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DT: January 15, 2010

Re: U.S. Participation in the Trans-Pacific Partnership (TPP) Agreement

1. Background on TPP and U.S. Participation

Shortly after the passage of the North American Free Trade Agreement (NAFTA) in 1993, the Clinton administration launched initiatives to establish NAFTA-style “free trade” blocs that would encompass the Western Hemisphere and the Asian-Pacific region. Negotiations for an Asian Pacific regional “free trade agreement” (FTA) were proposed at the Asian Pacific Economic Cooperation (APEC) summit in Bogor, Indonesia in 1994. However, the plans for both the Free Trade Area of the Americas (FTAA) and the APEC FTA unraveled, as major countries in each region came to loggerheads over the agreements’ scopes and the model on which the pacts should be premised. With respect to APEC, this included Japan, Malaysia, Indonesia and others.

In late 2000, three of the APEC countries (Singapore, New Zealand and Chile) that were interested in pursuing the APEC concept of a regional Asian-Pacific FTA launched talks to establish what was formally called the Trans-Pacific Strategic Economic Partnership Agreement, or the Pacific-3 (P-3). In its origins, the Trans-Pacific Strategic Economic Partnership Agreement is somewhat parallel to CAFTA in the Western Hemisphere, in that after the FTAA talks imploded, the Bush administration’s Plan B was to establish FTAs with “the willing” in the hemisphere, which resulted in the Central America Free Trade Agreement (CAFTA), FTAs with Chile and Peru, and signed FTAs with Colombia and Panama. With respect to the “willing” Asian-Pacific countries, Brunei also joined the P-3 talks. In 2006, an FTA, sometimes called the P-4 but formally named the Trans-Pacific Strategic Economic Partnership Agreement, went into effect. The P-4 countries excluded financial services and investment from the original pact’s terms, but committed to negotiate on these issues not later than two years after the pact came into force.¹

These new talks started in 2008 with U.S. participation in three rounds of P-4 negotiations on financial services and investment issues.² In September 2008, President Bush’s U.S. Trade Representative (USTR) Susan Schwab notified Congress that the United States would expand its participation beyond the two sectoral issues and start negotiations to become a full member of the agreement, which was identified as the Trans-Pacific Partnership (TPP).³ The Bush USTR sent a

¹ **Article 20.1: Investment Negotiations:** “Unless otherwise agreed, no later than 2 years after entry into force of this Agreement the Parties shall commence negotiations with a view to including a chapter on investment in this Agreement on a mutually advantageous basis”; **Article 20.2: Financial Services Negotiations:** “Unless otherwise agreed, no later than 2 years after the entry into force of this Agreement the Parties shall commence negotiations with a view to including a self-contained chapter on financial services in this Agreement on a mutually advantageous basis.”

² Office of the USTR, “United States to Negotiate Participation in Trans-Pacific Strategic Economic Partnership,” Fact Sheet. September 2008, Available at: http://ustraderep.gov/assets/World_Regions/Southeast_Asia_Pacific/Trans-Pacific_Partnership_Agreement/Fact_Sheets/asset_upload_file602_15133.pdf

³ “Letter from Susan C. Schwab to the Hon. Nancy Pelosi, Speaker, U.S. House of Reps.,” Sept. 22, 2008, Available at:

second TPP notice to Congress in December 2008, expanding the list of partners to include Australia, Vietnam, and Peru.⁴

Shortly after President Obama's inauguration, USTR published in the January 26, 2009 Federal Register a "Notice of intent to initiate negotiations on a Trans-Pacific Partnership (TPP) free trade agreement with Singapore, Chile, New Zealand, Brunei Darussalam, Australia, Peru and Vietnam, request for comments, and notice of public hearing."⁵

On February 24, 2009, the Obama administration asked the TPP countries to delay negotiations that had been scheduled for March 30, 2009, so that the new administration could appoint trade officials and review its trade policy.⁶ On May 18, 2009, following a speech at the U.S. Chamber of Commerce, Obama administration USTR Ron Kirk told reporters that the Obama administration would pursue a TPP agreement.⁷ However, the Office of the USTR then clarified that no formal decision had been made on whether the United States would continue with the Bush-launched talks.⁸ The White House offered "no comment" to reporters regarding the matter.⁹

Prior to President Obama's Asia trip in the fall of 2009, various stakeholders were briefed by USTR that no TPP announcement was expected. However, on November 13, 2009, President Obama announced at an event in Tokyo that the United States would "engage" with the Trans-Pacific Partnership."¹⁰ On December 14, 2009, USTR Kirk sent letters to House Speaker Nancy Pelosi and Senate President Pro Tempore Robert Byrd: "On behalf of the President, I am pleased to notify Congress that the President intends to enter into negotiation of a regional, Asia-Pacific trade agreement, known as the Trans-Pacific Partnership (TPP) Agreement, with the objective of shaping a high-standard, broad-based regional agreement."¹¹ The notice included Australia, Brunei, Chile, New Zealand, Peru, Singapore, and Vietnam, noting that other countries might join at a later date.

2. Schedule for 2010 TPP Talks

The first 2010 TPP negotiations will be held in Melbourne, Australia during the week of March 15 with USTR participating. A complicating factor is that the Obama administration has yet to undertake the inclusive trade review process announced by USTR in 2009 that is designed to formulate a new Obama trade policy. There are four rounds of TPP negotiations scheduled for 2010.

[http://ustraderep.gov/assets/World_Regions/Southeast_Asia_Pacific/Trans-Pacific_Partnership_Agreement/Other_Documents_\(Letters,_etc\)/asset_upload_file775_15142.pdf](http://ustraderep.gov/assets/World_Regions/Southeast_Asia_Pacific/Trans-Pacific_Partnership_Agreement/Other_Documents_(Letters,_etc)/asset_upload_file775_15142.pdf)

⁴ Susan Schwab, "Letter from Susan C. Schwab to the Honorable Nancy Pelosi, Speaker, U.S. House of Representatives", December 30, 2008, Available at:

[http://ustraderep.gov/assets/World_Regions/Southeast_Asia_Pacific/Trans-Pacific_Partnership_Agreement/Other_Documents_\(Letters,_etc\)/asset_upload_file152_15321.pdf](http://ustraderep.gov/assets/World_Regions/Southeast_Asia_Pacific/Trans-Pacific_Partnership_Agreement/Other_Documents_(Letters,_etc)/asset_upload_file152_15321.pdf)

⁵ USTR, "Request for Comments and Notice of Public Hearing: Proposed Trans-Pacific Partnership Free Trade Agreement," Fed. Reg., (Vol. 74, No. 15), Jan. 26, 2009 <http://www.thefederalregister.com/d.p/2009-01-26-E9-1515>

⁶ Inside U.S. Trade, "U.S. Delays TPP Talks to Allow Obama Cabinet Members to Take Office," Feb. 24, 2009.

⁷ Inside U.S. Trade, "Kirk TPP Endorsement Precedes Formal Administration Decision, Panama FTA Efforts Slowing", May 20, 2009.

⁸ Inside U.S. Trade, "USTR Still Mulling Options for Deeper Asia-Pacific Trade Engagement," Oct. 16, 2009.

⁹ Ibid.

¹⁰ USTR, Nov. 13, 2009, Available at: <http://www.ustr.gov/about-us/press-office/blog/2009/november/increasing-us-exports-creating-american-jobs-engagement-tra>

¹¹ Ron Kirk, "Congressional notifications of intent to negotiate a TPP," USTR, Dec. 14, 2009, Available at: http://www.ustr.gov/webfm_send/1559

3. U.S. Negotiating Objectives for the TPP and Structural Issues

TPP negotiations pose an array of interconnected policy and political challenges.

Concerns have begun to emerge about why the TPP is a priority to which the administration will dedicate considerable negotiating resources. The United States already has FTAs with the largest economies in the prospective TPP bloc – Australia and Singapore – plus FTAs with Chile and Peru. These four prospective TPP countries with whom the United States already had FTAs comprise 87 percent of the total combined \$1.7 trillion nominal GDP of all target TPP countries.¹² Compared with the prospect of the United States initiating trade negotiations with other countries which might provide significant U.S. economic opportunities, the remaining TPP countries – Brunei, Vietnam and New Zealand – provide relatively limited U.S. export opportunities.

In addition, various significant U.S. agricultural interests have expressed strong concern about import surges with respect to any FTA that includes New Zealand. For instance, the National Milk Producers Federation is on the record as saying that the TPP “offers virtually no new meaningful export opportunities to U.S. agriculture while at the same time forces the dairy industry to compete against a virtual monopoly power in New Zealand....The U.S. should not proceed with the negotiations in its current form.”¹³

The very form a possible TPP could take remains unclear and the situation is extremely complex. First, the United States, Australia, Vietnam, and Peru all have sought to join negotiations on the expansion of an *existing* pact – the Trans-Pacific Strategic Economic Partnership Agreement, also known as the P-4 . The four P-4 countries consciously designed it to bring in new partners over time. However, this 2006 pact between Brunei, Chile, New Zealand, and Singapore reflects a past trade pact model that many congressional Democrats have opposed. Environmental and labor concerns are relegated to side letters (the Environmental “Cooperation Agreement” and the labor “Memorandum of Understanding”) that are unenforceable. In comments filed on the January 2009 USTR notice on TPP, the AFL-CIO singled out the labor provisions of the P-4 as being inadequate: “The Labor Memorandum of Understanding (MOU) negotiated between the P-4 countries as part of the Trans Pacific Strategic Economic Partnership Agreement should not serve as a model labor chapter for the TPPFTA negotiations. The obligations in the MOU are very weak and there is no enforcement mechanism.”¹⁴ (Labor unions in New Zealand were also wary of the original P-4.¹⁵) The pact also covers trade in goods, services, customs procedures, intellectual property, import safeguards, procurement, sanitary and phytosanitary measures, dispute settlement, technical barriers to trade, and competition policy. In important ways, the existing P-4 text does not reflect President Obama’s campaign commitments to trade reform¹⁶ or the position of many congressional

¹² Central Intelligence Agency, “The World Factbook 2009,” Available at: <https://www.cia.gov/library/publications/the-world-factbook/index.html>

¹³ Jaime Castaneda, “Testimony Presented on Behalf of the NMPF Producers Federation Before the Trade Policy Staff Committee,” National Milk Producers Federation, Mar 4, 2009.

¹⁴ AFL-CIO, “Testimony Regarding the Proposed United States - Trans-Pacific Partnership Free Trade Agreement,” Feb. 25, 2009.

¹⁵ New Zealand Council of Trade Unions, “Submission of the New Zealand Council of Trade Unions to the Ministry of Foreign Affairs and Trade on P4 Negotiations with the United States,” Dec. 8, 2008, Available at : <http://nznotforsale.files.wordpress.com/2009/02/ctu-submission-on-us-and-trans-pacific-fta-dec-2008.pdf>

¹⁶ Public Citizen, “Selected Campaign Statements by President Barack Obama on U.S. Trade and Globalization Policy,” 2008, Available at: <http://www.citizen.org/documents/ObamaTradeCampaignStatementsFINAL.pdf>

Democrats. Thus, the prospect of the United States joining the existing P-4 text and proceeding with the negotiation of only the outstanding financial service and investment issues is problematic.

Second, the outstanding issues in the TPP – financial services and investment – are among the most controversial among Democrats. A majority of Democrats opposed the 2007 U.S.-Peru FTA in part because it failed to remedy problems with foreign investor rights and their private enforcement that had led many Democrats to oppose NAFTA and CAFTA. Congress and the Obama administration have yet to discuss how to proceed on this issue, which candidate Obama identified as a matter requiring reform. The Bush administration’s engagement on the TPP financial service issues predated the trend towards reregulation that followed the global financial crisis. The lessons of the crisis call into question the prudence of establishing new constraints on financial regulatory policy within a trade agreement.

Third, there are 11 other existing trade agreements between the various proposed TPP partners that create what has been called a “spaghetti bowl” of differing rules.

Agreements among TPP Negotiating Partners		
Agreement	Signing date	Entry into force
U.S.-Peru Free Trade Agreement	April 12, 2006	February 1, 2009
U.S.-Chile Free Trade Agreement	June 6, 2003	January 1, 2004
U.S.-Singapore Free Trade Agreement (USSFTA)	May 6, 2003	January 1, 2004
Australia-U.S. Free Trade Agreement (AUSFTA)	May 18, 2004	January 1, 2005
Singapore-Australia Free Trade Agreement (SAFTA)	February 17, 2003	July 28, 2003
Australia and New Zealand Closer Economic Relations		January 1, 1983
Australia-Chile Free Trade Agreement	July 30, 2008	March 6, 2009
ASEAN-Australia-New Zealand FTA (AANZFTA) (includes Brunei, Burma, Malaysia, the Philippines, Singapore and Vietnam)	February 27, 2009	January 1, 2010
Agreement between New Zealand and Singapore on a Closer Economic Partnership (ANZSCEP)	November 14, 2000	January 1, 2001
Peru-Singapore Free Trade Agreement (PeSFTA)	May 29, 2008	August 1, 2009
Peru-Chile Free Trade Agreement	August 22, 2006	March 1, 2009

Fourth, the United States has FTAs with four of the prospective TPP countries – Australia, Chile, Peru and Singapore – that have varying terms. Only the Peru FTA includes certain initial reforms to labor, environmental and access to medicine patent rules that resulted from a 2007 deal between some congressional Democrats and the Bush administration. A majority of House Democrats opposed the Peru deal, calling for reforms to investment, procurement, service-sector, agriculture, and imported food safety rules and additional reforms to labor and environmental terms. However, the Australia, Chile and Singapore FTAs contain the outdated terms on labor and environmental standards and intellectual property that were the basis of the Peru FTA’s renegotiation in 2007.

Meanwhile, Australia rejected the Bush administration’s demands that their FTA’s foreign investor provisions have private investor-state enforcement. Thus, the U.S.-Australia FTA alone among the four includes this important reform, which many congressional Democrats have demanded. Yet, all four pacts contain the substantive foreign investor terms that many congressional Democrats have opposed. The U.S. FTAs with Australia, Chile and Singapore do not even include changes made in the CAFTA text that were intended to remedy some of NAFTA’s foreign investor provision

problems ,changes that did not satisfy most congressional Democrats – only 15 of them supported CAFTA.

The structural and policy complications raise many thorny questions:

1. Which provisions of the existing agreements will remain in force and which will be replaced by the TPP? Will the TPP simply supersede all past FTAs among the prospective TPP partners? If the other agreements or elements of them remain in force, what will be the status of conflicting overlapping provisions?
2. Will the negotiations “harmonize upward” or “harmonize downward” rules on past U.S. improvements on environmental and labor standards, access to medicines patent rules and the Australia FTA’s important exclusion of investor-state private enforcement?
3. The P-4 was envisioned as a “docking agreement” that other countries could join after the agreement went into force. Might the TPP be structured similarly? *And, if so, what would be Congress’ future role in approving countries seeking TPP accession?*

USTR Kirk’s letters to Congress stated that: "USTR will now intensify consultations with Congress and with American stakeholders to develop objectives for the Trans-Pacific Partnership agreement negotiations, in order to enter already-scheduled talks in March with a robust U.S. view that seeks the highest economic benefit for America's workers, farmers, ranchers, manufacturers, and service providers, and that reflects our shared values on labor, the environment, and other key issues. The development of our negotiating positions will be a collaborative effort with elected leaders and stakeholders here at home, in order to shape an eventual Trans-Pacific Partnership Agreement that is a new kind of trade agreement for the 21st century, bringing home the jobs and economic opportunity we want all our trade deals to deliver."¹⁷ Given the first TPP negotiating session is mid-March 2010 and USTR has not yet initiated the inclusive U.S. trade policy review it committed in 2009 to undertake or the inclusive process to formulate a new Obama trade policy., it will be difficult to formulate new negotiating objectives in time for the March meeting.

Fifth, another difficult issue that U.S. negotiators will face is the possible inclusion of Vietnam and Brunei in the TPP. Vietnam is known for its violation of internationally recognized labor rights. The State Department has noted that “Workers are not free to join or form unions of their choosing. The Communist Party of Vietnam (CPV) controls the single trade union, the VGCL, an umbrella organization that approves and manages a range of subsidiary labor unions organized according to location and industry.”¹⁸ Moreover, according to the annual State Department Human Rights report, the government of Vietnam has “continued its crackdown on dissent, arresting a number of political activists and disrupting nascent opposition organizations, causing several political dissidents to flee the country,” according to the State Department.¹⁹

The State Department also has cited Brunei for “arbitrary detention; limits on freedom of speech, press, assembly, and association; restrictions on religious freedom; discrimination against women; restricted labor rights; and exploitation of foreign workers.”²⁰ In particular, the State Department

¹⁷ USTR Ron Kirk, “Congressional notifications of intent to negotiate a TPP,” U.S. Trade Representative, Dec. 14, 2009, Available at: http://www.ustr.gov/webfm_send/1559

¹⁸ U.S. State Department, “Country Report on Human Rights Practices: Vietnam”, March 2008, Available at: <http://www.state.gov/g/drl/rls/hrrpt/2007/100543.htm>

¹⁹ Ibid.

²⁰ U.S. State Department, “Country Report on Human Rights Practices: Brunei”, February 2009, Available at: <http://www.state.gov/g/drl/rls/hrrpt/2008/eap/119034.htm>

reported that newspaper publishers can be prosecuted for publishing anything that challenges the “Malay Muslim Monarchy concept,” which promotes “Islam as the state religion [and] monarchical rule as the sole acceptable governing system.”²¹

Following Obama’s announcement in Tokyo that he would push forward with the TPP, Ways & Means Chair Charles Rangel (D-NY) & Ways and Means Trade Subcommittee Chair Sander Levin (D-MI) urged him to incorporate international labor and environmental standards into the agreement.²² In the same statement, they added that, due to Vietnam’s labor right violations, there must be “active consultations between the Administration and Congress at every significant juncture in the engagement on TPP, working together to implement a 21st Century trade policy.”²³

Levin also noted that handling Vietnam in the right way will be important, because its participation could pose particular problems with respect to IPR protection and labor rights. “They are still a ... non-market economy, workers can only belong to one union that is tied into the government, you have a sense of the old communist party structure [in Vietnam] when it comes to worker rights,” he said following a hearing on trade preference programs.²⁴

Some observers have suggested that the TPP should include a democracy clause that would require parties to the agreement to have democratic forms of government. Several of our prospective TPP FTA partners are members of the Commonwealth (an association of former British colonies), whose charter includes the following democracy clause: We believe in... the individual's inalienable right to participate by means of free and democratic political processes in framing the society in which he or she lives.” Zimbabwe had its Commonwealth benefits suspended in 2002 when the Mugabe regime used targeted violence to ensure its reelection.²⁵ In contrast, when the democratically-elected Honduran government was overthrown in a coup, the benefits of CAFTA, which has no democracy clause, stayed in effect for the coup regime.²⁶

4. Some Political Considerations

Among congressional Democrats and Democratic base groups, there are strong expectations that the TPP negotiations be used to break away from the Bush trade agenda and to create a new American trade agreement model. ***That the Bush administration initiated the TPP talks creates a special imperative on the Obama administration to create a new approach to the TPP, in cooperation with Congress and interested Democratic constituencies.*** If the TPP were seen as a continuation of the same Bush trade agenda, the political implications could be dire.

Congressional Democrats and their constituents have been clear in their demand for a new trade model that implements the trade reform commitment made by President Obama during his

²¹ Ibid.

²² House Committee on Ways and Means, “Lawmakers on Announcement of U.S. Engagement on Trans Pacific Partnership Free Trade Agreement,” Press Release, Nov. 16, 2009, Available at: <http://waysandmeans.house.gov/News.asp?FormMode=release&ID=969>

²³ Ibid.

²⁴ Inside U.S. Trade, “Rangel, Levin Flag Vietnam as Possible Problem for U.S. Participation in TPP,” Nov. 20, 2009.

²⁵ BBC News, “UK welcomes Zimbabwe decision,” Mar. 19, 2002, Available at: http://news.bbc.co.uk/2/hi/uk_news/politics/1882262.stm

²⁶ U.S. State Department, “Senior State Department Officials on Honduras,” Conference Call Transcript, Aug. 25, 2009, Available at: <http://www.state.gov/r/pa/prs/ps/2009/aug/128373.htm>

campaign.²⁷ This includes *building upon* the labor and environmental standards reforms and access to medicines patent rules improvements included in the text of the Peru FTA. In addition, the TPP must provide for substantive reforms to investment rules on top of the Australia FTA's standard of not including private investor-state enforcement of foreign investor privileges. The changes noted in the Annex attached to this memo listing some core fixes to the past trade agreement model must also be made with respect to pacts' procurement, financial serviced, general service sector, food safety, and agriculture rules. Some key commercial interests are insisting that the TPP roll back the initial reforms to the Bush trade agreement model made in 2007. The National Association of Manufacturers (NAM), for example, opposes the inclusion of the improvements in the intellectual property provisions for prescription drugs contained in the May 2007 deal.²⁸ NAM threatened to withdraw its support for the TPP if the TPP is not the "highest quality agreement" that includes a rollback of the 2007 reforms to the trade agreement model.²⁹

A majority of House Democrats, chairs, and subcommittee chairs have sponsored the TRADE Act, which provides specific guidance with respect to what provisions U.S. trade agreements must and must not include.³⁰ In its comments on the January 2009 docket, the AFL-CIO has warned against negotiating the TPP without changing the fundamentals of the trade agreement negotiating framework, stating that the United States "cannot negotiate new free trade agreements using the current trade template."³¹

The comments of House Rules Committee Chair Louise Slaughter (D-NY) in response to the December 2009 TPP announcement captured the sentiments of many congressional Democrats and their constituents: "I don't plan to support any new trade agreements until this Administration finally annunciates a clear statement of policies and goals with respect to trade.... We've been eagerly awaiting some guidance from the White House all year. Until this Administration starts to make sound investments in creating opportunities for American workers we should not be pursuing new trade packages that will hurt U.S. manufacturing. Administration officials need to start from scratch and work on a trade agreement that follows the principles of the Reciprocal Market Access Act and the TRADE Act and protects American jobs."³²

The TPP negotiation process, being the first trade agreement negotiation into which the Obama administration has entered, has become the venue in which the administration must formally create and then implement a new U.S. trade agreement model.

Two Annexes Follow:

- **Chronology of U.S. interaction with P-4 and TPP Process**
- **What Must and Must Not be in Any U.S. Trade Agreement**

²⁷ Trade Reform, Accountability, Development, and Employment Act of 2009, H.R 3012, 111th Congress (2009). Available at: <http://thomas.loc.gov/cgi-bin/bdquery/z?d111:HR03012:@@D&summ2=m&>

²⁸ Franklin J. Vargo, "Testimony for the Public Hearing On the United States – Trans Pacific Partnership Free Trade Agreement," National Association of Manufacturers, March 4, 2009.

²⁹ Ibid.

³⁰ Trade Reform, Accountability, Development, and Employment Act of 2009, H.R 3012, 111th Congress (2009).

³¹ AFL-CIO, "Testimony Regarding the Proposed United States - Trans-Pacific Partnership Free Trade Agreement," Feb. 25, 2009.

³² The Office of Representative Louise Slaughter, "Slaughter Says New TPP Trade Talks are Premature," Press Release, Dec. 15, 2009, http://www.louise.house.gov/index.php?option=com_content&view=article&id=1436:slaughter-says-new-tpp-trade-talks-are-premature&catid=41:press-releases&Itemid=109

Annex I: Chronology of U.S. interaction with P-4 and TPP Process:

November 15, 2000 : Clinton administration decides not to get involved – Early in the course of negotiations of the Trans-Pacific SEC, officials referred to the agreement as “The Pacific Three Free Trade Agreement (P3)”. Singapore Prime Minister Goh Chok Tong, New Zealand Prime Minister Helen Clark, and Chilean President Ricardo Lagos met to discuss the possibility of forming a FTA between the countries. Originally, Clark hoped to include Australia and the United States in a proposed deal, but the United States was cold to the idea. At the time, Clinton Secretary of Commerce Norman Mineta said that the United States would be open to a “P-5” agreement, but only as a non-comprehensive agreement limited to air services.^I Besides Clark, Singapore was also pushing strongly for the deal, as it was open to greater trade negotiations with almost any nation.^{II} At that time, one negotiating topic that Clark brought up was dairy sector negotiations: “Miss Clark believed [Chile] was keen to enter a trade agreement but had concerns about the impact on its less-developed dairy industry. She said she had offered New Zealand assistance to Chile’s dairy sector.”^{III}

At October 2002 APEC summit in Mexico, New Zealand tries to get the U.S. involved in Trans-Pacific Partnership Agreement talks, but the U.S. remains outside the process: New Zealand, Chile and Singapore announced that they would begin negotiations for an FTA. The United States, however, remained opposed to the idea of joining a free trade bloc: “Miss Clark is still pushing the case for a free-trade agreement with the United States, though U.S. officials have made it clear New Zealand is not on its list of possible partners. But Miss Clark said the three-way deal was a building block. ‘Singapore hopes to conclude an agreement with the U.S. in November, Chile has been negotiating for two years, Australia hopes to start negotiations – a number of pieces in the jigsaw are starting to come together,’ [Clark] said.”^{IV}

Talks that establish the underlying P-4 agreement start in September 24-26, 2003 with no U.S. role: The initial idea of a P-5 – with the United States being the fifth country – failed to materialize over the course of the negotiations. Throughout the P-3 negotiations, New Zealand pleaded with the United States to join.^V Australia, for its part, seemed content to pursue an agreement with the United States only.

The Trans-Pacific Strategic Economic Partnership Agreement is signed on July 18, 2005: It entered into force in New Zealand and Singapore on May 28, 2006. Brunei implemented the agreement on July 12, 2006, while it entered into force for Chile on November 8, 2006.^{VI} The parties released a joint statement that read, in part, “The shared vision [of Chile, New Zealand, and Singapore] was to create a trade agreement, which would have the potential to grow into a larger strategic agreement for trade liberalisation within the Asia-Pacific region. Progress has already been made on this front, as the Ministers from Chile, Singapore and New Zealand today formally accepted Brunei Darussalam as a founding member of the Agreement, on terms that allow Brunei Darussalam to progressively implement some of its commitments over the next two years.... The Ministers from all four countries commended the outcome of the negotiations, which delivers....[a] liberalising framework that will encourage trade in services among the countries.”^{VII}

Bush administration gets involved in February 2008 as TPP financial service and investment talks start: The Trans-Pacific Partnership Agreement mandated that the parties would begin negotiations on financial services and investment in 2008. The Bush USTR used the resumption of talks on financial issues among the P-4 to try to squeeze itself into the agreement.^{VIII}

Bush administration participates in Trans-Pacific financial service and investment negotiations between February and September 2008: Three rounds of TPP financial services negotiations take place with the United States participating.^{IX} Australia, Peru, and Vietnam express interest in joining with the United States in TPP negotiations. According to *Inside U.S. Trade*, “USTR Spokeswoman Gretchen Hamel said Australia, Peru and Vietnam have already expressed interest in joining the TPP. The U.S. already has FTAs with Peru and Australia. One private-sector source said while Vietnam is interested in joining the P4, it is not yet at a point in developing a market-based economy where it is ready to do so.”^X

The Bush administration announces to Congress on September 22, 2008 that the United States will join a broader Trans-Pacific deal that includes more than just financial services –The Bush administration widened its interest and decided to pursue a comprehensive TPP agreement. Susan Schwab, Bush’s USTR, notified Congress that she would initiate negotiations with Brunei, Chile, New Zealand, and Singapore in March 2009.^{XI}

More countries join and USTR gives second TPP notice to Congress on December 30, 2008: The Bush USTR expanded the lists of negotiating partners to include Australia, Vietnam, and Peru in an additional notice to Congress.^{XII}

Obama administration requests a halt in negotiations on February 24, 2009: The Obama administration asked the TPP negotiating parties to delay indefinitely the negotiations that were scheduled for March 30, 2009, so that the new administration could appoint officials to the USTR and then review its trade policy.^{XIII}

USTR Kirk commits to TPP negotiations on May 18, 2009, then backpedals: Following a speech at the U.S. Chamber of Commerce, USTR Kirk told reporters that, at a minimum, the USTR would pursue a TPP agreement in the Obama administration.^{XIV} After Kirk’s comment, however, the Office of the USTR made it clear that no decision had formally been made and the White House offered “no comment” to reporters regarding the matter.^{XV}

President Obama makes first TPP policy announcement on November 14, 2009: – President Obama announced during a speech in Japan: “The United States will also be engaging with the Trans-Pacific Partnership countries with the goal of shaping a regional agreement that will have broad-based membership and the high standards worthy of a 21st century trade agreement.”^{XVI}

On December 14, 2009, USTR Kirk writes letters to Congress giving formal notification of the Obama administration’s intent to negotiate – USTR Kirk sends letters to House Speaker Nancy Pelosi and Senate President Pro Tempore Robert Byrd notifying them that he will initiate negotiations to form a TPP.^{XVII} Kirk states that the initial negotiating parties would be Australia, Brunei, Chile, New Zealand, Peru, Singapore, and Vietnam, but that other countries had already expressed an interest in joining the negotiations.^{XVIII}

NOTES FOR TIMELINE CHART

^I “Remarks by Secretary of Commerce Norman Y. Mineta”, Press Conference in Singapore, Nov. 15, 2000, http://www.insidetrade.com/secure/display.asp?dn=iwp2000_7846&f=wto2000.ask

^{II} “Clark in snap trade talks.” Dominion Post, Nov. 16, 2000.

^{III} “Clark in snap trade talks,” Dominion Post, Nov. 16, 2000.

^{IV} Wilson Peter, “Three-country trade deal,” Dominion Post, Oct. 28, 2002.

- ^v Government of New Zealand, “NZ congratulates Australia, US on FTA,” Press Release, Feb. 9, 2004, <http://www.beehive.govt.nz/node/18870> and Government of New Zealand, “New Zealand welcomes A-US FTA law passing,” Press Release, Aug. 13, 2004, <http://www.beehive.govt.nz/node/20639>
- ^{vi} Departamento de Estudios e Informaciones de la Dirección General de Relaciones Económicas Internacionales del Ministerio de Relaciones Exteriores de Chile, “Evaluación del P4 del Tercer Año del Acuerdo,” November 2009, at 4, <http://rc.direcon.cl/bibliotecas/1925>
- ^{vii} Singapore’s Ministry of Trade and Industry, “Joint Press Statement from Brunei Darussalam, Chile, New Zealand and Singapore Ministers on conclusion of Agreement,” Press Release, June 1, 2005, http://www.fta.gov.sg/press_home_detail.asp?id=48&txt_rdate=0&txt_ftalist=12
- ^{viii} “U.S. Seeks Services Deal With P4 As Possible First Step To New FTA,” *Inside US Trade*, Feb. 8, 2008. <http://www.insidetrade.com/secure/display.asp?dn=INSIDETRADE-26-6-7&f=wto2002.ask>
- ^{ix} Government of New Zealand. “Developments on free trade negotiations,” Speech by Phil Goff, 15 July, 2008. <http://www.beehive.govt.nz/speech/free+trade+negotiation+developments>
- ^x “USTR-Announced New Zealand FTA Gets Cool Agriculture Reaction,” *Inside U.S. Trade*. Sept. 26, 2008, <http://www.insidetrade.com/secure/display.asp?dn=INSIDETRADE-26-38-2&f=wto2002.ask>
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Annex II: What Must and Must Not be in Any U.S. Trade Agreement

Ttrade-Pacific Partnership Agreement (TPP) negotiations must ensure that certain provision found in past Bush-initiated FTAs are not replicated in a prospect trade pact with the TPP countries and that key provisions from missing from past pacts are included. The TRADE Act of 2009 sets forth in detail the provisions that must and must not be in future pacts. Among the changes relative to the past Bush-Clinton-Bush trade model that must be made so as to remove the most extreme conflicts with Democrats’ domestic agenda include:

- **Elimination of extraordinary foreign-investor privileges and private enforcement system that promote offshoring:** Past FTAs have all included substantive terms that provide foreign investors with special rights and privileges. The past FTA investment provisions have also allowed private investors and corporations to directly enforce the special FTA foreign investor rights and privileges by suing governments in foreign tribunals to demand cash compensation. The FTA investor rights terms create incentives for U.S. firms to offshore their U.S. production to foreign jurisdictions where they can operate under privileged FTA foreign investor status rather than be forced to deal with that country’s regulatory policy and courts.

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- **Extrajudicial challenges of U.S. environmental, health and land-use policies by foreign investors:** In future FTAs, the language defining the types of foreign investment subject to investor-state enforcement for expropriation and minimum standard of treatment must be limited to real property to meet the 2002 Fast Track rules (that foreign investors within the United States have no greater rights than the Constitution – as interpreted by the Supreme Court – offers). The language in future FTAs also must explicitly limit challenges only to government actions that terminate all value of an investment – permanently – to comply with the no-greater-rights standard. These changes are compatible with the terms of the 2002 “Kerry amendment” and demands by Reps. Doggett, Blumenauer, McDermott, and others.
 - **Extreme monopoly drug patent extensions via data exclusivity:** The past FTAs’ grant of monopoly control (“data exclusivity”) for drug-test data must be eliminated in the TPP and future pacts. The May 2007 deal made some progress in this area, but further changes are required to ensure the FTAs so not undermine nations’ ability to use the flexibilities guaranteed in 2001 WTO Doha Declaration on Public Health regarding making affordable medicines accessible to consumers. As now written, the FTAs violate Congress’ requirements in the 2002 Fast Track under which these pacts were negotiated to conform with the 2001 WTO Public Health Declaration. Rep. Waxman, Doctors without Borders, and others have demanded for years that FTAs not undermine nations’ ability to ensure consumers access to affordable drugs.
 - **Procurement:** Future FTAs must not include rules that limit the use of Buy American and Buy Local policies. Plus, language must be added to future FTAs explicitly stating that the technical specification rules and the supplier qualification rules in no way limit government actions regarding prevailing-wage, living-wage, renewable-source or recycled-content requirements, and that such measures do not violate either the FTAs’ procurement or investment rules. The language in past FTAs subjects many common pro-environmental and pro-labor procurement policies to challenge.
 - **Imported food must meet U.S. safety standards:** The right to send agricultural products for human consumption into the United States must be conditioned on meeting U.S. safety and inspection standards.
 - **Mandatory service-sector privatization and deregulation:** Trade pacts must not limit domestic policy regarding health, energy, and other essential services. Bush’s Peru FTA, for instance, locked in Peru’s failed Social Security privatization.
 - **Financial services deregulation.** The Bush administration's template for financial services chapters in FTAs also contains many serious problems that replicate and in some cases expand upon problems in NAFTA and the World Trade Organization's financial services terms that require certain forms of deregulation for any financial service that is covered by the pacts. Among the problems that should be addressed are: delinking the agreements' market access terms from deregulation terms. Currently, whole categories of regulation are prohibited with respect to any sector under the pacts' jurisdiction. This includes terms that forbid "firewalls" that limit the spread of risk between financial sectors, and bans of risky products and modes and means of supplying a financial service; and restrictions on countries' ability to control destabilizing capital inflows and flight. As well, the current agreement contain specific constraints on permissible domestic regulation with respect to licensing of financial services,

technical standards, professional standards and more. Moreover, the standard prudential measures language included in U.S. trade and investment pacts should be amended to ens

- **Zeroing out of staple food tariffs:** Provisions requiring FTA partners to zero out tariffs on their subsistence food crops must be removed to ensure food security. Exceptions must be added for staples foods and real safeguard mechanisms added against surges and dumping.
- **Completing the May 10, 2007 improvements to environmental and labor standards:** Improvements made to the Bush FTAs' labor and environmental terms in 2007 have unfortunately proved inadequate, as shown by the Peru FTA. That FTA (with the improved FTA labor/ environmental language) was implemented in 2009 without Peru improving its labor law to meet ILO standards as required, and after Peru rolled back environmental protections existing prior to the FTA's signing. Beefed up labor and environmental standards must be added to all FTAs' core texts. Signatories must enforce core ILO standards as set forth in the ILO Conventions and Multilateral Environmental Agreements (MEAs), with a requirement that the failure to do so or the weakening of such laws must be made an FTA violation and these terms must be enforced equally to commercial terms. This would bring human rights matters that directly affect production costs on parity with FTA treatment of patents and other rent-seeking protections unrelated to trade.

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