

Congress of the United States
Washington, DC 20515

January 20, 2010

The Honorable Ron Kirk
United States Trade Representative
Office of the United States Trade Representative
600 17th Street NW
Washington, D.C. 20508

Dear USTR Kirk:

We received notice of the Obama Administration's intention to continue with the Bush Administration's participation in negotiations for a Trans-Pacific Partnership Free Trade Agreement (TPP) with Australia, Brunei Darussalam, Chile, New Zealand, Peru, Singapore and Vietnam. We are writing to request an initial meeting with you on this matter as soon as possible and to establish an ongoing process to consult with members of the House Trade Working Group (HTWG) before and during these negotiations.

As members of the HTWG, one of our primary goals is to create a new U.S. trade agreement paradigm, one that benefits America's workers, consumers, farmers, and firms. A total of 133 of us have sponsored the Trade Reform, Accountability, Development and Employment (TRADE) Act, which does just that. In all of our efforts on trade policy, we are also dedicated to remedying the negative consequences on American jobs and our economy, the environment, and public health and safety that have resulted from aspects of the current trade model. Thus, we are eager to work with the new Administration to help deliver President Obama's campaign commitments on trade reform.

In September 2008, the Bush Administration formally notified Congress that the United States would fully participate in TPP negotiations after having informally participated for most of 2008. Given President Obama's campaign commitments to create a new American trade policy that works for the majority, it is critical that the new Administration thus formulate a new approach to the TPP talks. For these negotiations to yield an agreement that could enjoy broad support, it will be critical that you work in cooperation with congressional trade reform advocates to transform the Bush TPP initiative into an opportunity to develop a new forward-looking American trade agreement model.

We understand that at a March 2010 meeting in Australia, countries will discuss the structure and scope of a prospective TPP agreement. That is why we look forward to working with you immediately and prior to this meeting to develop U.S. standards and objectives for any agreement that might result from the TPP process. We also believe that it is critical that the countries interested in participating in TPP talks understand that there

are certain terms that must be and must not be included in this and any other future U.S. trade agreement for it to obtain congressional support.

Any TPP talks will be complicated given there are existing U.S. FTAs with four of the seven countries that you have listed as now participating in TPP negotiations. In addition, we note that one of the seven countries proposed as a TPP partner, Vietnam, does not have a market economy, while both Vietnam and Brunei have authoritarian governments. These challenges, however, represent opportunities for the new Administration.

We view the TPP negotiations as an opening to ensure that any country seeking to be part of the TPP meet criteria with respect to labor rights, democratic governance and other human rights. In addition, we believe that the Administration is well positioned to use the TPP talks to reform the American trade agreement model. Because existing FTAs with TPP countries include provisions that have since been improved upon in subsequent trade agreements, the TPP talks present an opportunity not only to establish a new trade policy going forward but also to address some of the mistakes of trade policy from the past.

In advance of our initial meetings on this matter, we would like to identify some of these key provisions included in past pacts from which we expect additional progress in the TPP context. The FTAs with Peru, Panama, Colombia and South Korea negotiated under the Bush Administration do not represent an acceptable trade agreement model. Indeed in 2007, a majority of House Democrats voted against the Peru FTA. However, specific improvements made to some of those pacts' terms with respect to labor and environmental standards and patent rules related to medicines are a starting point from which the TPP must achieve more progress. In addition, the U.S.-Australia FTA's investment chapter's exclusion of extrajudicial investor-state enforcement provides a basis from which TPP talks could achieve additional needed reforms with respect to trade agreement foreign investor provisions.

Foreign investor rights: We believe the new American trade agreement model must no longer provide extraordinary foreign-investor privileges and private enforcement systems that promote offshoring and allow foreign investors to challenge our environmental, zoning, health and other public-interest policies in foreign tribunals. Many in Congress have expressed serious concern about past trade pact provisions that allow foreign investors to skirt our court system to sue the United States in World Bank and UN tribunals over regulatory policies that apply to domestic and foreign firms alike. In order to ensure that foreign investors do not have greater rights than U.S. investors and firms, the TPP's investment chapter should build off of the progress made in the Australia-U.S. FTA in addressing this congressional concern by similarly not providing for extra-judicial investor-state private enforcement rights for foreign investors.

Additional reforms are still needed relative to the NAFTA-CAFTA foreign investor rights model that has been replicated in an array of U.S. trade agreements, including President Bush's FTAs with Korea, Colombia and Panama. Those pacts contain only non-binding hortatory language in their general preambles stating that foreign investors operating here should not be provided with greater rights than U.S. investors. The

TRADE Act provisions on investment provide an outline of the investor rules we support that would ensure that foreign investors do not obtain preferential rights relative to domestic investors and firms.

Specifically, we oppose trade agreements' establishment of rights for foreign investors to obtain compensation from the U.S government for "regulatory takings" – takings compensation for the costs of regulatory compliance that would not be allowed under U.S. law. We also believe it is critical that any new Obama trade agreement repair provisions in previous FTAs that guarantee a "minimum standard of treatment" for foreign investors by making clear that this standard is limited to guarantees of procedural due process rather than creating new substantive property rights for foreign firms. In addition, the TPP FTA must not include limits on capital controls and other policies countries may need to employ to counter financial and currency crises that have been included in past FTAs. These reforms, among others, are supported by labor, environmental, academic and other public interest advocates including those who participated in the recent Bilateral Investment Treaty (BIT) Review undertaken by the Administration.

Access to medicines. The patent provisions of the U.S. FTA with Peru provide a base on which further health-related protections can be built. We strongly believe trade agreements must work to ensure affordable access to medicines, and the Peru agreement addressed several of our long-standing concerns about the way that medicine patent-related issues are dealt with in FTAs. Additional improvements, however, are still required. It is imperative that TPP patent rules do not undermine the flexibilities and rights included in the access to medicine polices that were agreed in the 2001 WTO Doha Declaration on the Trade Related Intellectual Property Agreement (TRIPS) and Public Health, a standard which the 2002 U.S. Trade Promotion Authority bill formally identified as a policy goal.

Labor and environmental standards. The TPP FTA should build on the advancements made to the Bush FTAs' labor and environmental terms in 2007 which were included in the FTA with prospective TPP partner Peru. Among the additional improvements needed to the Peru FTA is better enforcement of labor and environmental terms. For instance, despite inclusion of the 2007-revised labor and environmental language, the Peru FTA was implemented in 2009 without Peru fully implementing its labor commitments as required and after its government rolled back existing environmental protections. Given the disconcerting labor rights records of Vietnam and Brunei, the issue of enforcement will be a critical one in the TPP negotiations.

In addition, TPP labor standards must require signatories to enforce the core International Labor Organisation's (ILO) standards as set forth in the ILO Conventions. Indeed, all future U.S. trade agreements must include a requirement that countries implement in their domestic law the ILO Convention standards. They must also include provisions stating that the failure to enforce or the weakening of such policies would constitute a violation of a trade pact provision, for which the consequences will be just as stringent as commercial violations. The Peru FTA and the three pending treaties require countries only to implement the vague terms set forth in the ILO Declaration on Fundamental Principles and Rights at Work, and they explicitly do not refer to the ILO Conventions,

with their associated jurisprudence and protections. For this reason, requiring in the TPP that countries implement in their domestic law the ILO Convention standards will be a historic accomplishment for international worker rights.

Procurement rules. We do not believe it is appropriate for international trade agreements to impose limits on the ability of Congress and state legislatures to design stimulus, infrastructure and other government procurement activities that promote the public interest. The old FTA model subjects many common U.S. federal and state procurement policies to challenges in trade tribunals. Included among these policies are: a ban on anti-offshoring, many *Buy America* policies, and U.S. renewable-energy, recycled content, and other environmental safety requirements. The most recent economic downturn has underscored the importance of these policies as a means to help our country recover from a recession and should not be undermined by trade agreements. In addition, the Administration's commitment to the creation of green jobs should make it obvious why our renewable-energy and other environmental requirements in government procurement should be protected from challenges brought under trade agreements.

Services deregulation. It is our understanding that the Bush Administration's initial attraction to the TPP forum was based on these talks' focus on service sector liberalization and deregulation and establishment of new foreign investor rights, including in financial services. Given the worldwide effort to reregulate banking, securities, derivatives and other financial services, including the recent legislation passed in the House of Representatives, no trade agreement with the United States should contain any constraints on the ability of Congress to regulate either foreign financial service firms operating here or the cross-border provisions of financial services.

Democracy clause. We believe that FTAs should be entered into only with trading partners that have democratic governments, and, should democratic governance be interrupted, the terms of an FTA be suspended until democratic rule is reestablished. The TRADE Act includes readiness criteria that require a prospective trade agreement partner to have a democratic form of government. Several of our prospective TPP FTA partners are members of the Commonwealth whose charter includes the following democracy clause language that could be incorporated into the TPP: "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." We believe it is imperative that the Obama Administration obtain a clause in the TPP agreement that has this function.

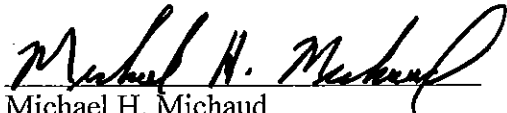
Food safety and agricultural terms. In addition, it will be critical to improve the safety and inspection standards for imported food and products in the pact relative to the past U.S. FTA model. We must also use the TPP opportunity to update FTA agriculture terms that have simultaneously undermined U.S. producers' ability to earn a fair price for their crops at home and in the global marketplace, while also displacing peasant farmers in trade partner nations.

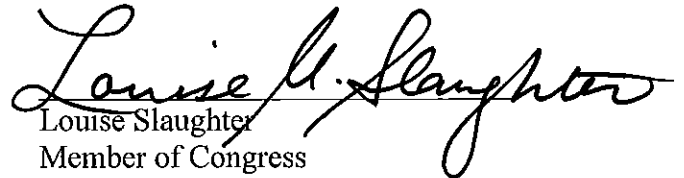
We believe it is critical to approach the TPP FTA negotiations as an opportunity to redefine and redirect U.S. trade policy. It is essential that we rebalance our trade and globalization policies so that they are beneficial to our workers, consumers, farmers, and

firms. Although we have opposed trade agreements that have not accomplished this balance, we strongly support a trade policy that creates and retains good jobs in the U.S., fosters sustainable and equitable development worldwide, and promotes solutions to our global economic and climate challenges. The TPP talks, as the Administration's first major trade policy initiative, will be the venue for President Obama to bring his message of change to the issue of trade and to begin creating a new trade agreement model that boosts prosperity and security at home and around the world. We are confident that working together, we can replace the failed policies of the past with those that deliver broadly shared benefits.


Thank you in advance for meeting with us on the TPP talks. We look forward to working with you to create a more just American trade policy.


Sincerely,


Michael H. Michaud
Member of Congress


Louise Slaughter
Member of Congress


Betty Sutton
Member of Congress



Barbara Lee
Member of Congress



Carol Shea-Porter
Member of Congress

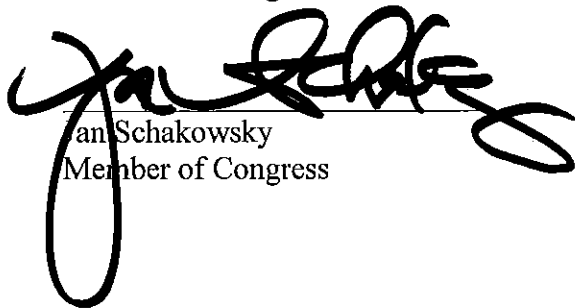

Tim Ryan
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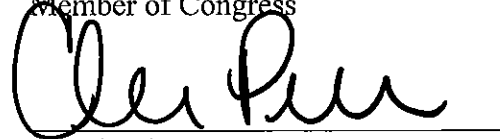

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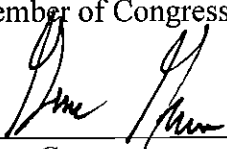
Peter DeFazio
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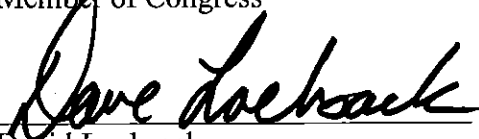
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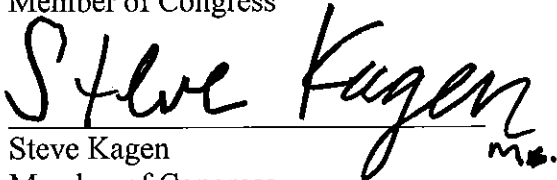
Hank Johnson
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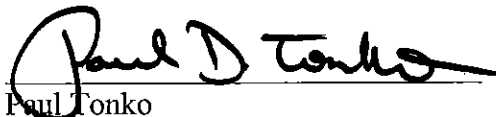
Gene Green
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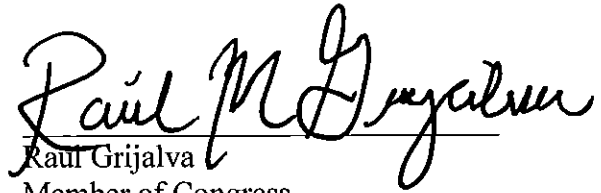
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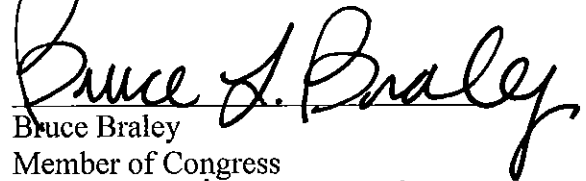
Mark Schauer
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Raul Grijalva
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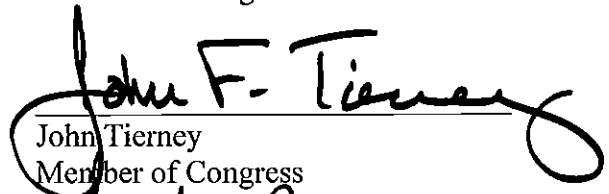
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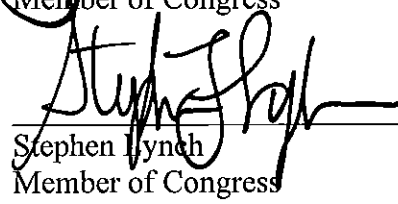
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