

The Honorable Ron Kirk
United States Trade Representative
600 17th Street NW
Washington, DC 20508

February 14, 2011

Dear Ambassador Kirk:

You have often said that you intend for the Trans-Pacific Free Trade Agreement (FTA) currently under negotiation to be a “new, high-standard, 21st century trade agreement.” Obtaining this result, which we support, will require a more transparent process than has characterized past U.S. trade negotiations or the first year of Trans-Pacific FTA talks.

We appreciate the opportunities you have provided for civil society participation around the Trans-Pacific FTA but feel strongly that more can and should be done. USTR moved early on to open space for civil society participants at the San Francisco negotiations, a step which other host countries have reciprocated at subsequent negotiating rounds. USTR has also provided post-negotiation civil society debrief sessions. However, it remains absolutely clear that important policy discussions and decisions are being made without the input of civil society (outside of the limited access provided to non-industry cleared advisors). Indeed, the overall level of transparency does not meet the standard expected of a 21st century trade agreement. At the center must be the U.S. public, which has a direct and long-term interest in the outcome of this negotiation.

Some Trans-Pacific FTA countries were involved in negotiations of the recently completed Anti-Counterfeiting Trade Agreement (ACTA). International civil society objected to the secrecy surrounding that process, and its draft texts were eventually widely circulated. Even the 153-member World Trade Organization (WTO) now posts country documents and negotiating texts on websites for scrutiny. Yet, to date, this practice has not been adopted in the context of Trans-Pacific FTA talks, even though the involved countries are all WTO members.

Enhanced transparency in the Trans-Pacific FTA process has many benefits. Having the expertise of a more diverse array of informed observers with access to text can safeguard against errors and the risks posed by limited understanding of possible consequences of proposals. An open process could also build confidence among the public and parliamentarians that Trans-Pacific FTA talks will indeed replace the past trade pact model – through which benefits and privileges were bestowed on various special interests and large multinational firms to the detriment of many in signatory countries.

In the past, nontransparent trade negotiations that are only made public after the final deals have been signed and sealed have had expansive implications for the daily lives of millions of people. If Trans-Pacific FTA talks are truly intended to result in a new model, then a negotiating process with greater transparency and regular access to draft text is necessary. This is the only way to ensure that those who would live with the results can have a meaningful part in the process.

The special circumstances of Trans-Pacific FTA negotiations greatly increase the need for such

openness. The current negotiations are premised on a process started in 2008 to add foreign investor protections and financial services regulatory limits to a Pacific-4 Free Trade Agreement (P4 FTA) existing between Singapore, New Zealand, Chile and Brunei. The P4 FTA certainly does not represent a new model for the 21st Century. And, especially in light of the global financial crisis, the prospect of adding new limits on financial regulation and new foreign investor rights to the P4 FTA is worrisome.

Indeed, the scale and scope of the proposed Trans-Pacific FTA is expansive. All signatory countries would be required to conform their domestic laws and regulations to certain provisions with an enforcement mechanism that would allow indefinite trade sanctions against countries that fail to comply. Trans-Pacific FTA negotiations cover not only financial regulation and new rights for foreign investors, but limits on how an array of services relating to healthcare, energy, natural resources, culture and more may be regulated; how domestic tax dollars may be expended; what sort of food safety and labeling and quarantine policies will be permitted; and more.

Citizens and legislators would never tolerate policymakers keeping secret the text of domestic legislation until it was passed. Yet, the Trans-Pacific FTA could require the alteration of wide swaths of our domestic policies under terms that do not facilitate later modifications as governments or public demands change. Indeed, the enforceability and permanence of such terms, with later changes to an adopted Trans-Pacific FTA requiring agreement by all of the signatory countries, necessitate extreme care and complete transparency on the front end.

Your USTR colleagues have confirmed that the investment and financial services texts initially developed during 2008 negotiations are being used as the basis for current negotiations. We request that these available draft texts be released immediately. Past requests by civil society representatives to our countries' negotiators for access to these two texts has been met with the argument that some *other* country objects to such transparency and that is why our government cannot allow us to have access. The February Santiago negotiations provide an excellent opportunity for the Trans-Pacific FTA countries to agree *together* to make the draft investment and financial service texts available and to release other draft texts as they are created.

We request that your negotiating team propose to the other negotiating parties at the February 2011 Santiago Round that they collectively agree to create a joint FTA website to facilitate enhanced transparency and to make available information about upcoming rounds (time, place, issues to be considered) and contact information for key negotiating personnel, as well as all white papers, draft texts, offers and counter-offers, trade and other data, press statements and declarations in the FTA process. Only such a robust, open and informed debate about possible Trans-Pacific FTA provisions will ensure a desirable outcome for a high-standard, 21st century trade deal.

Sincerely (continued on following page),

AFL-CIO
Center for International Environmental Law
Columban Center for Advocacy and Outreach

Earthjustice
Environmental Investigation Agency
Friends of the Earth
Global Exchange
International Brotherhood of Boilermakers
National Family Farm Coalition
NETWORK: A National Catholic Social Justice Lobby
Public Citizen
Sierra Club
United Church of Christ Justice and Witness Ministries
Witness for Peace