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For Immediate Release:
April 5, 2013

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Obama Administration Targets Numerous Public Interest Policies of TPP Countries in 2013 U.S. National Trade Estimate Report

New Report Indicts Health, Financial, Religious and Other Sensitive Policies as "Trade Barriers" to be Eliminated, Spotlighting Contentiousness of TPP Negotiations

WASHINGTON, D.C. – The Obama administration released a report this week that takes aim at a litany of sensitive domestic policies in countries currently negotiating the Trans-Pacific Partnership (TPP), identifying the policies as "trade barriers" that the United States seeks to eliminate. The target list of TPP nations' domestic policies, published in the 2013 National Trade Estimate Report by the Office of the U.S. Trade Representative (USTR), offers unusual insight into why negotiations over the sweeping, 11-nation deal are contentious and repeated deadlines for completion have been missed, said Public Citizen today.

The 406-page USTR report indicts a wide array of public health policies, financial regulations, politically sensitive manufacturing and agricultural policies and even religious standards as "trade barriers" that should be dismantled. The USTR levies such criticism against policies in all current and prospective TPP negotiating parties, including New Zealand's popular health programs to control medicine costs, an Australian law to prevent the offshoring of consumers' private health data, Vietnam's post-crisis regulations requiring banks to hold adequate capital, and Canada's standards requiring cheese to be made from milk.

For Malaysia, a predominantly Muslim country, the USTR report admonishes the government for "requiring that slaughter plants maintain dedicated halal facilities and ensure segregated transportation for halal and non-halal products." Instead, the report suggests that the government should conform its notions of Islamic meat-processing requirements to those established by Codex Alimentarius, an international food standards body at which multinational food corporations play a central role. The USTR also takes issue with restrictions on importation of pork and alcohol in this TPP negotiating country where three of every five consumers are Muslims.

"Even before the Obama administration's not-so-diplomatic target list of other countries' domestic policies, the Trans-Pacific Partnership was on rocky ground, with negotiators from many countries rejecting U.S. demands to expand patent monopolies for foreign pharmaceutical corporations and to subject their financial, health and environmental policies to foreign investor challenges before international tribunals empowered to order government compensation," said Lori Wallach, director of Public Citizen's Global Trade Watch. "By openly listing the domestic policies in other TPP countries that it wants dismantled, the Obama administration can only intensify growing public concern about the TPP in these countries."

The USTR reserves some of its most detailed policy critiques in the National Trade Estimate Report for Japan, which recently announced its intent to join the TPP negotiations. The report devotes 16 pages to castigating food labeling policies for providing too much information to consumers, outlining how exactly the country should restructure its public insurance system, urging the government to grant tax benefits to foreign universities, and bemoaning Japan's preference that its military equipment be made domestically. (The United States has similar rules on military procurement.)

The report also takes aim at Japan's agricultural policies, recommending, for example, the weakening of protections for domestic rice farmers because "Japanese consumers would buy U.S. high quality rice if it were more readily available." The political party of Japanese Prime Minister Shinzo Abe, backed by powerful farmer groups, has approved a policy position that would require the country to exclude rice, wheat and barley, beef and pork, sugar and dairy products from tariff eliminations in the TPP. In contrast, the USTR report explicitly names all but one of these sensitive sectors (sugar) as high-priority targets for liberalization.

For several TPP countries, the USTR's National Trade Estimate Report encourages the adoption of copyright enforcement measures akin to those proposed under the Stop Online Piracy Act (SOPA) that was defeated in the U.S. Congress. For example, the report notes that the Obama administration "has also urged Chile…to amend its Internet service provider liability regime to permit effective action against any act of infringement of copyright and related rights."

When addressing some TPP countries, the USTR report accuses national governments of broad corruption or even incompetence. For example, the report states that two of Peru's three federal branches of government lack the "impartiality" or "expertise" required to fulfill their responsibilities.

The USTR also chooses to mount public criticisms against TPP countries for "trade barriers" that are so specific in definition and trivial in consequence as to seem motivated by comically narrow U.S. corporate interests. For example, the report lambasts Singapore's import restriction for "non-medicinal chewing gum," Canada's high tariff on "breaded cheese sticks," and Peru's refusal to import "cars over five years old."

Among the report's hundreds of pages, the following commentaries on TPP countries are some of the most revealing:

Vietnam

- The USTR cites Vietnam's "new regulations aimed at improving the capital position of the banking industry" as a new form of trade restrictions. The report particularly blames new capital adequacy requirements for causing "difficulties" for banks.
- The USTR takes note of Vietnam's decision to block importation of "cultural products deemed 'depraved,'" listing the policy as a "nontariff barrier."
- The report targets Vietnam's ban on the shipment of certain products through the country en route to other destinations. These "barriers to trade" include restrictions on the trans-shipment of "hazardous waste items,…frozen animal by-products, and offal."

- The report states that the "United States continues to urge Vietnam to undertake more aggressive actions to combat the rising problem of intellectual property infringement, including digital piracy." Such urging, according to the report, has produced initial government conversations with Internet service providers about cracking down more on content that "rights holders" (e.g. U.S. media corporations) see as infringements – a key component of SOPA defeated in the U.S. Congress.

- The report concludes its remarks on Vietnam by casually and categorically accusing the country of "widespread official corruption and inefficient bureaucracy."

Singapore

- Despite praising Singapore for having "the second lowest rate of software piracy in Asia," the report still alleges that the country has "insufficient deterrent penalties for end-user software."

- The report notes that despite Singapore's increasing allowance for foreign ownership of domestic banks, "Singapore has indicated that it will not allow foreign controlling stakes or takeovers of its three major local financial institutions." That is, the report lists Singapore's unease with foreign takeovers of its most critical banks as a barrier to trade.

- The report bemoans the fact that most "foreign law firms with offices in Singapore cannot practice Singapore law" The report takes note of the fact that even when permitted to practice law in Singapore, foreign law firms are not allowed to litigate in Singapore's courts based on their understanding of Singaporean law.

- The report singles out Singapore's taxes on alcohol, tobacco and motor vehicles, noting that they are imposed "for social and/or environmental reasons." While the USTR does not explicitly call for the dissolution of these taxes, it apparently finds cause to highlight the measures in a report devoted to unwelcome trade barriers.

Peru

- The USTR levies a series of blanket accusations against the Peruvian government, lambasting two of the three federal branches. The report plainly states, "Both U.S. and Peruvian firms remain concerned that executive branch ministries, regulatory agencies, the tax agency, and the judiciary often lack the resources, expertise, or impartiality necessary to carry out their respective mandates." The report gives no further arguments to support the unabashed questioning of the federal government's fairness and competency.

- The USTR notes that a data privacy law in Peru "has caused concern among companies dependent on cross-border data flows." Those companies, according to the report, are particularly concerned about Peru's requirement that consent must be obtained from Peruvians before acquiring their confidential information.

- The report cites Peru's disinterest in U.S. used goods as a trade barrier, "including used clothing and shoes (except as charitable donations), used tires, cars over five years old, and heavy trucks (weighing three tons or more) more than eight years old."

New Zealand

- The USTR channels "strong concerns" regarding the Pharmaceutical Management Agency (PHARMAC), the New Zealand government agency that administers the country's successful medicine cost-containment policies. These concerns, the report notes, come from "U.S. stakeholders," – that is, U.S. pharmaceutical companies that have long opposed New Zealand's programs to contain medicine costs. The USTR accuses PHARMAC of not providing these "stakeholders" with adequate "transparency, timeliness, and predictability." In addition, the report takes issue with the fact that PHARMAC is expanding its cost containment policies into sectors, such as medical devices, that previously went "unregulated."

- The report notes that "rights holders" (e.g. U.S. media corporations) are somewhat supportive of New Zealand's new law to crack down on allegations of online copyright infringement. But the report then expresses annoyance with the fee that U.S. media conglomerates have to pay under the law to take action against an alleged infringement. The onerous fee required is $21.

Mexico

- The first investment barrier cited by the report is that "Mexico's oil and gas sector remains largely closed to private investment" The USTR acknowledges that this is because "the Mexican constitution mandates state ownership of hydrocarbons."
- The USTR sees fit to spotlight the Mexican laws that prohibit "foreign ownership of residential real estate within 50 kilometers of the nation's coasts." The report frames the inability of U.S. citizens to buy up Mexico's coastland as an "investment barrier."
- The report offers Mexico unsolicited advice for how to change its government procurement policies, including a recommendation that state-level procurement transparency standards be "harmonized…to avoid corruption and foster competition."

Malaysia

- The report admonishes the government of this predominantly Muslim country for "requiring that slaughter plants maintain dedicated halal facilities and ensure segregated transportation for halal and non-halal products." Instead, the report suggests that the government should conform its notions of Islamic meat requirements to those established by Codex Alimentarius, an international food standards body at which multinational food corporations play a central role.
- The USTR also takes issue with Malaysia's restrictions on importation of pork and alcohol, products traditionally forbidden for the three of every five Malaysians who are Muslim.
- The report states, "the U.S. Government continues to raise concerns about the procurement process in Malaysia." The stated concern is that "Malaysia has traditionally used procurement to support national public policy objectives." The particular objectives provoking USTR consternation include "encouraging greater participation of bumiputera [ethnic Malays and indigenous groups] in the economy, transferring technology to local industries, reducing the outflow of foreign exchange, creating opportunities for local companies in the services sector, and enhancing Malaysia's export capabilities."

Chile

- The United States has, according to the report, "urged Chile…to amend its Internet service provider liability regime to permit effective action against any act of infringement of copyright and related rights." Similar provisions were soundly rejected by the U.S. public and Congress as part of the ill-fated SOPA, due to widespread concern that the provisions would enable a sweeping crackdown on user-generated content, stifling innovation and restricting Internet freedom.

Canada

- The report conveys concerns of the U.S. pharmaceutical industry, mentioning the Notice of Intent filed last year by U.S. pharmaceutical corporation Eli Lilly, in which the company announced plans to use NAFTA's investor privileges to directly challenge Canada's entire patent policy. This investor-state attack was launched in response to Canadian courts' invalidation of a patent on an Eli Lilly medicine for which the firm had not met Canada's patentability standards. The USTR also notes another recent patent invalidation – for Pfizer's "little blue pill" – that has yet to produce a NAFTA investor-state case. The USTR's inclusion of these cases could be intended to provide political backing for the U.S. corporate challenges to Canadian patent law, which have generated wide-spread consternation among public health officials.
- The report takes issue with Canada's policy that major foreign investments and acquisitions must be reviewed to ensure that they offer a "net benefit" to the country. This standard, according to the USTR, is "overly broad."
- The USTR laments that Canadian provincial policies to control alcohol distribution "greatly hamper[] exports of U.S. wine and spirits to Canada." The report particularly blames "province-run liquor control boards," which enact policies closely resembling those used by U.S. state-level counterparts, such as the Pennsylvania Liquor Control Board.
- After describing a Canadian project to consolidate a wide array of federal government data, the report criticizes a stipulation that companies involved in the consolidation will not be permitted to move the government data outside of Canada. The USTR implies that the Canadian government should not have qualms with the offshoring of a wide range of government data because doing so aligns with "today's information-based economy."
- The report blasts Canada's popular supply management program for sensitive dairy and poultry products. While the program provides support and stability to Canadian farmers, the USTR explains that it "severely limits the ability of U.S. producers to increase exports to Canada."
- The USTR singles out one item as an illustrative example of U.S. "dairy products" that have been particularly impaired by Canada's import barriers: "breaded cheese sticks."
- The report disparages Canada's "compositional standards for cheese," which the USTR blames for blocking U.S. "dairy" products from being sold in Canada. The primary standard that the USTR cites as concerning is Canada's establishment of "a minimum for raw milk in the cheese making process."

Brunei

- The report chastises Brunei for a military procurement process that does not "publically disclose" the rationale behind all military contract decisions.

Australia

- The USTR expresses frustration with Australia's resistance to the offshoring of its citizens' private data to foreign countries via cloud computing and offshore storage. The report particularly singles out Australia's new law barring offshore storage of confidential health records. The USTR urges "a risk-based approach to ensuring the security of sensitive data as opposed to a geographical one." However, the same paragraph notes that Australia's reticence is indeed based on risk, as the country "cites the U.S. Patriot Act" as "presenting a legal and regulatory risk associated with cloud computing." U.S. lawyers have long expressed similar concerns – that the Patriot Act threatens the data privacy of U.S. citizens. The report does not attempt to defend the act.

- In its remarks on Australia, the report devotes an entire section to "Blood Plasma Products and Fractionation." In no unclear terms, the report states, "The United States remains concerned about the lack of an open and competitive tendering system for blood fractionation in Australia." The USTR apparently would like U.S. companies to have an equal chance to separate the blood of Australian citizens.

Japan (likely future TPP partner)

- The report expresses disapproval of Japan's food labeling policy, which "mandates that all ingredients and food additives be listed by name along with content percentages, and include a description of the manufacturing process." In a time when consumers are demanding ever more information about the products they consume, the USTR complains that Japan's progressive labeling policy is "burdensome" and "risks the release of proprietary information to competitors."

- The report is careful to state that "the U.S. Government remains neutral as to whether Japan Post [a state-owned postal, banking and insurance conglomerate] should be privatized." Still, the USTR makes clear that "the U.S. Government continues to monitor carefully the Japanese government's postal reform efforts." The USTR further clarifies that such monitoring is far from "neutral," stating that the U.S. government will continue "to call on the Japanese government to ensure that all necessary measures are taken to achieve a level playing field between the Japan Post companies and private sector participants in Japan's banking, insurance, and express delivery markets." Thus, while the USTR respects Japan's decision over whether its single largest public entity should be privatized, the USTR is eager to remind Japan that the entity should be stripped of the standard preferential treatment that governments typically channel through public entities to benefit consumers.

- The USTR chastises Japan for not opening all of its military procurement contracts to foreign companies. The report expresses annoyance for Japan's "general preference" that "defense products and systems be developed and produced in Japan." National security arguments apparently have no standing "when a foreign option exists that could fulfill the requirements more efficiently, at a lower cost" (unless those arguments are made in the United States; U.S. Buy American laws cover military procurement).

- According to the report, the U.S. government is "urging[] the Japanese government to work with foreign universities to find a nationwide solution that grants tax benefits comparable to Japanese schools." Why should the government provide private, foreign universities the same sort of tax breaks that it affords to Japan's own schools? According to the USTR, meeting this rather anomalous request is necessary for the foreign schools "to continue to provide their unique contributions to Japan's educational environment."

- The USTR accuses Japan's government of using policy advisory groups that are too often "opaque," noting that "nonmembers are too often not uniformly offered meaningful opportunities to provide input into these groups' deliberations." The critique mirrors, nearly word for word, criticisms levied against the USTR itself for administering a non-transparent and exclusive official trade advisory system comprised almost entirely of corporate representatives. The USTR continues by urging Japan "to ensure that ample and meaningful opportunities are provided for all interested parties, as appropriate, to participate in, and directly provide input to, these councils and groups." U.S. stakeholder groups have continually made the same recommendation to the USTR to open the closed-door trade advisory system, though "meaningful" changes have yet to be seen.

- The USTR takes aim at Japan's politically sensitive rice import policies, calling them a "highly regulated and nontransparent" system that "limits meaningful access to Japanese consumers." The report laments that most U.S. rice under the system does not reach Japanese consumers, and argues that they "would buy U.S. high quality rice if it were more readily available." To substantiate this claim of Japanese consumers' unrealized preference for U.S. rice, the report cites "industry research."
- In quick succession, the report individually targets Japan's policies on rice, wheat, beef, pork and dairy products, taking issue with tariffs, quotas, and state distribution systems. These targeted agricultural sectors are among the most politically sensitive in the country, and have been named by Japan's ruling Liberal Democratic Party as sectors that must be excluded from tariff eliminations in the TPP.

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