

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

October 18, 2011

Dear Ambassador Kirk:

In February of this year, organizations representing millions of Americans wrote to you requesting that you make the negotiations on the prospective Trans-Pacific Free Trade Agreement (FTA) more transparent than past U.S. trade negotiations. The letter noted that significant improvements in access to information and relevant texts were necessary if the Obama administration intends for Trans-Pacific FTA negotiations to result in a “new, high-standard, 21st century trade agreement.”

While we applaud your efforts to be more inclusive than the previous Administration, particularly with respect to reaching out to Congress and non-business stakeholders, the requested transparency, particularly with regard to Trans-Pacific FTA negotiating texts, has not occurred. We understand that the Trans-Pacific FTA negotiating parties have apparently signed a confidentiality agreement, which reverses recent progress in making negotiations more open and providing access to documents to facilitate informed input by more diverse parties.

In our prior letter, we cited the examples of new public access to negotiating documents that were provided in the context of negotiations at the World Trade Organization and for the Anti-Counterfeiting Trade Agreement. Rather than continuing with this improved access, it appears that a Memorandum of Understanding dated March 4, 2010, which is referenced in the text of a leaked draft Intellectual Property chapter tabled by the United States government, commits the countries not to declassify documents related to the negotiations for ‘Four years from entry into force of the TPP agreement or, if no agreement enters into force, four years from the close of the negotiations.’

Just as the Trans-Pacific FTA negotiating parties agreed to this heightened secrecy last year, at the pending October 2011 Lima, Peru negotiating session, they can agree to restore the rights of their citizens, press and legislators to know what policies are being considered in these talks. Our past letter noted your personal commitment to having the most transparent Office of the U.S. Trade Representative ever and requested U.S. leadership to propose that our negotiating partners agree to make publicly available the draft investment and financial service texts and release other draft texts as they are created. The letter further urged U.S. leadership to propose creating 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.

The letter described the benefits of such improvements, while highlighting that the broad scope of these negotiations necessitated a high level of public access to documents and opportunities for informed comment. The rules that these talks may establish would be binding on each signatory country with respect to what policies that country may establish or maintain domestically relating to

medicine prices, tobacco control, food and product safety and other health issues; regulation of banks and other financial services firms operating in signatory countries; land use, development and other investment policies; and even whether taxpayers can set labor, environmental and other standards to shape how their tax dollars may be spent in government procurement decisions. That so many domestic non-trade policy areas would be directly affected by these “trade” negotiations highlights why it is untenable for such rules to be established under the current U.S. trade advisory regime. This system allows 700-plus official industry trade advisors to have full access to negotiating texts while the public, press and most in Congress are denied equal information. It is worth noting that fewer than 40 representatives in the entire U.S. trade advisory system represent non-industry interests, many of whom are the union representatives concentrated on one committee.

Government leaders of Australia, Chile, Malaysia, and New Zealand received similar letters calling for improved transparency and participation from their trade unions, environmental, faith and social justice organizations, and other civil society groups. Copies of these letters also were hand delivered to each delegation during the negotiating round in Santiago.

With numerous negotiating texts now established in addition to the investment and financial services chapters, the relevance and urgency of our request has only increased. Moreover, while we appreciate the opportunities you have provided for civil society, including the opportunity for stakeholders to make presentations to delegates at the recent Chicago Round, without access to the actual texts being discussed in these talks, the effective input and informed participation of civil society is largely thwarted. As we have learned from prior negotiations, an independent set of eyes can be critical – finding potential missteps not immediately apparent to our negotiating team or its official advisors.

At the stakeholder briefing in Chicago on September 2011, the Chair of the Chicago round, Assistant USTR Barbara Weisel, was asked if the Memorandum of Understanding could be released. She said the parties will have to consider such a request together. We urge U.S. representatives to take leadership at the Lima round to obtain agreement from all parties to release the Memorandum of Understanding so that we can better understand the rationale for the extreme level of secrecy it implements. In addition, we respectfully reiterate our earlier demands for access to negotiating texts, and other relevant documents so that we may help you ensure that these negotiations do indeed deliver a new 21<sup>st</sup> Century model agreement that broadly benefits people in the involved countries.

Yours sincerely,

AFL-CIO  
Building and Construction Trades Department, AFL-CIO  
Center for Policy Analysis on Trade and Health (CPATH)  
Citizens Trade Campaign  
Columban Center for Advocacy and Outreach  
Communication Workers of America  
Friends of the Earth  
Holy Cross International Justice Office

Institute for Policy Studies, Global Economy Project  
International Association of Machinists and Aerospace Workers  
International Brotherhood of Boilermakers  
International Brotherhood of Electrical Workers  
International Brotherhood of Teamsters  
Knowledge Ecology International  
National Family Farm Coalition  
Presbyterian Church (USA), Office of Public Witness  
Public Citizen  
Sierra Club  
United Church of Christ Justice and Witness Ministries  
United Steelworkers  
Witness for Peace