Citizens Trade Campaign working **together** for **social** and **environmental justice** in **trade policy**

REPORTERS' MEMO

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"Bigger-than-NAFTA" Leesburg Trade Summit Attracts Controversy, Protest

The Pending Addition of Mexico and Canada to the Trans-Pacific Partnership (TPP) Negotiations Sparks Renewed Calls for Transparency

Trade negotiators from throughout the Pacific Rim will be meeting at the Lansdowne Resort from September 6 – 15, 2012 for the fourteenth major round of negotiations aimed at moving the new Trans-Pacific Partnership (TPP) Free Trade Agreement towards completion. Labor, environmental, public health, consumer and community advocates from mid-Atlantic and beyond will also be present to demand that the secretive TPP negotiations be brought "out of the shadows."

The TPP is under negotiation between the United States, Vietnam, Brunei Darussalam, Singapore, Malaysia, New Zealand, Australia, Peru and Chile, but is also intended as a "docking agreement" that other Pacific Rim countries would join over time. This "add-on" feature to the TPP have led some to suggest it could become the last U.S. trade agreement.

On June 18th, the United States formally invited Mexico to join the TPP, and the following day extended a similar invitation to Canada. As such, the TPP is now poised to become the largest free trade agreement in U.S. history — dwarfing the North American Free Trade Agreement (NAFTA) in geographic and economic size. Other countries, including Japan, have expressed interest in joining the TPP. During a springtime TPP negotiating round in Texas, U.S. Trade Representative (USTR) Ron Kirk told a Reuters reporter that he would "love nothing more" than for China to join the TPP.

The United States is pushing for the ongoing, multi-year trade negotiations to conclude soon, and as such, the window of opportunity to shape the TPP's major provisions is rapidly closing.

Civil society organizations will be holding a *"TPP: Out of the Shadows! Rally for Good Jobs, Affordable Medicine and a Healthy Environment"* at 3:00pm on Sunday, September 9 outside the Lansdowne Resort to demonstrate public opposition to business-as-usual trade policy and to make basic demands of negotiators regarding labor rights, the environment, access to medicine, financial regulations and other social and economic justice issues — including, especially, transparent public policymaking. This memo provides some background on the Trans-Pacific Partnership and civil society's concerns.

Negotiating Process Marred by Extreme Secrecy

To date, Trans-Pacific Partnership talks have taken place behind closed doors, and no draft texts have been formally released. This includes draft texts on key provisions such as foreign investment and financial services that were initially written in 2008 and reportedly serve as the basis for current negotiations.

Executives from hundreds of corporations that have been named as official trade advisors have access to the texts and talks. ***The people whose lives will be most affected, however, have no ability to see what our negotiators are bargaining for — and bargaining away — until a deal is done and it is effectively too late for changes.***

In early May 2012, during the TPP negotiating round in Dallas, U.S. civil society organizations led by Citizens Trade Campaign (CTC) delivered over 42,000 petition signatures calling on U.S. negotiators to release texts of their proposals for public scrutiny. While accepted by negotiators, to date, that petition has gone without any formal answer.

On May 23, Senator Ron Wyden (D – Ore.), who chairs the Senate Trade Subcommittee charged with overseeing international trade policy, has top-level security clearances as a member of the Senate Intelligence Committee and was himself being denied access to TPP negotiating texts, introduced legislation requiring that information about the TPP be shared with Congress. In a floor statement, the Senator said, "The majority of Congress is being kept in the dark as to the substance of the TPP negotiations, while representative of U.S. corporations — like Halliburton, Chevron, PhRMA, Comcast and the Motion Picture Association of America — are being consulted and made privy to details of the agreement."

In late June, over 130 Members of the House, led by Representatives Rosa DeLauro (D — Conn.) and George Miller (D – Calif.) sent a letter to U.S. Trade Representative Ron Kirk pointing out the TPP's rollback in transparency from several past U.S. trade negotiations and calling for greater Congressional and public oversight. The letter was followed up on August 28 by eight Democratic House members specifically asking Kirk to grant them observer status during the Leesburg round of negotiations.

The enforceability and permanence of trade agreement terms, with later changes requiring agreement by all of the signatory countries, necessitates extreme care and transparency on the front end. In the past, the lack of transparency in trade negotiations has led to an array of negative consequences, including problems in trade agreements that negotiators didn't foresee or intend. For instance, in one case the U.S. unintentionally negotiated away its right to regulate online gambling. It has been ordered to pay tens of millions of taxpayer dollars to other countries in an attempt to regain that right, a matter that is still not resolved.

As the internet gambling example indicates, modern "trade" agreements cover a host of regulatory issues that go far beyond traditional trade matters such as quotas and tariffs. Civil society organizations, academics and others bring a range of expertise and experience to trade policy debates, and argue that the public should have a chance to comment on draft texts before they are completed.

Leaked Investment Texts Reveal Special Rights for Corporations

On June 13, citing the absence of transparency on the part of the U.S. government, CTC published leaked text of the TPP's draft investment chapter. The document revealed that ***the United States and all but one other TPP country (Australia) have agreed to a so-called "investor-state" dispute resolution process that would grant transnational corporations special authority to challenge countries' laws, regulations and court decisions in private tribunals that circumvent domestic judicial systems.***

Under the auspices of the World Trade Organization (WTO), the United States has lost more than 90% of the more than 65 cases brought against it by other countries. The United States has lost cases involving the Clean Air Act, Endangered Species Act, Marine Mammal Protection Act, Country-of-Origin Labeling, Internet gambling restrictions and more. The leaked texts show the TPP going beyond this "state-to-state" dispute resolution, by inviting individual corporations to initiate "regulatory takings" cases heard by private panels of attorneys specializing in international trade.

Expanding this proposed "investor-state" system throughout the Pacific Rim would: (1) increase the use of extra-judicial legal systems accessible to transnational corporations, but not to citizens and domestic business owners; (2) increase attacks on environmental, consumer safety and other public interest policies; and (3) create an incentive for corporations to move employment overseas, where they'd be granted a powerful new tool to challenge future regulations.

The environmental organization the Sierra Club said, "Our worst fears about the investment chapter have been confirmed by this leaked text… This investment chapter would severely undermine attempts to strengthen environmental law and policy."

Leaked IP Texts Reveal Attempts to Undermine Access to Medicine

Leaked U.S. proposals for intellectual property and drug formulary chapters first published by CTC in late 2011, and later by Congressman Darrell Issa (R – Calif.), further reveal that the U.S. Trade Representative has reversed reforms designed to enhance access to affordable medicines that were made during the George W. Bush administration. Instead, U.S. negotiators are now demanding new rights for pharmaceutical corporations that would expand their monopoly control over medicines and empower them to challenge drug formulary policies designed to keep prices in check.

The U.S. intellectual property proposal would lengthen pharmaceutical monopolies, eliminate safeguards against patent abuse, grant additional exclusive controls over clinical trial data and otherwise favor giant pharmaceutical companies' monopoly interests. Leaked texts pertaining to drug formularies seem aimed at undermining Australia's Pharmaceutical Benefits Scheme (PBS) and New Zealand's Pharmaceutical Management Agency (PHARMAC), both of which have been successful at reducing sky-high drug prices; if enacted, however, the proposed language could also impact efforts by state and federal agencies in the U.S. to negotiate lower drug costs.

The Nobel prize-winning organization Doctors Without Borders said, "The leaked draft intellectual property proposals by the United States for the Trans-Pacific Free Trade Agreement have confirmed our fears that the [U.S.] is walking away from previous efforts to ensure that developing countries can access affordable medicines, setting a dangerous new standard that will likely be replicated in future trade agreements."

The Trans-Pacific Partnership's Labor and Human Rights Problem

Two prospective Trans-Pacific FTA countries — Vietnam and Brunei — are undemocratic, and have serious and well-documented human and labor rights problems. ***With labor unions, human rights groups and many Democrats in Congress demanding the inclusion of enforceable labor standards in U.S. trade policy, Vietnam and Brunei's participation in the FTA talks presents huge challenges for U.S. negotiators.***

The State Department's 2010 Report on Human Rights Practices noted that workers in Vietnam are prohibited from joining or forming any union that is not controlled by the government. On political freedoms, the State Department reported that, in 2010, "political opposition movements were prohibited. The government increased its suppression of dissent, arresting at least 25 political activists, convicting 14 dissidents arrested in 2008, 2009, and 2010, and denying the appeals of another 10 dissidents convicted at the end of 2009."

In Brunei, there is virtually "no trade union activity in the country and there is no legal basis for either collective bargaining or strikes," according to the International Trade Union Confederation.

The policy and political imperative for effective labor standards in the Trans-Pacific Partnership is complicated not only by Vietnam and Brunei's inclusion in the talks, but by the reality that Singaporean leaders and Chile's new conservative government may not be willing to improve on the lax labor provisions in their existing trade agreements with the United States. Malaysia has also been a fierce opponent of including any labor standards in trade pacts.

In addition to calls for strong labor standards, a number of Senators, Representatives and civil society groups in the United States have called for the Trans-Pacific Partnership to include a Democracy Clause that would require parties to have democratic forms of government before joining. The South American MERCOSUR pact and some European trade pacts include such provisions.

A "21st Century" Trade Deal or the Old NAFTA Model?

The USTR has repeatedly promised that the Trans-Pacific FTA will be a "high-standard, 21st century trade agreement." With the small number of leaked texts showing rollbacks from previous agreements, and the vast bulk of the pact's negotiating text still largely hidden, it remains to be seen exactly what that means. In addition to investment, access to medicine, labor standards and human rights, several key provisions that civil society organizations from various countries are attempting to influence include:

- ***Internet Protocols***. In addition to concerns around access to medicine, leaked texts reveal that the U.S. has also forwarded an intellectual property proposal that would introduce "secondary liability" holding Internet Service Providers accountable for online copyright violations. In late August, the American Civil Liberties Union (ACLU) called the TPP "the biggest threat to free speech and intellectual property that you've never heard of."

- ***Financial Services***. The Trans-Pacific Partnership is viewed by Wall Street as a mechanism for expanding financial service agreements throughout the Pacific Rim. Doing so would not only provide U.S.-based financial corporations with greater market access abroad, but, if past trade deals are any guide, would further enshrine measures that handcuff governments' abilities to regulate banks and insurance companies. Past financial service trade provisions explicitly ban regulations that limit the size of financial institutions, that erect firewalls between them or that prevent the sale of toxic derivatives; they also impose severe limitations on the use of capital controls.

- ***Public Procurement***. Sixty-nine Members of Congress, as well as labor unions and others, have called on the USTR to ensure that the TPP does not curtail nations' ability to implement purchasing programs, like "Buy America" or "Buy Local," that are designed to keep taxpayer funds circulating within national, state or local economies. Depending upon how they're written, the TPP's procurement provisions could also limit the use of "green" and human rights-oriented purchasing requirements and preferences.

Mexico and Canada Enter the TPP as Junior Partners

The governments of Mexico and Canada had been pressing for years to join the TPP negotiations. On June 18, during the G-20 summit in Mexico, the United States announced it planned on allowing Mexico to join. The following day, the U.S. announced it would allow Canada to join as well.

Mexican and Canadian negotiators are not being allow to participate in the Leesburg round of TPP negotiations, as the USTR has decided to give Congress a formal 90-day notice of intent before entering negotiations with those countries. Such notice was formerly required under "Fast Track" Trade Promotion Authority, but Fast Track has long since expired.

As a precondition to being allowed entry into future TPP negotiating rounds, Mexico and Canada reportedly agreed to accept sight-unseen TPP texts that have already been agreed upon by the other negotiating countries, as well as whatever texts are agreed upon by the other negotiating countries in Leesburg and whatever other talks take place during this 90-day window.

The other parties' refusal to either allow Mexico and Canada entry into the talks immediately, or to temporarily delay the talks (as had once been done for the United States), is the subject of considerable controversy, leading some to refer to Mexico and Canada as "junior partners" to the TPP.

Limited Prospects for New Exports Under the TPP

Another key question related to the Trans-Pacific Partnership is how it is expected to help advance the United States' goal of increasing exports. ***The United States already has free trade agreements that eliminate tariffs and maximize access for U.S. exports with the six countries (Australia, Canada, Chile, Mexico, Peru and Singapore) that comprise 90% of the combined $5.6 trillion in nominal GDP of partner countries involved in the TPP talks. As such, some in Congress have asked why these talks are the best use of trade negotiators' limited resources.***

The four remaining countries in the Trans-Pacific trade negotiations do not present particularly significant market access potential for U.S.-made goods and services. On the U.S. exports side, Vietnam's nominal GDP is just $122 billion and it has a per capita income of only $1,374 a year. On the import side, Vietnam is now promoted as the low-cost labor alternative to China. Even if labor rights issues were adequately addressed, a trade agreement with Vietnam hardly seems likely to improve the overall U.S. balance of trade or create jobs domestically.

The population of Brunei is just 417,000 — about half that of Indianapolis — and it has a GDP of less than $16 billion. The population of New Zealand is also relatively low (4,369,000) and it has a GDP of $162 billion, which equates to about half that of the State of Maryland. Malaysia has a slightly larger GDP of $279 billion, but a per capita income of just $9,700 a year.

Given the bleak prospects of increasing exports significantly among the current Trans-Pacific Partnership members, some have suggested that the TPP seems more about accessing cheaper-and-cheaper supply chains and advancing deregulation than it is about increasing U.S. exports.

The Economic Legacy of NAFTA-Style Trade Pacts in Virginia

There was widespread consensus on U.S. trade policy for decades until the North American Free Trade Agreement (NAFTA) hit Congress in the 1990s. Suddenly, so-called “trade” policy contained expansive new regulatory constraints and investor offshoring protections unlike most trade pacts in the past. Americans did not become anti-trade, as many NAFTA boosters like to pretend. Rather, the public has reacted to the significant negative consequences of NAFTA-style trade policies.

In Virginia, the adverse effects of NAFTA-style trade agreements have been severe. The U.S. Department of Labor has certified 70,706 Virginia workers as having lost jobs due to either direct offshoring or displacement by imports since NAFTA took effect in 1994. For a variety of reasons, including that the Labor Department did not include service sector jobs within this data set until midway through 2009, the true number of Virginia jobs lost to offshoring is likely much higher.

Virginia employers who have each had over 1,000 employees directly offshored or displaced by imports include Qimonda, Viasystems Technologies, International Paper and Burlington Industries. Of course, the offshoring of manufacturing jobs impacts far more than just those whose jobs are shipped overseas. It also reduces the base for state and municipal revenue, and puts a downward pressure on the wages and benefits of jobs that are left.

A 2008 study by the Economic Policy Institute estimates that the downward pressure on wages and benefits cause by the U.S. trade imbalance costs the majority of American households an average of $2,560 each year.

Potential Political Ramifications of the TPP

Public opinion is decidedly against business-as-usual trade policies. According to a November 2010 poll by the Pew Research Center, only 35% of Americans believe that free trade agreements benefit the U.S. Opposition to free trade pacts was shared across all parts of the political spectrum. The report concluded, "Support for free trade agreements is now at one of its lowest points in 13 years of Pew Research Center surveys."

A separate NBC News-Wall Street Journal poll conducted in September 2010 identified the outsourcing of jobs by U.S. companies to low-wage nations as the most-cited reason for America's economic woes. It was listed as a concern by 86% of respondents — far more that the budget deficit, taxes or any other issue.

Background and Timeline: Trans-Pacific FTA and U.S. Participation

Shortly after the passage of 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 trade agreement were proposed at the Asian Pacific Economic Cooperation (APEC) summit in Bogor, Indonesia, in 1994. However, the plans for both the APEC trade agreement and the Free Trade Area of the Americas (FTAA) 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). Brunei later joined the P-3 talks. In 2006, a trade agreement, sometimes called the P-4 but formally named the Trans-Pacific Strategic Economic Partnership Agreement took effect. Its text was similar to NAFTA except it did not include chapters on financial services and investment (and also failed to include even modest labor and environmental side agreements).

The U.S. joins, and P-4 becomes Trans-Pacific Partnership under Bush in 2008: Built into the P-4 text was an agreement to restart talks on financial services and investment issues, which had been put aside during the initial negotiations. The Bush administration entered these talks and participated in three rounds of negotiations. In September 2008, the Bush administration notified Congress that it 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 Free Trade Agreement." The Bush USTR sent a second TPP notice to Congress in December 2008, expanding the list of partners to include Australia, Vietnam, and Peru.

Obama administration and the TPP: On Jan. 26, 2009, shortly after Obama's inauguration, the USTR published in the 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." Shortly thereafter, on Feb. 24, the Obama administration asked the TPP negotiating parties to delay indefinitely the negotiations that were scheduled for March 30, so that the new administration could appoint officials to the USTR and then review its trade policy. On Nov. 14, 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." On Dec. 14, 2009, USTR Kirk sent letters to House Speaker Nancy Pelosi and Senate President Pro Tempore Robert Byrd notifying them of plans to initiate negotiations to form the TPP. On June 18, 2012, USTR issued a press release welcoming Mexico into the TPP, and on June 19 did the same welcoming Canada.