

TRANS-PACIFIC PARTNERSHIP

HEARING BEFORE THE SUBCOMMITTEE ON TRADE OF THE COMMITTEE ON WAYS AND MEANS U.S. HOUSE OF REPRESENTATIVES ONE HUNDRED TWELFTH CONGRESS FIRST SESSION

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TRANS-PACIFIC PARTNERSHIP

WEDNESDAY, DECEMBER 14, 2011

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:03 a.m., in Room 1100, Longworth House Office Building, the Honorable Kevin Brady [chairman of the subcommittee] presiding.
[The advisory of the hearing follows:]

HEARING ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

Brady Announces Hearing on the Trans-Pacific Partnership

December 14, 2011

Congressman Kevin Brady (R-TX), Chairman, Subcommittee on Trade of the Committee on Ways and Means, today announced that the Subcommittee will hold a hearing on the Trans-Pacific Partnership. **The hearing will take place on Wednesday, December 14, 2011, in 1100 Longworth House Office Building, beginning at 10:00 A.M.**

In view of the limited time available to hear the witnesses, oral testimony at this hearing will be from invited witnesses only. However, any individual or organization not scheduled for an oral appearance may submit a written statement for consideration by the Committee and for inclusion in the printed record of the hearing. A list of invited witnesses will follow.

BACKGROUND:

In September 2008, then-U.S. Trade Representative Susan Schwab notified Congress of President Bush's intent to launch negotiations for the United States to join the Trans-Pacific Partnership (TPP). Subsequently, on Dec. 14, 2009, U.S. Trade Representative Ron Kirk notified Congress of President Obama's intent to enter the TPP negotiations. Along with the United States, there are eight other countries engaged in these negotiations—Australia, Brunei, Chile, Malaysia, New Zealand, Peru, Singapore, and Vietnam. The goal of the negotiations is to achieve an ambitious and comprehensive 21st-century agreement that will help create and retain U.S. jobs, including by increasing trade and investment among the TPP partner countries, promoting innovation and competitiveness, increasing the participation of small and medium-sized enterprises in trade, supporting efficient production and supply chains, improving trade facilitation, promoting regulatory coherence and cooperation among the TPP members, furthering transparency, and appropriately addressing trade-related aspects of development, labor and environment issues of mutual concern.

Nine rounds of negotiations of the TPP agreement have been held so far, and additional rounds are scheduled for 2012. Consolidated legal text has been developed in almost all areas, with further work needed to finalize text on specific issues. The areas of negotiations include: tariffs and other barriers to trade in goods, services and investments; competition; customs rules; capacity building; e-commerce; environment; government procurement; intellectual property; labor; sanitary and phytosanitary standards; technical barriers to trade; and telecommunications. Based on the negotiating progress so far, the trade ministers for the TPP partner countries released the broad outlines of an agreement on November 12, 2011. In response to this outline, the leaders of the TPP partner countries released a statement noting that they are committed to completing the TPP negotiations as quickly as possible and instructed the negotiators to continue work through 2012. President Obama remarked, "There are still plenty of details to work out, but we are confident that we can do so. So we've directed our teams to finalize this agreement in the coming year. It is an ambitious goal, but we are optimistic that we can get it done."

The TPP agreement will significantly increase the United States' economic integration into the Asia-Pacific region. This region includes some of the world's most robust economies and represents more than 40 percent of global trade. As a result, further opening up the huge and expanding Asia-Pacific market will increase U.S. exports of goods, services, and agricultural products. Combined, the current TPP partner countries are already the fourth largest goods and services export market for the United States.

The TPP is the most significant pathway toward broader Asia-Pacific regional economic integration, and the benefits of TPP to the United States would be even greater if other countries participate and provide meaningful access to their markets. According to USTR, the consensus among the nine TPP countries is that to join TPP, new members must be willing to demonstrate their willingness to match the high level of ambition established by the current TPP partner countries and not hinder the momentum for completing the negotiations. Moreover, any bilateral issues between a potential new partner country and each of the current members must be adequately resolved. Japan, Canada, and Mexico recently announced their interest in joining the TPP negotiations. USTR is beginning to consult with Congress and stakeholders to identify the bilateral issues pertaining to each of these countries and next steps.

In announcing this hearing, Chairman Brady said, **“Opening up markets in the Asia-Pacific region for American goods and services must be a priority for robust U.S. long-term growth—to create good U.S. jobs, increase the competitiveness of U.S. exporters, and to preserve U.S. influence and leadership in the region. That is why it is vital that we complete an ambitious and comprehensive 21st century agreement as quickly as possible. We should also welcome new countries to the TPP if they are willing to meet TPP’s high ambitions and resolve outstanding bilateral issues. I look forward to hearing about the Administration’s plans for completing an agreement that will garner bipartisan support and hearing the private sector’s views on how this agreement could benefit American companies, workers, and farmers.”**

FOCUS OF THE HEARING:

The hearing will focus on the status and future of the ongoing TPP agreement negotiations as well as the potential benefits of the agreement for U.S. companies, workers, and farmers. The hearing will also explore how the TPP agreement will be a “21st century agreement” by addressing barriers to trade beyond tariffs and increasing trade facilitation.

DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:

Please Note: Any person(s) and/or organization(s) wishing to submit for the hearing record must follow the appropriate link on the hearing page of the Committee website and complete the informational forms. From the Committee homepage, <http://waysandmeans.house.gov>, select “Hearings.” Select the hearing for which you would like to submit, and click on the link entitled, “Click here to provide a submission for the record.” Once you have followed the online instructions, submit all requested information. ATTACH your submission as a Word document, in compliance with the formatting requirements listed below, **by the close of business on Wednesday, December 28, 2011**. Finally, please note that due to the change in House mail policy, the U.S. Capitol Police will refuse sealed-package deliveries to all House Office Buildings. For questions, or if you encounter technical problems, please call (202) 225–1721 or (202) 225–3625.

FORMATTING REQUIREMENTS:

The Committee relies on electronic submissions for printing the official hearing record. As always, submissions will be included in the record according to the discretion of the Committee. The Committee will not alter the content of your submission, but we reserve the right to format it according to our guidelines. Any submission provided to the Committee by a witness, any supplementary materials submitted for the printed record, and any written comments in response to a request for written comments must conform to the guidelines listed below. Any submission or supplementary item not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. All submissions and supplementary materials must be provided in Word format and **MUST NOT** exceed a total of 10 pages, including attachments. Witnesses and submitters are advised that the Committee relies on electronic submissions for printing the official hearing record.

2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.

3. All submissions must include a list of all clients, persons and/or organizations on whose behalf the witness appears. A supplemental sheet must accompany each submission listing the name, company, address, telephone, and fax numbers of each witness.

The Committee seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call 202-225-1721 or 202-226-3411 TTD/TTY in advance of the event (four business days notice is requested). Questions with regard to special accommodation needs in general (including availability of Committee materials in alternative formats) may be directed to the Committee as noted above.

Note: All Committee advisories and news releases are available on the World Wide Web at <http://www.waysandmeans.house.gov/>.

Chairman BRADY. Good morning, everyone. I would like to welcome all of you to our hearing on the Trans-Pacific Partnership, or TPP, as it is known. I would like particularly to recognize Ambassador Beazley from Australia, Ambassador Forsyth from Peru, and Ambassador Moore, from New Zealand, who are joining us today. Welcome.

I am particularly excited about today's hearing, because we can finally talk about a new trade initiative, one that will create jobs and increase our competitiveness. The recent passage of the Colombia, Panama, South Korea trade agreements was a tremendous achievement, one that has given the United States new momentum in the trade arena widely recognized around the world. We must now make the most of this new momentum to seek 21st century solutions, to streamline trade to end non-tariff barriers, and interconnect regulations across borders to reduce foreign regulatory barriers to our exports.

Focusing just on tariffs, import quotas and other traditional barriers to trade is no longer enough to fully open markets. We need to make the processes for selling U.S. products overseas cheaper, faster, and easier. Establishing high-standard, market-based rules of trade through new agreements will also create better leverage to get other countries like China to adopt such rules. That is why I strongly support the TPP negotiations.

Trans-Pacific Partnership is a sure-fire way to create U.S. jobs and expand opportunities for American workers, businesses, and farmers. It will allow American ingenuity to create jobs instead of relying on costly government programs to do so.

Like past successful trade agreements, TPP will open markets for U.S. goods, services, agriculture products and investment by knocking down tariffs and other trade barriers. It will also build on past work to eliminate differing standards that disadvantage us, discriminatory government procurement rules, non-science-based sanitary and phytosanitary standards, and inadequate protection of intellectual property rights. At the same time, where provisions and past agreements reflect a bipartisan consensus, such as those relating to labor, TPP should maintain that balanced approach to ensure continued broad support.

What makes the Trans-Pacific Partnership a 21st century agreement is that it also tackles cross-cutting and new emerging trade issues to streamline trade, and will define economic competition in the future. These issues include: improving foreign regulatory practices, recognizing the importance of efficient supply chains, increasing the role of small and medium-sized businesses in international trade, and addressing market distortions by state-owned enterprises.

The partnership will deepen our economic relations in the fast-growing Asia-Pacific region. The world's most robust and dynamic economies are found in that part of the world. Plus, as a whole, the eight other countries currently in the Trans-Pacific Partnership are already the fourth largest goods and services export market for America. Our future economic growth and prosperity depends upon our ability to trade and invest more throughout the Pacific. TPP will make sure that American workers, businesses, and farmers benefit from the Asia-Pacific region's rapid economic growth.

And I particularly look forward to hearing from our private-sector witnesses about how TPP will create new opportunities for them, their workers, and everyone in their supply and production chains. That is why I want to see the talks finish quickly. Midyear would be my goal. I applaud the TPP negotiators for the incredible amount of progress they have already made, and their achievement in reaching the broad outlines of an agreement.

I am also glad that TPP leaders instructed negotiators at APEC last month to complete their work as quickly as possible. Some tough issues certainly remain, but we can't slow down our efforts toward achieving a robust agreement. We can't afford any needless delay to expand American export and create American jobs.

Another strength of TPP is that more Asia-Pacific countries can join when they are ready to meet TPP's high standards. Let's not forget the United States was not an original member of the Trans-Pacific Partnership, but was welcomed in when the Bush administration announced we were ready to join. We should seek new entrants from Asia, and also from the Americas. As a result, I welcome the announcements by Canada, Japan, and Mexico that they are considering joining TPP.

New members must be committed to meet TPP's high standards and not lower its ambition or delay its conclusion, and must be willing to put all issues on the negotiating table. New members must also be willing to adequately resolve outstanding bilateral issues with the TPP countries. Some of these issues may be difficult. But allowing them to remain unresolved is contrary to the high standards and the high ambition of the Trans-Pacific Partnership.

By the same token, we shouldn't let past difficulties in resolving these issues keep us from seeking to resolve them now. Otherwise, we will forever be frustrated by the problems of the 20th century. The new TPP candidates have presented us with a moment of opportunity.

I understand that USTR has started to engage with Congress and stakeholders to identify the bilateral issues that need to be raised with Canada, Japan, and Mexico. I look forward to working closely with USTR as it seeks to resolve these issues.

I would like to welcome all of our witnesses today, and thank them for being with us. I look forward to hearing the testimony from both panels. At this time I will yield to the ranking member of the Trade Subcommittee, Mr. McDermott, for the purposes of an opening statement.

Mr. MCDERMOTT. Thank you, Mr. Chairman. A month ago, Mr. Brady and Mr. Levin and I were in Honolulu, talking to TPP country officials. In our meetings I was struck by the urgency that so many representatives of other countries had for a strong agreement. I think we all see the potential in this agreement.

Asia-Pacific countries, as you have heard, account for 40 percent of the global population, and together generate 56 percent of the global GDP in 2010. Indeed, my home state, Washington State, exports nearly 70 percent of its total exports to markets in Asia.

We have to do things right if we are to unlock the potential of TPP. We have to ensure that TPP lives up to its billing as a 21st century agreement. This is all the more important because, as President Obama said in Honolulu last month, "The TPP has the potential to be a model not only for Asia-Pacific, but for future trade agreements."

So, what does it mean to be a 21st century trade agreement? To me it means an agreement that can help create American jobs and promote American values. TPP must tackle the range of real-world barriers to competition. This means not just tariffs and non-tariff barriers, but also things like unfair competition from state-owned enterprises.

In June, every Democratic Member of the Ways and Means Committee signed a letter to President Obama identifying state-owned enterprises as one of the greatest of the 21st century challenges faced by U.S. businesses and workers, and urging robust SOE disciplines in TPP. Ensuring that the SOEs, state-owned enterprises, compete on an even playing field with private actors has to be the critical component of any TPP agreement.

This is all the more important when countries like Japan—that are seeking to enter into this. Japan is notorious for its range of methods it uses to close its markets to foreign competition. This includes special benefits for SOEs, such as the Japanese Post, as well as a host of tariff and non-tariff measures in sectors ranging from agriculture to autos to pharmaceuticals.

USTR has just initiated a comment period to help in deciding whether Japan should be allowed at the negotiating table. I personally am one who think they ought to be at the table. I think we ought to have that opening. But that—we will see what the comment period brings.

Some are skeptical that Japan will really open its markets. Skeptics think Japan will continue to use creative methods to keep out foreign goods and services, while taking advantage of other countries' TPP trade concessions. This is clearly an unacceptable result. We need to make sure we do not end up there if we are to agree to Japan's participation.

We also need to look carefully at the rules of origin that determine which products will get duty-free treatment and create rules that help keep the maximum benefit of the FTA—and thus, the greatest number of jobs—in the TPP region.

We also need to incorporate and, where appropriate, build on the so-called May 10th Agreement. That congressional executive agreement reflected state-of-the-art thinking on a range of critical issues, including labor, environment, and intellectual property. May 10th has to be the basis for TPP and all other FTAs going forward.

Speaking as a physician with experience in LDCs, lesser-developed countries, I think we got it pretty close to right in the May 10th Agreement on IPR access to medicines. We grafted language that ensured protection for innovation, but also ensured that life-saving generics would be available in developing countries at the exact same time they become available in the United States. This is consistent with core American values. Lives are at stake. Poor people in poor countries shouldn't have to die because they don't have the affordable medicines we have here. And I have been very disappointed by the USTR's move away from that policy. I think this reported change would be deeply flawed. Hopefully, USTR can address this issue in its testimony today.

The expectations are high for this agreement, as are the stakes. And I think we could overcome them, but we have a lot of work ahead of us. I look forward to working with the administration and our Republican colleagues to get there.

Thank you. I yield back the balance of my time.

Chairman BRADY. Thank you, Mr. McDermott. Today we have two panels of witnesses. First panel is composed of our witness from the Administration, Ambassador Demetrios Marantis, Deputy U.S. trade representative from the Office of the U.S. Trade Representative.

Ambassador Marantis, welcome. We look forward to your testimony. I especially appreciate you are willing to work with—closely with Members across the aisle to discuss the very many complex issues in trade.

As always, I would ask you keep your testimony to five minutes. Your written statement, like those of all the witnesses, will be made part of the record. And you are recognized for five minutes. Welcome.

STATEMENT OF DEMETRIOS MARANTIS, DEPUTY U.S. TRADE REPRESENTATIVE, OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Ambassador MARANTIS. Thank you, Chairman Brady. Thank you, Ranking Member McDermott, Members of the Subcommittee. It is a great honor to testify here today. And I would also like to acknowledge the presence of the TPP ambassadors here today who we have forged a wonderful working relationship with.

Two years ago today the Obama Administration notified Congress of our intention to enter into the Trans-Pacific Partnership negotiations. Since then, we and our TPP partners, Australia, Brunei-Darussalam, Chile, Malaysia, New Zealand, Peru, Singapore, and Vietnam, have come far towards realizing an ambitious, cutting-edge trade pact that promises to transform the economies in the Asia-Pacific.

The TPP is a historic endeavor that embodies the Obama Administration's vision for the American economy, the future of trade,

and the United States' central role in the Asia-Pacific. The TPP holds the prospect of unlocking significant new opportunities for increasing exports that support higher-paying jobs here at home. That is because the Asia-Pacific includes some of the world's most dynamic economies, representing more than 40 percent of global trade. The region is a key destination for U.S.-manufactured goods, agriculture products, and services, last year accounting for over 60 percent of total U.S. goods exports, and nearly 3/4 of our total agricultural exports.

At the APEC meetings in Honolulu last month, the leaders of the nine TPP countries announced the broad outlines of an agreement. Without announcement, other countries publicly expressed interest in participating in this high-standard agreement, including Canada, Japan, and Mexico. In a short time, the TPP has become the primary platform for regional economic integration, securing the United States' role as a leader in the 21st century economy.

Negotiation of the TPP is an enormous undertaking, not only for the combined size of the countries participating, but also for the scope and ambition of the agreement itself. TPP partners are aiming to address a range of issues not covered in past agreements, including opportunities for small and medium-sized businesses, green growth, and trade and investment distortions that can occur when governments provide special treatment to state-owned enterprises.

The Obama Administration's goal is to conclude an agreement that positions U.S. workers and businesses well to compete and win in the Asia-Pacific, and we hope that advances made in the TPP agreement will serve as models for future trade pacts.

Just last week, our negotiators traveled to Malaysia to build on the substantial progress we have made to date, and to press ahead towards conclusion of the agreement. The nine TPP partners have already developed consolidated legal text for virtually every chapter, covering nearly all key trade and trade-related issues. In some areas, text is almost complete. In others, further work is needed.

While many issues have yet to be resolved, our negotiations have benefitted tremendously from unprecedented collaboration between the administration and Congress. The administration has closely consulted with Congress on each U.S. negotiating proposal, and your guidance and input have played an integral role as we have developed our negotiating positions.

In particular, I would like to thank Chairman Brady, Ranking Member McDermott, and Ranking Member Levin for coming to Honolulu during the November APEC meetings. Your presence underscored to our TPP partners the seriousness and commitment of the United States across all the government. In the coming months, as we work to conclude the agreement, we will need your support and continuing advice even more.

We know that our efforts to build the TPP today can help drive the growth of our economy, and support jobs for Americans far into the future. We look forward to working together closely with you to achieve this goal.

Thanks again, and thank you for the opportunity to be before you today.

[The prepared statement of Ambassador Marantis follows:]

**Testimony of Ambassador Demetrios J. Marantis
Hearing on the Trans-Pacific Partnership
Before the House Committee on Ways and Means
Sub-Committee on Trade
December 14, 2011**

Thank you, Mr. Chairman and Members of the Committee. I appreciate the opportunity to testify today on the Trans-Pacific Partnership (TPP), a flagship trade initiative of the Obama Administration and a manifestation of the President's strategic focus on the Asia-Pacific region.

Two years ago today, the Obama Administration notified Congress of our intent to enter the TPP negotiations. Our objective was, and remains, to conclude an ambitious, next-generation, Asia-Pacific trade agreement that reflects U.S. economic priorities and values. Through this agreement, we are seeking to boost U.S. economic growth and support the creation and retention of high-quality jobs by increasing American exports to a region that holds great potential for U.S. workers, manufacturers, farmers, and ranchers.

Over the past nine quarters of recovery, U.S. real GDP is up 2.4 percent at an annual rate, and American exports of goods and services have contributed 1.2 percentage points to U.S. economic growth. The huge Asia-Pacific market already is a key destination for U.S. manufactured goods, agricultural products, and service suppliers. Last year, U.S. goods exports to the region comprised over 60 percent of total U.S. goods exports and nearly three-quarters of our total agricultural exports to the world. With some of the world's most dynamic economies, and representing more than 40 percent of global trade, the Asia-Pacific region presents significant new opportunities to increase exports that support higher-paying jobs here at home.

While U.S. exports to the Asia-Pacific region have continued to grow, the overall share of U.S. trade in the region has declined relative to other countries. One of the reasons for the fall in U.S. share is that many of these countries have aggressively moved to conclude bilateral or regional free trade agreements that give their companies an advantage over their U.S. competitors. Through the TPP, we are seeking to secure the job-creating economic opportunities this region has to offer, as we establish a pathway for regional economic integration in the Asia-Pacific. The TPP will level the playing field for U.S. workers and businesses in the important markets of the Asia-Pacific and will position them to compete in this dynamic region.

THE TPP FRAMEWORK

The United States is currently negotiating the TPP with eight countries -- Australia, Brunei Darussalam, Chile, Malaysia, New Zealand, Peru, Singapore, and Vietnam. We are starting with this economically-significant and regionally- and developmentally-diverse group of countries that share our vision for the TPP. Our goal is to build an agreement that expands out progressively to include countries across the Asia-Pacific region.

After notifying Congress two years ago of our intent to enter the TPP, the Obama Administration began developing negotiating positions in close consultation with lawmakers and stakeholders. We thoroughly reviewed our approach for each chapter of the proposed agreement, analyzing previous models and updating or completely revising them or developing entirely new texts to reflect U.S. interests and the competitive realities we expect our businesses and workers to confront over the coming years in this region. We held the first round of negotiations in March 2010. By the APEC meeting in November 2010, the Leaders had formally welcomed Malaysia and Vietnam into the TPP and these two countries were quickly integrated into the negotiations.

Last month, on the margins of the APEC Leaders meeting in Honolulu, the Leaders of the nine TPP countries had a chance to meet. The Leaders of the other eight TPP countries welcomed the passage by the United States of the Korea, Colombia and Panama trade agreements, which they viewed as a demonstration of U.S. resolve in advancing our trade agenda, including the TPP. President Obama and the other TPP Leaders took stock of progress made to date in the negotiations. They were informed that TPP negotiators have developed consolidated legal text for virtually every chapter, which cover all key trade and trade-related issues. In some areas, text is almost complete; in others, further work is needed before the text can be concluded.

Based on this progress, the nine TPP Leaders announced that their negotiating teams had reached the broad outlines of a TPP agreement.

The Leaders expressed satisfaction at the substantial progress the negotiations have made toward achieving their common vision of establishing a comprehensive, next-generation, regional agreement that liberalizes trade and investment and addresses new and traditional trade issues and 21st century challenges. They also reviewed and endorsed the report that their trade ministers had provided them on the five features that will define the TPP as a state-of-the-art, transformative agreement.

- First, the TPP will be a comprehensive agreement that eliminates both tariffs and other barriers to trade and investment. This approach will ensure that the agreement promotes trade and investment, creates new opportunities for American workers and businesses, and provides immediate benefits for our consumers.
- Second, the TPP will include rules and approaches that facilitate trade and the development of production and supply chains across the entire region. For the United States, this will promote linkages with Asia-Pacific supply chains and encourage companies to retain their operations – and jobs – in the United States and not have to relocate to ensure they can stay competitive.
- Third, the TPP will, for the first time in a trade agreement, address key cross-cutting trade issues, drawing on work undertaken in APEC over the last two decades. Among these issues are:

- Promoting regulatory coherence to help make trade between TPP countries more seamless and efficient. We are working on commitments to improve regulatory practices, eliminate unnecessary barriers, reduce regional divergence in standards, promote transparency, eliminate redundancies in testing and certification and promote cooperation on specific regulatory issues relating to industrial products while also strengthening the transparency and scientific requirements for regulations governing food safety and animal and plant health.
 - Encouraging competitiveness and business facilitation. We are discussing inclusion of the first-of-its-kind mechanism to facilitate enhanced dialogue between government and stakeholders on competitiveness even after the agreement enters into force. This will ensure that the implementation of the agreement continues to respond to the evolving needs of businesses and workers in the 21st century.
 - Addressing issues that small- and medium-sized businesses face in understanding how to use agreements such as the TPP to help them participate in global trade. America's small- and medium-sized businesses exported \$171 billion to the Asia-Pacific region in 2009. Through the TPP, we hope to provide opportunities to them to enable them to boost their sales significantly.
 - Supporting development. The level of development of some TPP countries increases the challenges in participating in a high-standard agreement. The United States and its TPP partners are working to identify tools to address this issue, both during the negotiations and after the agreement is implemented.
- Fourth, the TPP will address new issues and emerging challenges our companies and workers face in the 21st century. For example, developments in the digital economy, such as cloud computing, raise issues that earlier trade agreements have not addressed. Addressing these issues in the TPP can help facilitate use of this technology, which can particularly support small- and medium-sized enterprises seeking to use the tools necessary to compete in global trade. TPP partners are also exploring proposals on green growth, including commitments to address fisheries subsidies and illegal marine fisheries practices, illegal wildlife trade, and illegal logging and associated trade. The nine countries also are looking at ways to address the trade and investment distortions that can result from the special treatment governments provide to their state-owned enterprises.
 - Finally, the TPP will be a living agreement. The United States and our eight TPP partners share a common vision of expanding the agreement out to eventually include countries across the Asia Pacific and are committed to an open architecture that allows other countries to join as soon as they are ready to meet the high standards of the agreement. In addition to adding new partners, the nine countries want to ensure that we can update the agreement as necessary in response to developments in trade, technology, or other issues. The TPP countries also want to be able to address issues that may emerge as new countries join the agreement.

NEXT STEPS

The progress the United States and its TPP partners have made toward conclusion of an agreement with this group of countries is striking, especially given the complexity and ambition of the agreement. The TPP Leaders have agreed that we should use the momentum built thus far to seek to finalize the agreement within the next year. President Obama and the other TPP Leaders recognize that significant work still lies ahead, with challenging issues to resolve. But they agreed to make concluding the agreement a priority and instructed negotiators to try to do so as soon as possible to help boost economic growth and support job creation.

Last week, the U.S. team headed back to Asia for an intersessional round of negotiations in Malaysia, focusing on a select number of issues to press for further meaningful progress. We were able to narrow the gaps between the nine countries and to agree on ways to accelerate the overall process in the coming months. Some negotiating groups will meet again in January, and others are exchanging proposals and doing other preparatory work ahead of the next full round in March in Australia. In addition, the United States and its TPP partners have developed a work plan for the months ahead so that we can table the remaining outstanding text – including on labor, which is a priority for the Obama Administration – and then close both the legal texts and the market access packages as quickly as possible. Clearly, there are some difficult issues to work through, but the Leaders and trade ministers will be consulting regularly over the coming months to ensure continued progress and a successful conclusion to these negotiations.

INTEREST OF ADDITIONAL COUNTRIES

The United States has been working on the TPP for a few years now, but the APEC meeting last month was a new high-water mark in the visibility of this dynamic initiative. This was in part because of the interest expressed by Japan, Canada, and Mexico at the APEC meeting in joining the TPP. Their interest validated the TPP as the premier platform for economic integration in the region and the most promising pathway to a Free Trade Area of the Asia Pacific. For this reason, the United States and our TPP partners welcomed their announcements, as well as the expressions of interest of other countries that are looking at joining the agreement down the road.

Japan's interest, in particular, has generated much attention. As the third largest economy in the world and our fourth largest trading partner, its potential participation has enormous implications that we will need to consider seriously. The possible participation of Canada, our largest trading partner, as well as Mexico, also has major implications that we need to assess carefully.

The United States and its TPP partners have agreed on a process for considering new participants. Each country that has expressed formal interest in joining the TPP will consult bilaterally with each existing TPP participant in order to permit a thorough assessment of each applicant's readiness to meet the standards and objectives of the agreement. Once those bilateral processes are concluded, the current TPP partners will decide by consensus on the participation of any new countries.

We have started our own domestic consultation process to consider the interest of Japan, Canada and Mexico in the TPP. Last week, we published notices in the Federal Register seeking comments from stakeholders on issues related to these countries' participation and readiness, including input on trade and investment issues with respect to each country. We will consult with our cleared advisers, other stakeholders, and, of course, with Members of Congress throughout this process. We will also engage directly with each of these countries. Our bilateral processes will proceed entirely separately from the TPP negotiations, which we do not intend to slow down. None of these countries will participate in the TPP negotiations until each of the current nine TPP partners concludes its respective bilateral consultations with each of these countries, and until we and other existing TPP participants have agreed formally to include these countries in the negotiations. With the keen interest in Congress on this issue, we will consult with you closely and regularly on developments related to these bilateral consultations, and will formally notify Congress of our intent to bring any of these countries into the TPP, if and when the TPP partners decide to do so.

OUTREACH AND PARTNERSHIP WITH CONGRESS

This negotiation has benefitted significantly from the input received from innumerable stakeholders and from the close partnership the Obama Administration established with Congress even before the negotiations began. We have undertaken unprecedented outreach with stakeholders, and have had input from a broader range of groups than in any previous negotiation. Stakeholders have been invited to be on-site at each negotiating round to make presentations on their issues to negotiators from all TPP partner countries, and at each round we have provided updates and briefings to stakeholders on site. We also have arranged for stakeholders to meet with individual negotiating teams to discuss issues of interest to them. At the same time, USTR has met regularly with stakeholders in Washington and around the country as we pursue an unprecedented outreach strategy to hear from workers, farmers, ranchers, businesses, both large and small, and civil society groups who have input to provide us. This input has been tremendously helpful as we have developed and refined our negotiating positions, and will continue to be critical as we seek to successfully conclude the negotiations.

Our partnership with Congress on the TPP also has been integral and invaluable to our work, and represents the Congressional-Executive collaboration on trade at its best. We have consulted with Congress on each and every negotiating proposal early on in the process and well before what has been past practice so we could get your advice and guidance as we were beginning to develop our negotiating positions, and not wait until our positions were largely formed. There is no question that our proposals have benefitted from this more robust engagement. Of course, there are some issues on which we will have difficulties. But we appreciate the constructive dialogue and genuine effort to work together to find solutions that will allow us to realize our common goal of concluding this groundbreaking agreement. In the months ahead as we work to close the agreement, we will face some particularly difficult challenges. We are committed to maintaining the partnership we have established and recognize that we will need to continue to work together closely to solve them. I look forward to doing so.

The Obama Administration believes that in order to create the jobs Americans want at home, we must create more export opportunities abroad. Through the TPP, we are acting on that belief, and by playing a leading role in the development of the TPP, the United States is creating a state-of-the-art trade agreement that levels the playing field for American businesses. Once the nine existing TPP partners conclude an agreement, the TPP will serve as an engine for job-creating opportunities in the United States, and as other countries commit to meeting its high standards, it will continue to do so far into the future.

Thank you, Chairman Brady, Ranking Member McDermott and Members of the Subcommittee, for the opportunity to appear before you today. I look forward to answering your questions.

Embargoed until December 14th at 11:00am

Chairman BRADY. Mr. Ambassador, thank you very much. Your testimony demonstrates the enormous potential value of TPP, both from an economic standpoint and an engagement standpoint.

In light of all those potential benefits, it is clear we want to move this agreement forward as quickly as possible. My goal would be midyear of next year. What is USTR doing to stay on a steady time table? What can Congress do to help you stay on a steady, brisk time table, going forward?

Ambassador MARANTIS. Thank you, Chairman Brady. I think the reality is success breeds a lot more work. And the success that we were able to achieve in Honolulu with the TPP leaders announcing the broad outlines of an agreement and their commitment to accelerate the pace of the negotiations has meant that we are working very hard right now with our TPP partners to schedule additional negotiating rounds, to schedule additional bilateral and regional negotiations so that we can meet the goals our leaders set for us.

We have a lot of the work done, in terms of U.S. proposals on the table. But we are going to enter a very difficult period now, where we try to bring these negotiations to closure. And as we have over the past year, consulting very closely with you on developing our proposals, we are going to need to work very closely with you in honing them to make sure we bring these negotiations to a conclusion as quickly as we can.

Chairman BRADY. Thank you. Second and final question—there is an area of concern I want to highlight. While the TPP provides important opportunities for a broad range of industries and, again, beyond the border and state-owned enterprises and regulatory coherence, trade facilitation, our most recent trade agreements provide a proven means for handling certain other critical issues.

For example, I would urge the Administration to follow the approach in our recent agreements relating to labor, so as to avoid increasing controversy. If the administration seeks to expand the scope of commitments beyond the compromise embodied in the recent trade agreements, it could seriously undermine support for the TPP and jeopardize congressional approval of the agreement.

Is the Administration planning to put forward a proposal on labor that goes beyond the approach taken in our recent trade agreements?

Ambassador MARANTIS. Chairman Brady, as with every element of TPP, whether it is labor or intellectual property, services, SPS measures, we are trying to ensure that the TPP addresses the concerns that workers and businesses face in the 21st century economy. So we have looked very closely at the obligations of what we have done in the past. We have received input from you, we have received input from stakeholders. And our goal in all of our chapters is to move the ball forward, and do so in a way that is consistent with U.S. law.

We have not yet tabled a proposal on labor. We are in active consultation with this committee now, and hope to table our labor proposal before the end of the year.

Chairman BRADY. The point I think I would like to drive home is that we have just completed three very important trade agreements, with very strong—not overwhelming—bipartisan support. So we know where the consensus lies. My concern is that should the labor text go beyond the May 10th Agreement it would create, first, unnecessary controversy. Secondly, I think it would undermine support among the TPP's strongest advocates. And, in the end, I am afraid it could seriously jeopardize congressional approval of a final deal.

And I appreciate you listening, as you do, to our serious concerns about this area. With that, I would recognize Mr. McDermott.

Mr. MCDERMOTT. Thank you, Mr. Chairman. Yesterday I picked up a piece of paper and I was really pleased, because I see USTR has “enthusiastically”—this is a quote—“called for supporting extension of AGOA.” And you are going to the WTO summit. I hope that that goes. We are working with the Senate to try and get a bill through that they won’t amend over in the Senate. There is a little bit of paranoia on this side that if we send a bill to the Senate, sometimes it comes back differently than we had anticipated. So we are working to try and make that possible.

I would like to take the rest of my time to explore with you the whole Japanese question. I had a delegation of people—the agriculture minister and other people—yesterday from Japan. I had this morning the ambassador of the embassy came in to talk about what is going on and all this. I would like to hear how you think things will develop in our—if Japan is brought in.

First of all, is it your position that you would like Japan to be in the negotiation? And secondly, if they are, how do you think it will proceed, dealing with the issues that are clearly different than dealing with Brunei and Malaysia and Vietnam?

And there are some long-standing issues with Japan. I would like to hear you talk a little bit about that for us.

Ambassador MARANTIS. Sure. Thanks, Mr. McDermott. And thank you very much for your support of extending third-country fabric in AGOA until 2015. You know, this is a big priority of ours, and we look forward to working with you, with this committee, and with the Senate in getting it done as quickly as we can.

On Japan Canada, and Mexico announced that they were interested in participating in the TPP. That means that we need to begin a process here domestically with you and our stakeholders so that we can determine whether or not Japan, in this instance, is prepared to take on the high-standard commitments that we expect in the TPP, and that we are negotiating with our eight other counterparts.

Mr. MCDERMOTT. Could I clarify one thing?

Ambassador MARANTIS. Sure.

Mr. MCDERMOTT. Would it be your intention that there be an agreement reached with the first nine countries, and then Japan negotiations became a part of it? Or would it be Japan making 10 from the very start?

Ambassador MARANTIS. I think it is too soon to tell. The way I sort of—I think we see this proceeding—there are two parallel tracks. There is the track that we are on with our TPP countries right now, accelerating, our negotiations with a view to try to conclude this as quickly as possible.

And then, there is a track with the applicant countries, like Japan, Canada, and Mexico, where we need to work with you and stakeholders, again, to decide if they are, willing and able to address our concerns and to meet the high-standard commitments we expect.

At some point those tracks theoretically will merge. But the question of when that will happen will largely be dictated by the substance of the consultations that we have, you know, both with you, as well as with the Japanese, the Canadians, and the Mexicans.

Mr. MCDERMOTT. It would seem, just listening to the chairman's suggestion that he would like to see it all done perhaps by midyear, that it would not be possible to get everybody in the umbrella by midyear. Is that a fair assessment?

Ambassador MARANTIS. Again, Mr. McDermott, it is hard to tell. We will get our submissions back from the public from our Federal Register notice on Japan, Canada, and Mexico on January 13th. We have already begun our outreach to stakeholders. We have already begun to begin our consultations with the committee. And we will just—we will have to see where we are as the months progress, and see how quickly our trading partners are able to address the concerns that are identified in the public submission process.

Mr. MCDERMOTT. And then, tell me—I raised the issue of IPR and drugs. Tell me why you are—why you have different language, or why you think we should have different language in TPP, as opposed to what we put in Peru and some other agreements.

Ambassador MARANTIS. Sure. I mean I just want to underscore this administration's commitment to using trade policy to drive access to medicine in a way that fosters innovation. That was the goal of May 10th, and we very much uphold and affirm that goal.

The approach that we are taking in TPP, though different from—different in language from May 10th, is very much as effective, we believe, in terms of driving access to medicines in the developing world. What we have tried to do, Mr. McDermott, is we have tried to create increased legal certainty and predictability for generics, as well as for innovative producers, so that they get into the market in a developing world as quickly as possible. And the goal that we have is to propel the TPP countries to the front of the line for important innovative products, as well as the generic competition that follows.

So, we think that the proposal we have made, both in the IP chapter, but as well as in other areas of the agreement with respect to tariffs, customs, you know, trading rights, and distribution, provides, really, the best way to drive access to medicines in the developing world as quickly as possible in a way that achieves the balance that we sought to achieve in May 10th. That fosters innovation, as well.

Mr. MCDERMOTT. Thank you.

Chairman BRADY. Mr. Davis.

Mr. DAVIS. Thank you, Mr. Chairman. I request unanimous consent to submit two documents for the hearing record.

First is a statement from the Burley Tobacco Growers Cooperative Association, which includes the many tobacco producers from Kentucky, requesting the administration defend the economic interests of American farm families by ensuring that tobacco and tobacco products are not excluded from the TPP.

The second document is a copy of a letter the Kentucky delegation sent to Ambassador Kirk with the same request.

Ambassador Marantis, I would like to ask you about the second document that I submitted for the record. On October 7th of this year, the Kentucky delegation sent a letter to Ambassador Kirk opposing USTR's consideration of excluding products from the TPP, specifically tobacco. I, along with congressional delegations from

seven other states who sent similar trade letters, received a response that stated the Office of the U.S. Trade Representative is “still developing our negotiating position for the TPP.”

The TPP is often described as an ambitious 21st century trade agreement, but I want to ensure it is also a comprehensive agreement. I was wondering if you could provide any additional insight or updated information regarding USTR’s position on the potential exclusion of tobacco or any other products from the TPP.

Ambassador MARANTIS. Sure, Mr. Davis. We—I don’t have a lot of new news for you. We have received an enormous amount of input on this issue from all across the spectrum, and we haven’t made any decisions yet. But as we continue to review the input and to determine how to best approach this issue, we will definitely do so, in close consultation with this committee.

Mr. DAVIS. Well, I would close by just sharing that the one concern that I have on this matter is Kentucky produces over a quarter of the nation’s tobacco and a 9.5 percent unemployment rate in our state. If there were to be an exclusion, it would be devastating.

Could you give us some assurance that you would work with us and—on the committee and the Congress, to be updated appropriately as you develop this position, and include us in the dialogue?

Ambassador MARANTIS. Yes, sir.

Mr. DAVIS. I appreciate that. I would like to move on to another subject, briefly. With the expanding interest in joining the TPP, I think it is an important validation of a broader goal of the agreement to create a free trade area for the Asia-Pacific region. And this effort will have significant commercial benefits, but it could also have an important effect on China’s expanding influence. TPP would help to deepen trade ties with key allies in the Pacific and serve as a counterweight to Chinese influence.

What role, in your opinion, does TPP play in our China strategy, and China’s growing influence, both in Asia and in Latin America to our south?

Ambassador MARANTIS. We view TPP as a platform for regional integration in the Asia-Pacific. And as we have started out with this group of like-minded countries, we hope to expand it to include other countries in the Asia-Pacific.

We have learned a lot from our trade relations in the region over the past number of years, and that is why we have included some new and innovative proposals in the TPP to address concerns that have come up with the nine, but also more broadly.

For instance, we have included state-of-the-art provisions on state-owned enterprises in order to ensure that the competitive distortions that state-owned enterprises could put in the international trade and investment regime are accounted for.

Similarly, we have also included provisions to address issues that have arisen with respect to indigenous innovation, in order to ensure that countries don’t require standards, a specific standard, as a condition for investing in that country.

So, we have learned a lot in close consultation with you, as well as just what our exporters have faced in the region. And that is why we are trying to develop the TPP as a, you know, innovative

21st century agreement that could grow and expand and include other countries in the region.

Mr. DAVIS. Great. Thank you very much. We look forward to working with you.

And I yield back, Chairman.

Chairman BRADY. Thank you. Mr. Reichert.

Mr. REICHERT. Thank you, Mr. Chairman. And welcome, Ambassador. First of all, I want to just, again, say thank you. The last time you were here we expressed our appreciation. I don't think we can say this enough to you and your staff. Thank you so much for all your hard work.

And I don't think we can repeat this enough, either, in the success of the Korean agreement, Colombia, and Panama, the 250,000 jobs that are estimated to be created right here in the United States, the improvement to environmental standards across the world, the improvements to labor standards across the world, and also the great concern we have and the benefits that these trade agreements bring to our national security interests. So a lot broader than just, you know, economic partnerships here. I think most folks understand that. So I appreciate your hard work.

I wanted to focus on a couple of things that have sort of been touched on. One, the chairman mentioned. How can we help? How can Congress help you move your time line?

And I just wanted to ask a question that relates to the President's Export Council, which I happen to be a member of, and whether or not you have had an opportunity to see the letter they provided, giving their thoughts and ideas and input into TPP.

Ambassador MARANTIS. Yes, sir. And you know, with that and all of the outreach that we have done to stakeholders, it has very much helped us shape where we are on TPP.

Mr. Reichert, thank you very much for your offer and your consistent support of what we do. This committee has been fantastic to work with at the Member level and the staff level. And the unprecedented amount of collaboration that we have had on the TPP has enabled us to get to a point where the President was able, in Honolulu, to announce the broad outlines of the agreement.

With the commitment that you all have, we are going to need it over the course of the next 6, 8, 9, 12 months to get this done. We have got a lot of hard work to do and a lot of really tough decisions to make. But we have established a great track record of congressional-executive collaboration, and I look forward to continuing it.

Mr. REICHERT. Great, thank you. I wanted to touch on the services market, again highlighting the fact that with the Korean agreement we have opened up a \$560 billion services market for the United States to sell American. And my question is: How will the TPP agreement create a level playing field for our service providers in those countries that want to be partners?

Ambassador MARANTIS. Services is a key market access priority for us across the board. And there are a number of services barriers in the region that we need to address head-on. For instance, in the area of financial services, our service providers face obstacles in terms of being able to get licenses to offer their services. Or their limitations on the amounts of branches that our service providers can have in particular markets.

We also face high equity limitations, which inhibit our ability to provide services through a commercial presence. So that is just one example of the many issues that we hope to get at in our services market access negotiations.

We are working also in the area of electronic commerce, to enhance the electronic delivery of services, where we have some really new, interesting, innovative proposals that help to ensure access to data, and that also ensure that our trading partners don't erect barriers or requirements that would require a server to be located in a particular jurisdiction, which in some way would inhibit the electronic delivery of services.

So, there is a lot of work we are doing on both the market access side and on the non-tariff barrier side to ensure that we get greater access to the services market of that important region.

Mr. REICHERT. And one last point: intellectual property rights. Mr. McDermott touched on that briefly specific to medicines. I want to stress the fact that I think the language in the Korean agreement, Colombia, Panama were strong had strong intellectual property right language. We don't want to see weaker version of that language, as we look at TPP. I think that would hurt our relationship, friendship, and partnership, and the agreement that we have with the three previous countries that I just mentioned.

And are you looking at, hopefully, the same language when it comes to intellectual property rights?

Ambassador MARANTIS. On pharmaceuticals specifically, we are, working to seek the balance between driving access to medicines in the developing world in a way that fosters innovation.

On the other provisions in IP we are doing some new innovative things to protect IP protection. We, for instance in the area of trade secrets, are requiring criminal penalties for trade secret theft. We are trying to strengthen our approach to trademarks and geographic indications to address concerns that our agriculture industry has raised with us. We are trying to do new things in the area of promoting criminal penalties for counterfeiting and piracy offenses that threaten health and safety.

So, there is a lot of new, good work that we are doing to make sure that our IP chapter stands alongside the other IP chapters that we have negotiated in the past.

Chairman BRADY. Thank you. Mr. Neal.

Mr. NEAL. Thank you, Mr. Chairman. Mr. Ambassador, 60 years ago plus, if you were traveling through New England you would have noted that it was the footwear capital of the United States. Not necessarily real high-wage jobs, but it had a steady ladder of opportunity for a generation of immigrants and others who had come to New England. And, in many instances, families by two or generations had worked in that respective industry.

New Balance is still there. And it is certainly a name with international reputation. And as we look at growing foreign imports, particularly from Vietnam, how can we be assured that, in your role, that you are going to continue to not only monitor tariff issues, but what is the administration's position on making sure that, if necessary, that those tariffs remain in place to keep New Balance and what is left of that industry competitive in a marketplace where it is much more difficult to compete?

Ambassador MARANTIS. Thank you, Mr. Neal. We have been in close touch with the industry on this issue. As we are seeking comprehensive market access for TPP, we have very real sensitivities, including in the area of rubber footwear. And what we need to do, and are doing, is to work in very close consultation with them and with you as we determine how to best address issues of sensitivity as in the rubber footwear sector. And so, we are committed to working with you and with the industry to do so.

Mr. NEAL. And Mr. McDermott and Mr. Reichert both mentioned biosciences. As you know, that is terribly important to Massachusetts. And that whole notion of intellectual capital and how it is protected is also a very important consideration, as we go forward.

And I won't ask you to repeat the answers that you have given previously, but—as much as to point out how important it is to the millions of jobs across the country, many of those jobs centered in Massachusetts.

Thank you, Mr. Chairman.

Chairman BRADY. Thank you, Mr. Neal. Mr. Herger.

Mr. HERGER. Thank you, Mr. Chairman. Again, I want to join, Mr. Ambassador, in thanking you for the work that you and the administration have been doing, particularly of late, on moving these trade agreements further, and working with us. Incredibly important to our nation in this economic downturn that we are experiencing.

In his State of the Union Address earlier this year, President Obama said, “The first step in winning the future is encouraging American innovation,” and he noted that “our free enterprise system is what drives innovation.” One of the sectors that he went on to emphasize in his address was biomedical research.

In fact, research and development in the U.S. biopharmaceutical industry is critical to the future of our economy. Biopharmaceutical firms in the United States invested over \$65 billion in R&D in 2009, and supported 4 million U.S. jobs. Almost half-a-million of those jobs are in my home state of California. These are very good, high-paying jobs, and they depend on strong intellectual property rights for drugs that our R&D workers develop.

It is strong IPR protections, including data protection, that make it commercially sustainable for our biopharmaceutical firms to invest so substantially in R&D “five times more relative to their sales than the average U.S. manufacturing firm,” according to the Congressional Budget Office.

If the President is right, that the first step in winning the future is to encourage American innovation, I believe we need to press for the same high standards in IPR protections in TPP countries as we provide here at home to protect the hard work and valuable production of our R&D workers, including biopharmaceutical R&D workers.

Mr. Ambassador, would you agree with this?

Ambassador MARANTIS. Mr. Herger, without a doubt, biologics are a vital area of innovation. In the TPP we have not yet made a specific proposal with respect to data protection for biologics. There are differing views on this issue. There are differing views, in fact, on this committee about how to handle that issue.

What we are doing is we want to engage in more discussion with our TPP trading partners, as well as with Congress, to determine what the best approach should be for this.

Mr. HERGER. Well, again, with this being so important, I would encourage you to take a very strong stand in this area.

I would like to turn quickly to Japan. I believe Japan's interest in joining the TPP creates an opportunity to address a number of barriers to U.S. exports. I have heard from a number of industries, including agriculture, autos, and insurance about Japan's persistent barriers.

For example, rice, which is extremely important to my congressional district in northern California, faces a tariff that hovers around 700 percent. Could you describe what steps the administration is taking to address the outstanding concerns about Japan's discriminatory policies?

Ambassador MARANTIS. Sure, Mr. Herger. We are seeking, in the context of the TPP, a comprehensive agreement, recognizing that there are sensitivities. But with respect to the various issues we face with Japan, we are in the process now, through our public consultation process, getting feedback. And we will have to work very closely with you and with our stakeholders to determine how to best address the concerns that are raised.

I fully anticipate hearing concerns like those you just raised from our agriculture industry. Our services industry has longstanding concerns. Our manufacturing industry has longstanding concerns. And the challenge that we are going to face with Japan is how to determine how to best address those in this context.

Mr. HERGER. Thank you very much. That is very helpful. I look forward to working with you and Chairman Brady on these efforts.

Ambassador MARANTIS. Thanks, Mr. Herger.

Chairman BRADY. Thank you, Mr. Herger. Mr. Buchanan.

Mr. BUCHANAN. Yes. I want to thank Chairman Brady for holding this important hearing today. And also, thank you, Ambassador, for being here. We are here today—I think one of the biggest reasons is talk about jobs. In Florida, my home state, we have over 10 percent unemployment. I believe trade is a good way for Florida to increase jobs. And we are home to 14 ports in Florida, with about \$68 billion in economic activity. So we really think that is a great opportunity for us to grow, in terms of exporting.

My question, Ambassador, is the TPP is described as a pathway to broader Asia-Pacific regional economic integration. How will this help create jobs, increase exports, and grow our economy?

Ambassador MARANTIS. Mr. Buchanan, you hit it on the head. I mean this agreement is all about jobs, and trying to create the high-paying jobs that depend on export opportunities.

We are doing a lot of things that are new and different in the TPP to try to ensure that we further enhance our export opportunities in this very important region. We are doing, traditional stuff like trying to reduce tariff barriers. But what I think is very new and unique in the TPP is the work we are doing on behind-the-border measures, specifically to address non-tariff barriers.

For instance, in the area of SOEs, we are trying to eliminate the competitive distortions that SOEs may put in the international trading regime. We are negotiating sector-specific annexes in the

agreement to address non-tariff measures in specific sectors like cosmetics and medical devices.

We are negotiating new and innovative obligations in the area of agriculture non-tariff measures to ensure that our trading partners are more transparent when they regulate food safety, as well as ensure that their risk analyses are more grounded in science.

So, there is just a whole range of things we are doing throughout this agreement to get at the behind-the-border obstacles that have really proved most meddlesome to our exporters.

Mr. BUCHANAN. Let me—I want to jump on another question quickly. My time is running out.

Ambassador, China, as we all know, is an 800-pound gorilla in the room. I just got back from Beijing. We have a lot of issues with the Chinese that need to be addressed. How does the TPP agreement help us in the Asian region, as it relates to our relationship with China?

Ambassador MARANTIS. I think the TPP, as a platform for regional integration, establishes the model of what the United States and our fellow TPP countries would view as the best approach towards conducting international trade. And that includes through the range of obligations on tariff and non-tariff measures that we are putting in place.

So, in a sense, it is really creating a model for how trade should be conducted in such an important region.

Mr. BUCHANAN. Thank you, Mr. Chairman. I yield back.

Chairman BRADY. Thank you. Mr. Doggett.

Mr. DOGGETT. Thank you, Mr. Chairman. And thank you, Ambassador, for your testimony.

On the issue of tobacco that was raised earlier, this administration has been a leader in trying to prevent the continued efforts of the tobacco industry to addict our children at home. And I would hope, in terms of good public policy, it would follow the same objective abroad.

But my question is a more narrow one. While I would never object to your consulting with anyone, I assume that whether the issue is flavoring of product in Canada or the excellent efforts, in my opinion, of Australia to prevent addiction with its packaging laws, that a first objective of USTR is to comply with existing law, longstanding law, that prevents you from being involved in the promoting, the sale, or export of tobacco, tobacco products, or to seek the reduction or removal by any foreign country of restrictions on the marketing of tobacco or tobacco products.

And USTR does attempt to comply with that law, does it not?

Ambassador MARANTIS. Yes, sir.

Mr. DOGGETT. And with reference to the labor issue that Mr. Brady asked at the opening of the hearing, I, of course, as you know, take a different position, that the agreement to which he refers sets the minimum established by the prior Bush-Cheney Administration, and that this administration, both with President Obama's comments and also by Ambassador Kirk's comments, indicated an interest in assuring that labor rights, the rights of workers, were protected, and working conditions.

I will look forward to what you put on the table about labor rights. And the concern that I have to date is that it is not clear

that the international labor organization fundamental or core standards are incorporated into TPP, nor is it clear that there is an enforcement mechanism that has improved over prior agreements.

This is, of course, the first major agreement that this administration is negotiating on its own, rather than inheriting from a prior Administration. And I would just urge you to give meaning to the statements of the President and the trade ambassador to have enforceable standards, and standards that are meaningful and comprehensive.

And the same thing is true with reference to the environment. As you know, a very big concern of mine, in TPP you are dealing with a number of very environmentally sensitive areas across Asia, that those standards be as enforceable as any other provision of the agreement, and that they deal with the tremendous challenges that exist across the Pacific, with reference to the environment. And I hope you will give priority to that.

You and I have discussed in your previous testimony before the committee the whole question of investor state. And that becomes relevant in these other areas since Philip Morris, for example, has attempted to use bilateral investment agreements to thwart legitimate public health efforts in some other countries.

With reference to Australia, to date have any problems been detected for U.S. investors in relying on the Australian court system, as provided in the free trade agreement with Australia, as distinguished from the investor state arbitration panels that are used in a number of other agreements?

Ambassador MARANTIS. I am not aware of any, sir.

Mr. DOGGETT. Do you know of any reason, or do you have any evidence to suggest that the mature court system of New Zealand would not be just as effective as the Australian courts have been in protecting the rights of American investors?

Ambassador MARANTIS. I am not aware of any.

Mr. DOGGETT. Well, I would hope you would look to the court systems where there are mature systems, rather than always opting for the investor state approach. Does—with reference to investor state and, for that matter, with other issues, the many other issues, doesn't the TPP contemplate the fact that there are many different systems—Vietnam versus New Zealand—and not necessarily apply exactly the same provision to all countries within TPP on all issues?

Ambassador MARANTIS. We are trying to negotiate single standards for everything across the board in TPP the idea of this agreement is being a regional agreement that other countries, both developed and developing, will join.

Mr. DOGGETT. So you would expect the same labor standard, the same environmental standard for all the countries?

Ambassador MARANTIS. Yes, sir.

Mr. DOGGETT. And you don't expect to see any exceptions or alternative approaches suggested for any individual countries?

Ambassador MARANTIS. No, sir.

Mr. DOGGETT. On any issues?

Ambassador MARANTIS. No, sir. We are trying to create a single standard throughout.

Mr. DOGGETT. Thank you.

Ambassador MARANTIS. Thank you.

Chairman BRADY. Thank you, Mr. Doggett. Mr. Smith.

Mr. SMITH. Thank you, Mr. Chairman. And thank you, Ambassador, for your presence here today, and certainly the efforts of USTR to promote U.S. products.

Can you provide an update on Japan and beef access?

Ambassador MARANTIS. Sure. I mean this is obviously a long-standing issue of all of ours. It is something that we continue to work on, and continue to push the Japanese Government on, at every opportunity.

Mr. SMITH. Okay. So have there been many changes, or any progress made? And certainly perhaps maybe addressing how the U.S. is actually assessing Japan's interest in joining the TPP, certainly in the context of beef.

Ambassador MARANTIS. Sure. There is no new news on beef at this point, but this is a priority issue for us, and continues to be. And I would expect that we will hear from you and other stakeholders as we move this process forward.

There are a lot of issues that I expect will come up with respect to Japan throughout the economy, whether it is in the manufacturing sector, or the services sector or the agriculture sector, and we are going to have to determine how best to address the concerns, once we have had an opportunity to go through them as we work with Japan towards their TPP aspirations.

Mr. SMITH. Yes. I mean we know that there are often times non-science-based phytosanitary measures that are applied in—certainly in a non-transparent manner to the U.S. products. And so the WTO rules on sanitary and phytosanitary measures do help solve this problem, but they often are not enough.

How would the TPP agreement ensure that these illegitimate sanitary and phytosanitary measures do not keep out U.S. ag products.

Ambassador MARANTIS. I am really excited about what we are doing in the sanitary and phytosanitary provisions in the TPP for exactly the reason that you just said.

We are trying to beef up the SPS provisions beyond what we have in the WTO in a variety of ways. One is to increase transparency, so our stakeholders can be more involved in the rule-making processes conducted by our trading partners. The second is we are trying to ensure that the risk analyses that are done in support of SPS measures are grounded in science. Third, we are working to facilitate trade by harmonizing export certification processes on specific commodities, based on tough, science-based standards.

And so, through a combination of these things, we hope to really buttress the SPS provisions in this agreement, so they are, in fact, high-standard, 21st century, and deal with the types of non-tariff agriculture measures that our exporters face.

Mr. SMITH. So do you see this being consistent or paralleling WTO rules, or would it go beyond?

Ambassador MARANTIS. I think it will go beyond.

Mr. SMITH. Okay, thank you.

Ambassador MARANTIS. Thanks.

Mr. SMITH. I yield back.

Chairman BRADY. Thank you. Ms. Jenkins.

Ms. JENKINS. Thank you, Ambassador, for being here. And thank you, Chairman Brady, for holding this hearing. I love the “beef up” pun. Very appropriate for the beef producers in our area.

The animal health industry develops groundbreaking medicines, vaccines, and feed additives that enhance livestock and pet health. The Kansas City animal health corridor is home to many animal health companies, as well as grant universities, which include Kansas State University, the Kansas State University Veterinary College, the University of Kansas, and the University of Kansas Medical Center.

The companies and universities invest heavily in research and capital to develop new animal drugs and treatments. In fact, it is estimated that, on average, it takes 7 to 10 years, and up to \$100 million to bring a new product to market. For this reason, not only is access to new markets important to the future success of this important industry, but strong data protections are also critical to protect the integrity of the products.

Therefore, first, I would like to know what measures the administration will be taking to ensure that strong data protections exist in the agreement. And second, is the standard adopted in the Korean free trade agreement, which is a minimum of five years for non-biologics once a new product is licensed in a participating country, an option?

Ambassador MARANTIS. Thanks, Ms. Jenkins. On the data protection issue, this is one of the components of our pharmaceutical access window proposal. And the way it would work would be if an innovative company launches its product within a certain amount of time, they would benefit from certain high-standard IP protections.

We haven’t yet negotiated the amount of time with our trading partners, nor have we negotiated what the specific high-standard IP protections would be. But data protection is among those that we are talking about, and the five-year term in that regard.

So, the way it would work, again, it would be kind of a carrot-and-a-stick approach. If an innovative company comes in within a certain amount of time, they would benefit from high-standard protections. But if they don’t come in during that particular access window, then they would be subject to whatever provisions that country would provide. There would be no guarantee.

Ms. JENKINS. Okay. I look forward to working with you. I yield back, thanks.

Ambassador MARANTIS. Likewise.

Chairman BRADY. Thank you. Mr. Schock.

Mr. SCHOCK. Thank you, Mr. Chairman. Thank you, Ambassador, for being here. I appreciate your comments earlier about the need for strong intellectual property, and your desire to position U.S. companies to compete among these Asia-Pacific countries.

I am specifically interested in a letter that I led with over 100 Members of Congress. Sixteen of those Members that signed the letter were members of this committee, the Ways and Means Committee that we wrote to the President this past summer regarding the importance of ensuring a high standard of intellectual property for the U.S. biopharmaceutical industry in the TPP agreement.

This is especially important for me in my home state. The pharmaceutical industry supports over 4 million jobs in the U.S., 167,000 jobs just in my home state of Illinois.

As I mentioned, there is strong bipartisan support for the U.S. law, which currently provides 12 years of regulatory data protection for innovative biological medicines. I and my over-100 colleagues firmly believe that it is critically important that the administration continue to push U.S. law as the model for the TPP.

My question to you is: What is the administration doing to ensure that the U.S. position on intellectual property protection for biologics with TPP is consistent with the current 12-year regulation, U.S. law—or guarantee, I should say?

Ambassador MARANTIS. We have not tabled a proposal on this issue yet. And without a doubt, biologics, it is a vital area of innovation—

Mr. SCHOCK. When you say you haven't "tabled" it, what does that mean?

Ambassador MARANTIS. We don't have a proposal on data protection for biologics at this point. What we are doing right now is we are trying to discuss this issue with our TPP partners before we decide how to approach it. There are differences also amongst this committee on exactly how to handle data protection for biologics. And so we are just—we are trying to get more discussion and have more information before we decide how to approach it in the context of TPP.

Mr. SCHOCK. Do you believe that it will be consistent with current U.S. law, or is there any reason why it wouldn't be?

Ambassador MARANTIS. I think it is an open question, in terms of how to handle it. The Affordable Care Act mandates 12 years of data protection for biologics. The administration's budget assumes seven years of data protection for biologics. There are differences in opinion between members of this committee on how to handle it. Our trading partners have their own views. So, we are still in the process of gathering information before we decide how to best approach this.

Mr. SCHOCK. Well, I would like to be on the record, as well as my over-100 colleagues, I think, in supporting current U.S. law. And all I would say is that the President's budget did not pass. To his credit, the Affordable Health Care Act did. And that is why we have a 12-year guarantee. And I think it is important that we continue to maintain that for jobs in our country, as well as these companies' ability to compete overseas.

So, I hope that we can—the administration and you, Ambassador, decide to be consistent with the 12-year guarantee for these pharmaceutical biologic IPs. Thank you.

Chairman BRADY. Mr. Crowley is recognized.

Mr. CROWLEY. Thank you, Ambassador Marantis. New York is home, as you know, to much of the service industries in the country today—insurance, legal services, technology, tourism, et cetera. How do you see the services industries benefitting or not benefitting from TPP? And how would that affect U.S. job growth?

Ambassador MARANTIS. It is a huge potential market for U.S. services. And there are lingering barriers in the region that we need to address throughout the services sector, whether it relates

to lingering equity limitations, or branching restrictions licensing restrictions in the areas of financial services in the area of express delivery services or telecom services. There is a lot that we hope to gain through our market access negotiations in the services sector. And it will be a big win for jobs, given that we are a net services exporter, and have a net services surplus. And access to, you know, new markets like Vietnam and Malaysia will be of great benefit to our service providers.

Mr. CROWLEY. Like many of my colleagues, I am intrigued by Japan now, and its interest. We are looking very closely at the possibility of them entering into the TPP.

On the one hand, we are talking about a \$5 trillion economy that has yet to really even begin to reach its potential, in terms of purchases within the United States. Japan is also a very strong ally of the United States, one of our closest allies in the world, and a country that I think is appreciated by many Americans. A strong Japan helps create a strong U.S. is the sense that we have.

On the other hand, it is undeniable that Japan has historically used non-tariff barriers, as you have been hearing from my colleagues, and other restrictions to limit U.S. exports in many areas.

Do you have a sense as to why Japan is interested in joining TPP now? And what are we looking for from Japan to determine whether they are willing to address many of these outstanding issues? Is there a sense that there is a real willingness to address the closed markets in Japan? For instance on autos, on insurance, using Japan Post as an example? What is your sense?

And really, why do you think they are choosing now to enter, when this has been discussed for a while?

Ambassador MARANTIS. I think Japan—and not just Japan, but Canada, Mexico, and others—have noticed the unbelievable promise of the TPP, in terms of growing jobs and creating new market access and export opportunities in the world's most dynamic region. And I think the success that the President had at APEC in Honolulu in announcing the broad outlines of an agreement really catalyzed Japan, Canada, Mexico, and others to look at the TPP as being an essential part of their strategy for creating economic growth in their economies.

And we welcome that interest. You know, two years ago, when we started this process, we were very clear that we wanted to begin this negotiation with this group of like-minded countries, but to expand it to include other countries throughout the Asia-Pacific region.

The question, though, Mr. Crowley, as you raise, going forward is we are through our consultation process with you and with our stakeholders going to have to best determine how we will ensure that Japan, Canada, Mexico, and whoever else is interested, is up to the task of meeting the high standards that we expect and that we are setting in the TPP agreement.

Mr. CROWLEY. You mentioned Japan. Sorry, you mentioned Canada and Mexico. I wasn't here for the NAFTA vote. I have been on record saying I would have voted no for that agreement, given the lack of inclusion of labor standards, as well as environmental standards.

We have come a good distance since then, in particular the May 10th Agreement. And that has been included in subsequent agreements. If Mexico and Canada join in the TPP, am I correct that they would be required to join the labor and environmental provisions outlined in the May 10th Agreement, or even go further?

Ambassador MARANTIS. I mean the intention would be with any country with which we have FTAs Mexico, Canada, or Australia, Singapore, et cetera—is that the provisions of the TPP, would exist alongside provisions of the currently existing FTAs, except in places where there is a conflict. And typically it is the agreement that is concluded later in time that would supersede the agreement that was concluded earlier in time, unless you negotiate something other.

So, that would be our expectation.

Mr. CROWLEY. Thank you. And I yield back the balance. Thank you, Ambassador.

Chairman BRADY. Thank you. Mr. Larson.

Mr. LARSON. Thank you, Chairman Brady. And thank you, Ranking Member McDermott, for this hearing. Ambassador, thank you for your service to the country.

Most of my colleagues have gone over a number of the salient points I want to address in general terms, and—but if you could for me, first with respect to biologics, which you have already iterated are so important to this administration, et cetera, I just would like to be assured that in the negotiation process, especially as we look at the 12 years that is involved in the issue of patent rights, et cetera, that the administration is going to negotiate for that up front, and not save that to the end. Is there any—do you have any sense of that?

Ambassador MARANTIS. Mr. Larson, we haven't yet made a decision on how to address the biologics issue. We need more, I think, discussion with our TPP partners, as well as Congress, in terms of how to figure out how to approach it in the context of the negotiations.

Mr. LARSON. Well, I hope that the administration—I think, as you listen to the Members here—get a strong sense of the importance of—as you have underlined yourself, how important and vital this issue is. And I hope that it is not left at the tail end of negotiations, but used as important leverage as an incredible manufacturing and growth sector for us here in the country, as the President underscored as well in Hawaii.

And second, building upon Mr. Crowley's comments, I come from an insurance capital of the world, and—we like to think—and also—so it is vitally important here, with respect to Japan and the whole Japan Post issue that has been so critical. I know the administration is aware of this, but we would again like to see the administration resolve these issues going in.

And can you give me any assurances as to where we stand with creating that kind of level playing field that should be there for everyone in a global economy, and certainly within the TPP?

Ambassador MARANTIS. Sure, Mr. Larson. I mean this is a very important issue. Creating a level playing field for our providers of insurance, banking, and express delivery services is critical. This has been a high-priority issue for us with Japan for a number of

years, and we continue to raise it with our Japanese counterparts at every opportunity.

Mr. LARSON. I thank you, Ambassador. I thank you for your service. And again, I thank Mr. Brady, Mr. McDermott, and yield back my time.

Ambassador MARANTIS. Thanks.

Chairman BRADY. Thank you. Dr. Boustany.

Mr. BOUSTANY. Thank you, Mr. Chairman, for holding this hearing. And Ambassador Marantis, thank you. And thank you to all your team for the great work that is being done.

I co-chair the U.S.-China working group in the House, and I was traveling in China back in April. And in meetings with senior Chinese officials I always emphasized that the United States of America is a Pacific nation, both geographically, but Pacific in the meaning of the word itself: we want peace. And my definition of all of that is free trade and unfettered navigation on our sea channels, our sea lanes.

And this agreement is strategically important. I am very pleased you are going forward with it. It gives the United States leverage and credibility. And I think that is at the heart of American competitiveness in the 21st century, job creation.

And I have seen it in my own state of Louisiana, where we have—you know, Louisiana is a maritime state. We are on the Gulf of Mexico. We are a leader in trade. We are consistently in the top 10 in exports. We are also an energy-producing state. But we have seen 45 percent growth in this year, much—in exports, much in the Asia-Pacific region for Louisiana with our Gulf Coast location. Our number one export destination is China. Our third most important export destination is Japan.

And so, opening these markets, having leverage in our negotiations to create jobs—one out of five jobs in Louisiana is related to trade—is critically important. Our 45 percent growth in exports is on top of a previous year, where we saw 54 percent growth in exports.

And so, as we look at this, whether it is agriculture—and my friend, Mr. Herger from California talked about rice; I have rice growing in my district—these tariffs and non-tariff barriers are of utmost importance. But as we engage in this, and finalize this agreement, I want to talk a—I want to ask you to describe a little bit more in depth about the dispute mechanism and enforcement dealing—given that we are going to be dealing with some very diverse legal systems.

You know, we—a global presence for U.S. firms is critically important for the 21st century for job creation and for our economic growth. But as part of that, we have to make sure that, as we deal with state-owned enterprises and so forth, we need good, solid enforcement mechanisms and dispute settlement mechanisms.

And so if you could describe a little bit of that and the work that you are doing, I would be grateful.

Ambassador MARANTIS. Sure, Mr. Boustany. You are absolutely right. An agreement isn't worth very much if it isn't enforced. And what we are working to do in the TPP is to ensure that the provisions are all subject to very strong, robust, enforceable dispute settlement provisions. And that includes the whole spectrum of issues

in TPP, including tariff commitments, labor commitments, environmental commitments, IPR commitments, services commitments, so that we have, you know, an agreement that looks great on paper, and it also is great in reality.

Mr. BOUSTANY. When you mention the, you know, criminal penalties for IP infractions and for piracy, counterfeiting, can you go into a little more detail about how you see this working when we get to the end game?

Ambassador MARANTIS. Sure. For instance, one of the innovations in our IP chapter will be to require that each country adopt criminal penalties to deter the theft of trade secrets. So what that will mean we would be looking to our TPP partners to make sure that they have measures on the books so that if there is an instance of trade secret theft we would have recourse or our industry would have recourse to criminal penalties.

Should they not place those measures on the books, we, as the United States, would have recourse to TPP dispute settlement to ensure that those measures actually get adopted.

Mr. BOUSTANY. Thank you. I yield back.

Chairman BRADY. Thank you, Doctor. Mr. Paulsen.

Mr. PAULSEN. Thank you, Mr. Chairman. And also, thank you for leading this hearing.

I want to compliment you, Ambassador, and the administration, for working with Congress to move these trade agenda items forward. I hope we are going to continue on that path with TPP, which I am very excited about, hearing the time line, which we want to hopefully try and stay connected to.

I was going to ask some questions on biologics, as well as some of the health medicine issues, but I will ask a different question, because U.S. market access on textiles and apparel is also a key issue in the TPP. And opening markets for this sector will support the millions of U.S. apparel and retail workers whose jobs do rely on trade. And I have a state who has many headquartered retail companies, as well as consumers across the country that will benefit from a new approach on textiles and apparel that, I think, recognizes the businesses realities in the supply chain from production on down.

And I recently led a bipartisan letter to Ambassador Kirk that shared the view that it is time to update U.S. policy on textiles and apparel, and that letter was signed by 30 Members of the House, 15 Republicans, 15 Democrats.

And can you talk a little bit about what USTR and the administration has done to evolve our position and promote policies that will facilitate trade and apparel so it is flexible, easy to enforce, as well as simple to use? And what is the administration's objective in the TPP apparel for—position for—in terms of apparel for TPP?

Ambassador MARANTIS. Sure. We have a very interesting opportunity in the TPP in the textile and apparel sector. You know, we were negotiating with Vietnam, which is our second-largest supplier right now. What we are trying to do in the TPP is to maximize opportunities for us while we address the very real sensitivities that we have in the textile sector.

And so, the way we are going about doing that is we have put forward a package that we hope will best encourage trade, invest-

ment, and production in the TPP region. And that package includes four elements. There is the market access element, where we will seek market access from our TPP countries, and where we will be able to source, you know, goods, textile and apparel products, from them.

We also have the yarn forward rule of origin that we have put forward, that, you know, there has been, I think, debate over. But we believe that the yarn forward rule of origin has a demonstrated record of success in attracting an investment and helping, again, ensure that we can encourage production and trade within the region.

The third element we have put forward is a safeguard to ensure that we have recourse to a safeguard, should there be—increased imports cause serious damage to our industry.

And the fourth element, which is very important—and this was something that we discussed in great detail in the Korea process—was to ensure that we have strong customs procedures to ensure that we combat transshipment, and that the benefits of whatever we are doing in the textile and apparel sector go to the TPP countries and not to third parties.

So, it is a package. And we think the package will best encourage production and trade in the region.

Mr. PAULSEN. Well, I just want to compliment you, because I think we need to absolutely focus on the trade and apparel side, as well as achieving that state-of-the-art agreement that really does have—become the gold standard, if you will, among—agreements among a lot of these countries.

And I yield back, Mr. Chairman.

Chairman BRADY. Thank you, Mr. Paulsen. Ambassador, thank you for your testimony today. I want to add my appreciation and congratulations on the passage of the three agreements—

Ambassador MARANTIS. Thank you.

Chairman BRADY [continuing]. Recent agreements, the hard work that you continue to put in on our trade agenda, along with Ambassador Kirk and the entire USTR trade team.

We really look forward to working with you on a bipartisan basis, both on TPP, which we see as a very strong agreement, but as well as a very strong proactive strategic trade agenda for the United States.

Again, thank you for being here today. As you know, Members have some time, may submit questions for the record. If they do, I hope you would respond promptly, as you always do. And again, thank you.

Ambassador MARANTIS. Thanks, Chairman Brady.

Chairman BRADY. I would like to welcome our second panel to step forward.

Today we are joined by three witnesses on our second panel. Our first witness will be Ms. Devry Boughner, director of international business relations, Cargill, Incorporated. She is also testifying on behalf of the U.S. Business Coalition for the Trans-Pacific Partnership.

After her we will hear from Ms. Angela Marshall Hofmann, Vice President, Global Integrated Sourcing and Trade for Wal-Mart Stores, Incorporated.

And our third witness will be Mr. Michael Wessel, President of the Wessel Group.

We welcome all of you. We look forward to your testimony. I would also like to ask our witnesses keep their testimony to five minutes. Ms. Boughner, your written statement, like those of all the witnesses, will be made part of the record. And you are recognized for five minutes.

STATEMENT OF DEVRY S. BOUGHNER, DIRECTOR, INTERNATIONAL BUSINESS RELATIONS, ON BEHALF OF CARGILL, INC., AND THE U.S. BUSINESS COALITION FOR TPP

Ms. BOUGHNER. Thank you very much, Chairman Brady and Ranking Member McDermott, and members of the Trade Subcommittee. Thank you for the opportunity to appear before you on the importance of the Trans-Pacific Partnership to the American economy. My name is Devry Boughner, and I am testifying today on behalf of Cargill, and on behalf of the U.S. Business Coalition for TPP, which is a multi-sector coalition of U.S. businesses supporting the negotiation of and ultimate passage of a comprehensive, high-quality, commercially-meaningful agreement with key economies of the Asia-Pacific region.

Cargill is in the international food business, and we are invested in 63 countries, and trade with well over 130. And Cargill is in full support of the TPP. TPP underpins Cargill's business purpose of nourishing people. And the agreement, if done right, will address regional food security concerns, and trade barriers will be eliminated so that food can move unencumbered from places of surplus to places of deficit. TPP will feed hungry people.

U.S. food and agricultural exports to the Asia-Pacific region totaled approximately 83 billion in 2010, and accounted for 72 percent—I will repeat that again, 72 percent—of total U.S. agricultural exports to the world; clearly a significant region. And every \$1 billion of agricultural exports supports 9,000 jobs, including transportation, workers, food processors, packers, longshoremen, and I would also like to say women, sales, and marketing representatives.

Cargill's U.S. businesses export a variety of agricultural and food products to the growing Asia-Pacific region. Last year, the total value of Cargill exports to Asia-Pacific exceeded \$11 billion. An example; Asia represents annual revenue of \$700 million to Cargill's U.S. meat businesses today, supporting nearly 32,000 jobs, unionized jobs, in communities in Texas, Illinois, Iowa, Kansas, Colorado, and Nebraska. And we have many other examples.

Given the race that is going on between countries to lock in trade agreements across Asia, it is critical that the United States conclude a commercially-meaningful agreement as soon as reasonably possible. And there are three key elements that we believe would make TPP a commercially-meaningful agreement.

First, make the TPP a comprehensive undertaking. That means that the agreement includes all products, all sectors, in all TPP economies. This means, for example, that Australia must agree to investor state dispute settlement. Malaysia must open its government procurement market. Singapore and Vietnam must open their financial markets. And the United States must not exclude any

agricultural products or seek to effectively exclude textile and apparel.

Second, TPP must address and provide new solutions to long-standing trade barriers. It must incorporate high standards for intellectual property and investment protection, transparency, competition policy, provisions to ensure that the Internet works without interference for companies to take full advantage of TPP, and science and risk-based sanitary and phytosanitary—known as SPS—standards.

Third, TPP must include the right subset of Asia-Pacific economies. The inclusion of Japan in TPP is critical in defining this agreement as “commercially significant”. On December 5, 2011 [sic], 63 U.S. food and agricultural organizations sent a letter to Secretary Vilsack and Ambassador Kirk, urging the Obama Administration “to work quickly and closely with Japan to smooth the way for Japan’s full participation in TPP.”

In summary, Cargill supports the administration’s efforts to move forward with TPP negotiations with a goal of completion no later than mid-2012. And we look forward to the long tradition of bipartisan support required to pass significant trade agreements of the past 50 years, including the most recent 3—and congratulations and thank you on those.

We are counting on TPP that ensures availability and reliable access to food in the region, and promotes U.S. competitiveness and new economic opportunities for our industry and for our country.

Thank you again for the opportunity to share Cargill’s views and the Coalition’s views with you today. And I am willing to answer any questions and respond to any inquiries that you may have.

[The prepared statement of Ms. Boughner follows:]



Written Testimony of Devry S. Boughner
Director, International Business Relations
Cargill, Incorporated

United States House of Representatives
Committee on Ways and Means
Trade Subcommittee

Trans-Pacific Partnership
December 14, 2011

Chairman Brady, Ranking Member McDermott, Members of the Trade Subcommittee, thank you for the opportunity to testify on the importance of the Trans-Pacific Partnership (TPP) to the American economy.

I am testifying today on behalf of Cargill, Incorporated, and as co-chair of the U.S. Business Coalition for TPP, which is a multi-sector coalition of U.S. businesses supporting the negotiation and ultimate passage of a comprehensive, high-quality, commercially-meaningful trade agreement with key economies of the Asia-Pacific region.

Cargill is an international provider of food, agricultural and risk management products and services. Cargill employs more than 55,000 employees in the United States, and 138,000 employees in total in 63 countries. We provide food, food products, ingredients and services to well over 130 countries. Among TPP countries, Cargill has existing investments in Australia, New Zealand, Peru, Singapore, Vietnam, Malaysia, and the United States. Cargill is also invested in Japan, Mexico and Canada.

Cargill has been a supporter of liberalized trade since our beginnings as a single grain elevator operator in Iowa in 1865. Trade liberalization — first across U.S. states and then in foreign markets — has allowed Cargill to grow and multiply the size of our employee base over the years. At Cargill we know that trade works. Approximately 40 to 50 percent of our global revenue is directly generated by international trade. Through trade agreements, Cargill can reduce costs incurred through the supply chain, thereby enabling the company to deploy capital saved toward investments in activities such as employee training and benefits, new businesses, marketing and research and development.



And we know that trade works for the United States. Take the North American Free Trade Agreement (NAFTA), for example. Since its enactment, bilateral trade has grown exponentially, reaching a record high of nearly \$400 billion in 2010. Mexico has become the United States' third-ranked commercial partner and the second most important market for U.S. exports. Overall, U.S. exports to Mexico have increased 220 percent.

Cargill is in full support of TPP negotiations. In these difficult economic times, we believe the United States needs to move on trade agreements more than ever. Every \$1 billion in agricultural exports supports 9,000 jobs, for transportation workers, food processors, packers, longshoremen, and sales and marketing representatives. A study commissioned by the U.S. Chamber of Commerce released on May 14, 2010 found that nearly 18 million U.S. jobs depend on trade with America's free trade agreement (FTA) partners — 5.4 million of which were created by the enactment of these agreements.

The TPP negotiations present an opportunity for greater economic growth in the U.S. through trade and investment liberalization with Asia Pacific countries. The negotiations create the opportunity to simplify trade in the region, to unravel the complexities of each country's standards and regulations, while setting in place a higher standard of trade and investment provisions and protocols. This will mean job growth and economic opportunity for U.S. workers and companies.

A comprehensive, high-standard and commercially strong TPP will provide an important platform for U.S. farmers, manufacturers, workers, and businesses to gain a stronger foothold vis-à-vis competitors in the Asia Pacific region. In the context of Cargill's purpose of nourishing people, we see a strong TPP agreement as important to the increase of global food security because it reduces barriers to moving food from places of surplus to places of deficit.

A comprehensive and strong TPP can ensure reliable access to food for consumers in the Asia Pacific region. At the same time, TPP is in the long-term interest of the U.S. food and agricultural sector. Ninety-five percent of the world's consumers live outside the borders of the United States, and 60 percent of those consumers reside in Asia. The U.S. food and agriculture sector, therefore, cannot afford to be left out of trade liberalization, especially at a time when our competitors are beginning to build relationships and market share in Asia through agreements such as the EU-Korea Free Trade Agreement, the ASEAN-Australia-New Zealand FTA, and the ASEAN-China FTA, to name a few of the nearly 200 FTAs in the region.



In addition, China is negotiating agreements with Australia, the Southern African Customs Union, and is considering agreements with India, Korea, and Japan, to highlight a few.

Given the race to lock in trade agreements across the globe, the United States must work to conclude a **commercially meaningful agreement** as soon as reasonably possible, and hopefully no later than mid-2012. There are three key elements that would make the TPP a “commercially meaningful” agreement:

- 1) **Make the TPP a comprehensive undertaking.** The agreement must be comprehensive, including all products and all sectors in all TPP economies. This means that, for example, Australia must agree to investor-state dispute settlement, Malaysia must open their government procurement market, Singapore and Vietnam must open its financial markets and the United States must not exclude any agricultural products or seek to effectively exclude textiles or apparel products. Of course, the agreement must provide adequate time for import-sensitive products and promote mechanisms for adjustment.

Even though TPP may need to provide flexibility on phase-outs where needed, TPP should result in commercially meaningful liberalization, which means that all tariffs should be phased to zero and quotas eliminated over the implementation period among all countries.

- 2) **TPP must address and provide new solutions to longstanding trade and investment barriers.** TPP must incorporate high standards for intellectual property and investment protection, transparency, competition policy, and science- and risk-based sanitary and phytosanitary (SPS) measures.

TPP provides an opportunity to address longstanding barriers concerning SPS issues. Cargill supports the inclusion of an innovative technologies working group (ITWP) in the TPP, which would establish a forum to address trade issues related to technology and agriculture as they arise and to develop work plans to resolve issues, such as low-level presence (LLP) of biotech products and labeling issues.

It is critical to promote the establishment of a science-based regulatory framework that would affirm the WTO SPS Agreement. Addressing agricultural biotechnology regulation should be a top priority,



particularly with respect to the challenges facing global agriculture and energy supplies in the 21st century and beyond.

TPP must require standards based on sound science and in line with international standards for food and agricultural products. When food producers are required to meet a different set of arbitrary standards for each country, trade in food can stop outright, or trade frictions can delay transportation, affect quality, or create unnecessary costs, all of which raise food prices and undermine food security. If global food supply chains are to operate efficiently, regulatory harmonization and increased efficiencies in trade facilitation are critical.

Where there are disagreements on standards and regulations, the TPP negotiators should include innovative and rapid, unbiased mechanisms for resolving disagreements so that trade disputes can be resolved almost immediately.

- 3) **TPP must include the right subset of Asia-Pacific economies.** The vision of a successful TPP agreement includes providing a pathway to include other Asia-Pacific economies. The interest shown by Japan, Mexico and Canada in joining the TPP demonstrates the momentum of this trade initiative. It is important that new entrants be welcomed that can commit to the comprehensive and high standards set by the current nine negotiating partners, subscribe to the measures already agreed to by them in the talks, and support the expeditious conclusion of the talks.

For U.S. agriculture, the inclusion of Japan in TPP is critical in defining this agreement as commercially-meaningful. On December 5, 2011, 63 U.S. food and agriculture organizations sent a letter of support to Secretary Vilsack and Ambassador Kirk urging the Obama Administration "...to work quickly and closely with Japan to smooth the way for Japan's full participation in TPP."

The Asia-Pacific region represents more than 40 percent of global trade. U.S. agricultural exports to the region totaled \$83 billion in 2010 and accounted for 72 percent of total U.S. agricultural exports to the world. Cargill's U.S. businesses export a variety of meat and grain products to the growing Asia Pacific export market. This trade reflects jobs and investment in communities across the United States. For instance:



- In Ottumwa, Iowa, Cargill Pork operates an industry-leading Special Export program that customizes the cut of up to 4,000 head per day specifically for Asian customer requests.
- In Bloomington, Illinois, Cargill processes raw soy protein materials for manufacture into value added soy food ingredients specific to Japanese customers.
- Cargill processes and exports soybeans grown across the Midwest through Louisiana ports, bound for Asian markets.
- Asia represents annual revenue of \$700 million to Cargill's U.S. meat businesses today, supporting nearly 30,000 employees in communities in Texas, Illinois, Kansas, Colorado, California, and Pennsylvania, to name a few.

Asia Pacific countries are major growing export markets for agricultural products. Harmonizing food safety standards and reducing duties through trade agreements will bolster U.S. exports, and create jobs in the food, feed and livestock industries.

In summary, Cargill is strongly supportive of the Administration's efforts to move forward on TPP negotiations. We subscribe to the timeframe which calls for an agreement by mid-2012. Meeting the President's goal of doubling exports by 2015 means locking in commercially meaningful trade agreements that allow U.S. producers and manufacturers to compete on a level playing field in the global marketplace. We look forward to a comprehensive undertaking that ensures reliable access to food in the region and promotes U.S. competitiveness and new economic opportunities for the United States.

Thank you again for the opportunity to share Cargill's views with you today. I am willing to answer questions and respond to specific inquiries going forward.

Chairman BRADY. Thank you, Ms. Boughner.
Ms. Marshall Hofmann is recognized.

STATEMENT OF ANGELA MARSHALL HOFMANN, VICE PRESIDENT, GLOBAL INTEGRATED SOURCING AND TRADE, WAL-MART STORES

Ms. HOFMANN. Good morning, Chairman Brady, Ranking Member McDermott, and Members of the Subcommittee. My name is Angela Marshall Hofmann, and I am vice-president of Global Integrated Sourcing and Trade at Wal-Mart. I am very honored to be here today to discuss Wal-Mart's views on the Trans-Pacific Partnership negotiations. As one of the chairs of the business coalition for TPP, Wal-Mart strongly supports these negotiations. And I am pleased to outline today our goals for the negotiations, as well as our views on new applicants to the trade pact.

By way of background, Wal-Mart serves customers and members more than 200 million times per week at over 9,800 retail units under 69 different banners in 28 countries in the Americas, Asia, Europe, and Africa. With fiscal year sales of 419 billion, Wal-Mart currently employs over 2.1 million associates worldwide.

Although Wal-Mart only has a retail presence in two of the TPP countries—the United States and Chile—we source a significant range of products from the majority of the TPP partners. Moreover, the region represents an important platform for retail growth in the future. Therefore, Wal-Mart supports a high-standard, 21st century TPP agreement that will foster new trade and investment, and create a potential platform for economic integration across the Asia-Pacific region.

Today I would like to share with you our overall goals for the TPP, which include a comprehensive agreement with no product or sector exclusions, a common set of rules of origin that allows for trade between and among all TPP partners, high-standard service and investment agreements that provide market access and protection for retail and distribution rights, and finally, expansion of the TPP to include new partners in the region. Specifically, we are enthusiastic about TPP as a vehicle to address emerging trade challenges through new disciplines on issues such as global supply chains and regulatory convergence.

One of the areas where we see great promise is the new horizontal focus on supply chains. Until recently, trade agreements have not looked at supply chains in a holistic manner. Rather, commitments have been made, sector by sector, without full consideration how each sector—for example, express delivery, maritime or trucking services—can impact the operation of the entire supply chain, from the point of production to distribution. We are, therefore, supportive of the establishment of a commitment to review and address supply chain issues in the TPP.

We also encourage negotiators to seek ambitious commitments in this area that recognize the need for a comprehensive, interdisciplinary approach, and an action-oriented work program with clear benchmarks to track enhanced efficiency of TPP supply chains.

As I have stated, we are very encouraged that USTR has billed TPP as a 21st century agreement. For Wal-Mart, this means ensuring that there are no product or policy exclusions, and that the agreement truly fosters trade among all TPP partners through workable rules of origin for all products.

Specifically in the areas of textile and apparel, we urge TPP negotiators to consider rules of origin that reflect today's modern dynamic global value chains that support apparel production. As it sounds today, textile and apparel are treated differently than other products, and negotiators have insisted on restrictive rules of origin which require materials of garment to originate and assemble in-country in TPP in order to receive tariff-free treatment. Past FTAs with TPP countries have shown that such all-or-nothing approach does not truly spur new exports or new apparel trade. These rules are simply not workable, and do not take into consideration the modern realities of apparel production. We simply do not believe you can have a 21st century agreement with 18th century rules of origin.

Finally, we believe that the true potential of the TPP will only be realized if membership can be expanded beyond the current parties to create a comprehensive Trans-Pacific agreement. Wal-Mart supports the proposed inclusion of Japan, Mexico, and Canada, where we also have a strong retail presence and sell a number of U.S. exports.

We agree with the administration and Congress that all new members must adhere to a high-standards agreement and must not slow down the momentum of the negotiations. However, we believe that there should be a clear and efficient mechanism for new countries to accede to the TPP.

Finally, thank you for the opportunity to present our views before this committee. We strongly believe that TPP represents an important opportunity to create a new dynamic trade agreement in one of the most important regions in the world. Thank you, and I am happy to answer any questions you may have.

[The prepared statement of Ms. Marshall Hofmann follows:]



WRITTEN TESTIMONY

OF

**ANGELA MARSHALL HOFMANN, VICE PRESIDENT
GLOBAL INTEGRATED SOURCING AND TRADE
WAL-MART STORES, INC.**

BEFORE THE

COMMITTEE ON WAYS AND MEANS

SUBCOMMITTEE ON TRADE

DECEMBER 14, 2011

Good morning, Chairman Brady, Ranking Member McDermott and members of the Subcommittee. My name is Angela Marshall Hofmann and I am Vice President for Global Integrated Sourcing and Trade at Wal-Mart Stores, Inc. (Walmart). It is a pleasure to be here today to discuss Walmart's views on the Trans-Pacific Partnership (TPP) negotiations. Walmart strongly supports these negotiations, and I am pleased to outline below both our objectives for the negotiations as well as our views on the new applicants to the trade pact.

Company Overview

By way of background, Walmart serves customers and members more than 200 million times per week at over 9,800 retail units under 69 different banners in 28 countries. With fiscal year 2011 sales of \$419 billion, Walmart employs 2.1 million associates worldwide. Walmart continues to be a leader in sustainability, corporate philanthropy and employment opportunity around the globe.

In every country where Walmart operates, we have made a commitment to our customers to help them save money and live better. We understand the critical role that efficient global trade networks play in ensuring value for consumers. In addition, trade agreements offer exciting opportunities for our suppliers to reach new markets on our store shelves. Thanks to these agreements, cranberry growers in Massachusetts are selling juices at our stores in Mexico, Californian farmers are sending fruits and vegetables to Japan and China, and one of our suppliers is even manufacturing diapers in Texas for sale to our customers in Chile.

Walmart's Goals for the TPP

Walmart supports a high-standard, 21st Century TPP agreement that will foster new trade and investment and create a potential platform for economic integration across the Asia-Pacific region. We support a TPP agreement that includes robust and reciprocal market access for goods and services, strong protections for intellectual property rights and investment, solid disciplines on technical barriers to trade, and innovative provisions on supply chains and regulatory harmonization. Walmart a co-chair of the Business Coalition for TPP and has participated in the civil society dialogues during the Chicago and Lima negotiating rounds.

Our overall goals for the TPP include:

- A comprehensive agreement with no product or sector exclusions.
- A common set of rules of origin that allows for trade between and among all TPP partners.
- High-standards services and investment agreements that provides market access and protection for retail and distribution rights.
- Expansion of the TPP to include new partners in the region.

We are particularly enthusiastic about the TPP as a vehicle to address emerging trade challenges through new disciplines on issues such as global supply chains and regulatory convergence.

Retail/Distribution Opportunities

Robust commitments in retail and distribution services are an essential element for securing market access for retail investment overseas. For example, several TPP partners currently maintain barriers to retail trade such as economic needs tests that constrain investment and

performance requirements around the types of products a retailer can sell and the people it employs.

Removing barriers to trade for retail not only allows Walmart to compete effectively against our major global competitors, but it also helps our suppliers' secure new markets abroad. In addition, services exports support jobs here in the United States. Recently, the United States International Trade Commission reported that that services activities abroad support nearly 700,000 U.S. jobs.¹

Walmart encourages negotiators to secure liberal rules for retail and distribution rights with no limits on size, geographic location or merchandise assortment. Further, we encourage the United States to make progress in distribution to ensure that all forms of distribution are granted national and most favored nation treatment, that there are no performance requirements or requirements for foreign ownership.

Global Supply Chains

One of the areas where we see great promise in the TPP is the new, horizontal focus on supply chains. At Walmart, we have built our business by developing state of the art supply chains that maximize efficiency and lower costs for our customers. In the past, though, our logistics and supply chain efforts were primarily focused on domestic operations. Although we traded billions of dollars of goods annually, we largely regarded trade barriers as an unavoidable cost of doing business. Over the last several years, however, we have realized that gaps and complications in the supply chain unnecessarily hinder our ability to deliver the right product at the right price to our customers around the world.

For these reasons, Walmart is committed to enhancing the efficiency of global supply chains. Efficient supply chains drive down cost. The World Bank has estimated that reducing transit times for goods by just one day equates to a 0.5 percent tariff cut. But, until recently, trade agreements have not looked at supply chains in a holistic way. Rather, commitments have been made sector by sector, without full consideration for how each sector, (for example, express delivery, maritime or trucking services) can impact the operation the whole supply chain from the point of production to distribution. We think a new approach that focuses on addressing choke points throughout the supply chain is warranted.

We are therefore, pleased that negotiators have proposed to establish a committee to review and address supply chain issues within the TPP. As we wrote in a multi-industry letter to USTR earlier this year, we believe that negotiators should work to secure ambitious commitments in this area including:

A comprehensive, inter-disciplinary approach. There should be a clear recognition of the responsibility of multiple authorities including transport, border administration, and "behind-the-border" regulatory agencies in supporting supply chains. To give legal effect to this approach, the TPP could require signatories to identify a single entity responsible for coordinating all national agencies and regulators that impact the supply chain.

¹

http://www.usitc.gov/publications/332/working_papers/ServicesEmploymentWorkingPaperNEWFINAL8.23.11.pdf

A mechanism for trouble-shooting and addressing problems. Obstacles can appear unexpectedly across global supply chains resulting from transport gateway restrictions, hold-ups at the border, or regulatory approvals. Such chokepoints result in additional costs for traders and goods by prolonging time-to-market. We believe a trouble-shooting mechanism in the TPP to secure quick and expedited corrective actions could be an innovative and impactful approach to resolving connectivity issues.

An action-oriented work program including clear targets. A continuing, targeted work program will demonstrate strong commitment to progress in all relevant areas. Some examples worth considering include time-to-release commitments, a harmonized list of common data elements, paperwork reduction goals, and benchmarks for expedited regulatory approvals.

Future oriented provisions. Twenty-first century supply chains are nimble, responsive to demand, involve collaborative decision making, and require maximum flexibility. To be responsive to the evolving global environment, we feel provisions on supply chains must leave room for incorporating new solutions

We hope that the agreement will build in formal consultations between key regulators in the TPP countries on a regular basis. Under this structure each TPP Member can exchange best practices and ensure that regulatory policies and procedures are enhancing, rather than constraining, supply chain efficiency throughout the region. These meetings should include a private sector component that allows key industries to share with regulators how new technologies and business models can strengthen supply chains, and identify what policy adjustments will enable such growth. These consultations will also help developing country TPP members adopt best practices and improve their policies to maximize the development benefits from the agreement.

We believe that focusing the negotiations on how global and regional supply chains actually operate is critical not just for retailers and logistics providers, but for manufacturers as well. Put simply, if you can't get your goods from point to point efficiently, you really can't take part in global trade. Efficient supply chains help smaller manufacturers to access global markets with less risk and cost.

The Importance of a High Standards Agreement

The promise of the TPP will only be realized if negotiators are steadfast in their commitment to a "21st Century" agreement. For Walmart, this means ensuring that there are no product or policy exclusions in the agreement, and that the agreement truly fosters trade among all TPP partners through workable rules of origin for all products. We note, for example, that sugar was excluded from the U.S.-Australia agreement, and as a result, the U.S. was not able to achieve all its goals in the area of investment (investor-state) or pharmaceuticals. We believe that the TPP represents a good opportunity to correct this deviation from the "no-exclusions" policy to which the United States had previously adhered.

In addition, to maximize benefits to consumers, companies, and workers, TPP negotiators should embrace a policy on textiles and apparel that facilitates today's global value chains and the millions of American jobs that depend on them.

As it stands today, textiles and apparel are treated differently than other products. U.S. negotiators have insisted on restrictive "yarn-forward" rules of origin, which require that all the

materials in a garment originate and are assembled in a TPP country in order to receive tariff-free treatment. Past FTAs with TPP countries have shown that such an "all or nothing" approach does not spur new U.S. exports or new apparel trade. These rules are truly unworkable as they do not take into consideration how garment production has shifted to adjust to global, post-Multi Fiber Arrangement production processes.

Today's fashion industry is fast-paced and dynamic, with consumers expecting a wide variety of apparel and trends. Flexibility in sourcing inputs is vital to meet design specifications and consumer demands. While scrutiny in very specific cases may be warranted, applying a blanket approach to all textiles and apparel goes beyond supporting the domestic industry and reduces export opportunities in the region, artificially increasing prices for consumers during a time of global economic distress.

Nearly 70 percent of all duties collected by the United States from TPP nations come from apparel imports. As such, more liberal rules will not only correspond to operational necessities, but will also ensure that our trade partners will offer new market access to U.S. exporters of industrial goods, services and agricultural products, and will be more amenable to accepting strong intellectual property rights and investor protections.

Walmart believes it is time to update our approach to rules of origin for textiles and apparel in order to bring apparel into conformity with every other industrial product. USTR should consider alternative approaches to "yarn-forward" such as a change in tariff heading (CTH) or regional value content (RVC) requirement. Additionally, we believe that negotiators should guarantee the ability to cumulate among all TPP countries and FTA partners to facilitate trade among all apparel producing trade partners.

American retailers employ millions of workers throughout the supply chain whose jobs depend on our ability to source product and be globally competitive. Trade restraints such as restrictive rules of origin and long duty-phase outs undermine our ability to compete, grow, and provide value to our customers.

New Members

We strongly believe that there should be an efficient and transparent mechanism for new countries to accede to the TPP. The true potential of the TPP will only be realized if membership can be expanded beyond the current parties to create a comprehensive trans-Pacific agreement.

Walmart supports the proposed inclusion of Japan, Mexico and Canada into the TPP. Refreshed agreements with Mexico and Canada represents a tremendous opportunity to break down persistent barriers to trade (such as supply managed commodities) that have not to date been addressed under the NAFTA agreement. And, a new agreement with Japan, our fourth largest trading partner, is an opportunity not to be missed.

Walmart operates stores in each of the potential new TPP partners. In Japan, for example, we operate 415 stores under the Seiyu brand and have more than 35,892 associates. We believe that including Japan in the TPP is an excellent opportunity to address the trade and competition barriers that hinder our business operations in the country. For example, exorbitant tariffs on staple goods such as rice, dairy and other food products severely limits choice and increases the cost of many grocery items in our stores. In addition, inefficient and collusive distribution

networks create price disparities among retailers that also hinder our ability to serve our customers.

We agree with many in the business community and the administration that all new partners must agree to a comprehensive, high standard TPP with across the board liberalization in all product sectors. In addition, new members must accede in a way that contributes to, and does not diminish the momentum towards a timely conclusion of the negotiation. We believe, however, that the Administration should not be so cautious and deliberative about new members as to undermine the desire and will of acceding countries to join the TPP. A TPP that is too difficult to join (either by demanding pre-negotiation of issue or limited participation in the negotiations process) will not deliver on the full promise of the pact.

Conclusion

Thank you for the opportunity to testify today. Walmart strongly supports the TPP negotiations and is looking forward to a timely conclusion of a high-standards innovative agreement. We look forward to working with the Congress and the Administration during the course of the negotiations.

Embargoed until December 14th at 11:00 AM

Chairman BRADY. Thank you, Ms. Marshall Hofmann.
Mr. Wessel, is recognized.

**STATEMENT OF MICHAEL WESSEL, PRESIDENT,
THE WESSEL GROUP**

Mr. WESSEL. Thank you, Mr. Chairman, Ranking Member McDermott, and other Members of the Committee. It is a pleasure to be here before you this morning. My name is Michael Wessel, and I am president of the Wessel Group, a public affairs consulting firm. I want to highlight the disclaimer that I am speaking today in my own capacity, and not on others' behalf.

The TPP represents the first trade agreement initiated by the Obama Administration. While much of the trade among the current TPP participants is already covered by free trade agreements, that does not minimize the scrutiny and attention that these negotiations deserve. This is highlighted by the recent announcements that Japan, Canada, and Mexico are interested in joining the agreement.

The template that is being developed will affect not only our trade and investment policies with the TPP countries, but in many other policy areas, as well. Our goal must be to maximize employment and opportunity, first for U.S. workers and secondarily for workers in the TPP countries. If it results in simply maximizing profits for companies, many of which are increasingly globalizing their supply chains, it will sadly be another trade agreement that fuels our trade deficit, promotes overseas investment, contributes to joblessness, and widens the income gap that exists in this country and in others.

An agreement, properly constructed, can be a force for progress. But that requires updating and reforming the existing approach, and much work remains to be done to achieve that goal.

With the short amount of time I have today, let me focus on a couple of key areas. The potential disciplines that will cover state-owned enterprises, SOEs, represent perhaps the most important area for new disciplines in the TPP. Vietnam's economy is dominated by SOEs. But it is not only the disciplines that will cover these markets that are important. It is also the effect the disciplines will have on non-TPP countries—most importantly, China.

SOEs, broadly defined, are of concern in three separate areas: their activities in their home market, their activities in third-country markets, and their activities in our market. Let me focus on their potential activities here, in the U.S.

What are the goals of SOEs when they come to our market? Is it to engage in activities that conform to our laws, goals, and principles? Are they seeking to benefit from the skills, quality, productivity, and creativity of our workforce and operate as good corporate citizens? SOEs, by definition, are interested in promoting the interests of their home country, and are all too often guided by state interests, rather than commercial interests.

Why does this matter? Let's consider a Chinese SOE. Chinese SOEs benefit enormously from below-market-rate financing by state-owned banks at rates well below what American companies pay. Many of these loans may not have to be repaid at all. How does a commercial entity here in the U.S. compete with the U.S.-based operations of an SOE that sets up shop here?

If a Chinese SOE exports a product here that injures a company and its workers, we have existing trade remedies to address the

impact. But if they invest in a greenfield operation here, and as a result of having little or no cost of capital can undermine the competitiveness of an existing U.S. manufacturer, there is no existing remedy in U.S. law to address that harmful activity.

On top of that, in certain circumstances, they might have standing under our trade laws to challenge an action by a domestic producer here against unfairly-traded products from overseas. This is a real problem, and one that will grow over time.

Yes, we want the jobs. But will those investments cost us more jobs at existing facilities? Will they source the inputs that they utilize from existing U.S. suppliers or from their home market? Will SOEs establish token presences in the U.S. market to benefit from the legal standing we give to domestic manufacturers, while keeping almost all employment in their protected home market?

There are many ways that disciplines on SOEs can be developed as part of the TPP talks. The best approach would be to ensure that all transactions are based on commercial considerations. Where that is not the case, an effective remedy should be made available to the private sector to fight for its interest when an SOE is operating here in our market, not one that depends on dispute resolution within the context of an agreement and on the U.S. Government's willingness to act. Our trade laws need to provide that SOE's right to block action by injured parties here in the U.S. can be severely restricted.

Rules of origins, is another critical area of the negotiations. The goal of any agreement must be to maximize production and sourcing within the signatory countries, and to limit the benefits of the agreement to third parties—what I call leakage. We should not be entering into trade agreements where substantial amounts of the benefits are available for inputs or products sourced from non-signatory countries.

Mr. Chairman, there are many other issues, as you and the other Members well know, that are important to the TPP negotiations and which have been raised here this morning: workers rights; the potential treatment of new entrants, such as Japan, Mexico, and Canada; currency. The list goes on. Over the coming months, I hope and expect that there will be a full discussion of all these issues, as Congress works with the administration on these negotiations. Thank you.

[The prepared statement of Mr. Wessel follows:]

Prepared Testimony of
Michael R. Wessel
before the
House Ways and Means Trade Subcommittee
December 14, 2011

Mr. Chairman. Members of the Committee. I want to thank you for the invitation to appear before you today regarding the ongoing negotiations on the Trans-Pacific Partnership. It's a pleasure to be here as I worked as a staffer for a Member of the Committee for twelve years and know the history of the Committee and the importance of the work you do.

My name is Michael Wessel and I am President of the Wessel Group, a public affairs consulting firm. In addition, I serve as a Congressionally-appointed Commissioner on the U.S.-China Economic and Security Review Commission. However, I want to highlight the disclaimer that I am speaking in my individual capacity today. My comments are informed by the work that I have done representing the United Steelworkers Union, the Communications Workers and coordination with others in organized labor as well as my work on the China Commission. But, I am not appearing here today on my client's behalf or for the Commission. That being said, I am proud of the work that I do with organized labor and completely share their goals of updating and reforming our nation's trade policies so that they work for working people.

The Trans-Pacific Partnership Free Trade Agreement (TPP) represents the first trade agreement initiated by the Obama Administration. It is designed to be a far-reaching agreement with countries strategically located in the Pacific Rim with the opportunity to expand beyond the current nine participants to other countries.

Much of the trade among the current TPP participants is already covered by free trade agreements. That, however, should not minimize the scrutiny and attention that these negotiations deserve. Expansion of the TPP to the four countries not presently FTA partners with the U.S. — Brunei, New Zealand, Vietnam and Malaysia — may not account for an enormous amount of trade, but it is vital that the terms and conditions of TPP be carefully crafted as the TPP is designed to be a template for our trade negotiations going forward and on the existing FTAs we have with TPP partners. Clearly, the need for strict scrutiny was highlighted by the recent announcements that Japan, Canada and Mexico are interested in participating in the negotiations.

In short, the template that is being developed will affect not only our trade and investment policies with the TPP countries, but with other more economically significant countries as well. For example, how the upcoming agreement treats State-Owned Enterprises will serve as the

basis not only for TPP countries, but for our actions and interactions with China on a variety of issues. Action on SOEs will provide important guidance to a revised model Bilateral Investment Treaty, if it proceeds. It will impact upon domestic competitive issues here in the U.S. It will inform efforts to provide effective regulations of financial markets. In this light, the TPP is a key policy initiative and not simply a “normal” trade agreement.

My perspective on this agreement is that the goal must be to maximize employment and opportunity first for U.S. workers, and secondarily for workers in the TPP countries. If it results in simply maximizing profits for companies, many of which are increasingly globalizing their supply chains, it will sadly be another trade agreement that fuels our trade deficit, promotes overseas investment, contributes to joblessness and widens the income gap that exists in this country – and in others. It is vital, as part of the evaluation of any agreement, to assess the specific impact, sector by sector, on our country and for our workers and whether an agreement will fuel further offshoring and outsourcing, or result in maintaining and recapturing employment opportunities.

An agreement, properly constructed, can be a force for progress. But, that requires updating and reforming the existing approach and much work remains to be done to achieve that goal. I’m hopeful that we can be successful and believe that our current trade situation is unacceptable and that new trade agreements that focus on domestic production and employment can put us on a better track. But, as President Obama said during the campaign, success should not be measured by the number of agreements that we sign, but the results that they produce. For the vast majority of working Americans, the results of past trade agreements have been unacceptable.

The Obama Administration deserves to be commended for the outreach they have engaged in. As a cleared staff liaison for both the USTR and Department of Labor’s Labor Advisory Committee and for the Advisory Committee on Trade Policy and Negotiations, I have spent dozens of hours discussing with Administration negotiators the specific issues that are involved in the TPP talks and, I believe, offering concrete recommendations and criticisms of the approaches that are being considered. While the President and the TPP participants highlighted in Honolulu several weeks ago the progress that they had achieved, much work remains to be done and everything remains on the table.

But, action is accelerating and, as the Members of this Committee know, once texts are tabled, it is highly unusual for the tabling country to alter its approach. Thus, the coming weeks demand that significant energy and attention be put into ensuring that the approach our negotiators take in tabled text represent, if fully achieved, an agreement that merits the support of the American people and their elected representatives.

It's important, however, that process not determine the substance of this agreement. Arbitrary deadlines could very well undermine our nation's interests. We should let the specifics of any deal drive the process and not allow other considerations – primarily foreign policy – to dictate the result. Some view the TPP as important to other regional considerations and that may or may not be the case. Auctioning off our jobs and our economic success is simply unacceptable. It was troubling, therefore, to hear press reports recently of discussions about the potential for the Administration to seek enhanced trade negotiating authority in advance of determining how this potential agreement would be different from past agreements and how it would promote domestic economic activity and employment. If one looks back at the history of trade negotiating authority and tries to line up Congressionally-approved objectives with final results, one will find significant gaps. Congress should not cede authority in this area without substantially more work being done and confidence in the result.

Key to the process of developing confidence is understanding what opportunities and challenges are posed by a new template with these countries. When Mexico looked at entering into the North American Free Trade Agreement negotiations, there were sector surveys commissioned across the board – agriculture, autos, alcoholic beverages, telecommunications to name a few – to guide the negotiators. To date, I am unaware of any similar effort being conducted here in the U.S. Generally, as this Committee knows, a macroeconomic study is completed at the end of the process to evaluate what the agreements' impact might be on our economy. Not only is that insufficient but the model has, all too often, dramatically underestimated the negative repercussions of our trade policies.

Organized labor has requested supporting economic data on several occasions. Indeed, to help evaluate the challenges posed in individual sectors, requests have been made to look not just at existing bilateral trade flows between the U.S. and each TPP partner but the regional and worldwide trade data, sector-by-sector, for those countries. So far, that data has not been provided and, indeed, there is concern that the data is unavailable because of inconsistencies in the data sets. Flying without a map should not be an option.

Mr. Chairman, the TPP, as I noted, is an exceedingly complex undertaking that seeks to address new issues and disciplines absent from earlier trade agreements. With the short amount of time I have today, let me focus on a couple of key areas.

State-Owned Enterprises

The potential disciplines that will cover State-Owned Enterprises (SOEs) represent, perhaps, the most important area for new disciplines in the TPP. Vietnam's economy is dominated by numerous SOEs. Similarly, Malaysia and Singapore have SOEs in many sectors. As noted earlier, however, it is not only the disciplines that will cover these markets that are important,

but what effect the disciplines will have on non-TPP countries – most importantly China. And, as a recent study prepared for the US-China Economic and Security Review Commission indicated, SOEs and other so-called state actors, control roughly one-half of China's non-agricultural GDP. We can't afford to get disciplines in this area wrong.

SOEs, which should include State-Invested Enterprises, and other entities acting under the authority of the state, are of concern in three separate areas – their activities in their home market, their activities in third country markets and their activities in our market. All three are of concern, but let me concentrate my remarks on their activities here in the U.S., as there appears to be much more agreement between organized labor and the business community regarding the challenges posed by SOEs in their home and third country markets.

Let me start by saying that, from the workers' perspective the location of the corporate headquarters is increasingly unimportant. There are good and bad employers no matter where they are headquartered and, indeed, many foreign-based companies are major employers of U.S. workers. The real question is what guides their activities, in all respects. I welcome foreign investment and, indeed, the size of our long-term trade deficit demands that some of our competitors' dollars be reinvested in our market.

But, what are the goals of investors when they come to our market? Is it to engage in activities that conform to our laws, goals and principles? Are they seeking to benefit from the skills, quality, productivity and creativity of our workforce and operate as good corporate citizens, or are they approaching our market with a "cash and carry" approach designed to maximize their returns and profit at our expense?

Nowhere is this more of a challenge – and a threat – than with SOEs. By definition, they are interested in promoting the interests of their home country and are, all-too-often, guided by state interests rather than commercial interests.

Why does this matter? Let's consider a Chinese SOE. Chinese SOEs benefit enormously from below-market rate financing by state-owned banks that are well below what American companies pay. Many of these loans may not have to be repaid at all. How does a commercial entity here in the U.S. compete with the U.S.-based operations of a SOE that sets up shop here? If a Chinese SOE sends a product here that injures a company and its workers, we have existing trade remedies to address the impact. But, if they invest in a green field operation here and, as a result of having little or no cost of capital can undermine the competitiveness of an existing U.S. manufacturer, there is no existing remedy in U.S. law to address that harmful activity. On top of that, in certain circumstances, they might have standing under our trade laws to challenge an action by a domestic producer here against unfairly traded products from overseas.

This is a real problem, and one that will grow over time. Already several Chinese entities have either entered into, or announced transactions that could pose problems. Tianjin Pipe, a SOE is investing \$1 billion in a Texas facility. What is their cost of capital? Can existing pipe producers compete successfully against them? Anshan Steel is reportedly in negotiations to set up operations here in the U.S. Yes, we want the jobs, but will those investments cost us more jobs at existing facilities? And, where will they source the inputs that they utilize – from existing U.S. suppliers or from their home market, as a way of advancing employment in China at the cost of employment here? Will SOEs establish token presences in the U.S. market to benefit from the legal standing we give to domestic manufacturers, while keeping almost all employment in their protected home market?

There are many ways that disciplines on SOEs can be developed as part of the TPP talks. The best approach would be to ensure that all transactions are based on commercial considerations. Where that is not the case, domestic laws should be updated to ensure that an effective remedy is readily available to the private sector to fight for its interests when a SOE is operating here in our market – not one that depends on dispute resolution within the context of an agreement and that depends on the U.S. government's willingness to act. Additionally, our trade laws need to provide that SOEs' rights to block action by injured parties here in the U.S. be severely restricted and that there be a rebuttable presumption that they are acting on their home country's behalf, not the interests of our workers.

Additional transparency regarding the actions and activities of SOEs operating in our market should also be developed. Some existing legal authority already exists, such as where the entity is listed on a U.S. exchange and under Section 482 of the Internal Revenue Code. These provisions should be used fully to improve the current information gap and enhance enforcement. Other existing authorities, and potentially new ones, such as a screening mechanism, deserve to be discussed. Canada and Australia, for example, have pre-screening mechanisms that have, I am told, worked effectively without putting a chill on foreign investment.

Rules of Origin

Rules of origin are another critical area of the negotiations. The goal of any agreement must be to maximize production and sourcing within the signatory countries and limit the benefits of the agreement to third parties – what I call “leakage.” We should not be entering into trade agreements where substantial amounts of the benefits are available for inputs or products sourced from non-signatory countries.

These rules should not result in further globalization of supply chains. Our goal should be to retain and increase jobs here at home. Recognizing that this is a trade agreement where

others expect to benefit, if anything, we should be seeking to reclaim and alter supply chains, with attendant economic benefits, among the signatories. I want those jobs here – that’s my goal. I recognize that other signatories want to benefit as well. Working together, our goal should be to minimize leakage and, over time, recapture production.

In doing so, we have to be realistic. The existing U.S. tariff on autos, for example, is 2.5%. Increasing the cost for a producer over that amount, in terms of demanding changes in the supply chain, will not result in immediate job gains. But, we should examine ways to incent producers to alter their activities so that we increase employment. A staged increase in the percentage of originating product covered by the rules is one approach worth considering that recognizes the investment patterns and time horizon of producers. Other ideas should be examined as well.

Most important, just because we’ve done it a certain way in the past doesn’t mean that it’s the right thing to do. Rules of origin need to be carefully crafted. Offshoring and outsourcing are critical concerns and trade agreements should improve our workers’ economic future, rather than undermine it.

Workers’ Rights

Workers’ rights should not be a partisan or an ideological issue. The fair and proper functioning of free markets must include free labor markets as well, where workers can exercise rights – including the right to organize and bargain collectively -- enabling them to maximize their share of the pie, and join the middle class. Rising standards-of-living, fueled by enhanced labor rights, will help build stable and growing economies and increase economic opportunity for our companies as well. It’s a synergistic “win-win” opportunity for all. That’s clear from today’s economic challenges faced by the U.S. and countries around the globe where demand is lacking, because incomes are stagnant or falling and unemployment is unacceptably high.

The labor standards in the so-called May 10 framework need to be strengthened to address continuing problems and must be easily accessible to ensure that an enforcement climate exists that maximizes private sector voluntary compliance. The labor rights commitments must be clearly delineated to avoid ambiguity in interpretation or the inadequate compliance efforts that can arise from vague standards. In addition, adequate resources and infrastructure need to be associated with any agreement, especially with regard to countries like Vietnam, to facilitate effective implementation of the agreement’s provisions.

Additional TPP Participants

Three new countries – Japan, Canada and Mexico – have indicated an interest in joining the TPP. TPP, as originally envisioned, was to include a “docking” clause that would allow for new entrants to join the agreement. How this clause is drafted, and the process for accepting new entrants, is of vital importance to the U.S.

Japan presents a unique challenge. Japan has one of the more closed markets in the world with a combination of Keiretsu business relationships and protectionist policies that limit market opportunities for others. While much of the focus, in terms of trade policy, has been on China in recent years, Japan continues many of its policies that disadvantage its trading partners.

Japan is a confident and competent competitor with world class producers. In autos, technology, and other sectors, it has proven its ability to succeed in world markets. Our bilateral trade deficit in autos and auto parts is testimony to its success and, also, the closed nature of its markets.

Any potential “docking” of new entrants should require upfront and staged commitments that ensure that the benefits of their eventual inclusion will actually inure to the benefit of our people. Since the early 1980s, America has faced challenges vis-à-vis trade with Japan that has had to be managed with tools ranging from the Market Oriented Sector Specific (MOSS) talks to voluntary restraint agreements. Further opening our market, without preliminary market-opening efforts by the Japanese will undermine our economic interests. We need actual proof that access to the Japanese market will yield identifiable and substantial benefits, not open-ended promises.

Challenges will also come if Canada and Mexico are included in any agreement. We have already seen the dispersion of supply chains in many sectors to these countries that were accelerated and deepened by NAFTA. We need a comprehensive review of the issues that will arise from the potential inclusion of these two countries. While the Obama Administration has issued Federal Register notices requesting comments on the inclusion of these three countries in the TPP, the submission date of January 13 does not leave much time for analysis. This Committee and Congress should carefully examine these issues.

Sequencing of Commitments and Enforcement

There are rumors of the TPP providing for “staged commitments” whereby certain countries would have time to transition to full adoption and recognition of the disciplines and provisions of any agreement. My concern is not with regard to normal staging requirements, for example, the treatment of sensitive products, but with broader issues. That is a highly risky

recipe that, as evidenced by China's failed track record of compliance with its WTO accession commitments, could seriously jeopardize jobs and production in this country. While the Administration has ramped up its enforcement activities, by the time action occurs, substantial injury may have already occurred. And, we do not know what the enforcement approach will be of future administrations.

The staging of commitments needs to be eliminated or severely limited. And, if staging is allowed, there needs to be an enforcement regime that provides for automatic responses for failure to fully and faithfully implement the commitments. These approaches need to be included in the core text of any agreement with an expedited and mandatory monitoring and enforcement system. We shouldn't have to wait, for example, the ten years it has taken our government to simply counternotify on China's subsidies – leaving the underlying subsidies in place and still costing us jobs and production.

This is not a novel concept. Prior agreements have included "snap-back" provisions. And, the concept of reciprocal market access needs to be fully imbedded in the enforcement regime. Our producers should not have to accept enhanced access here at home for their competitors while being deprived of similar access to their markets. That requires not only attention to tariff barriers, but the vast labyrinth of non-tariff barriers maintained or erected by other countries.

Transparency and Enforcement

Transparency is an issue in two respects: First, as it relates to the actual negotiations themselves. Second, as it relates to the activities and actions of our trading partners.

As I noted earlier, the level of engagement by the Administration with cleared advisors and stakeholders deserves recognition. The question, however, is what results from the engagement in terms of measurable progress on the texts that have been, and are to be tabled. In addition, the complexity of the agreement and the level of public interest in our nation's trade policies demands that there be greater transparency overall. The Administration should expand its engagement to other parties and share proposals and approaches so as to maximize input. Public scrutiny and participation can only strengthen the outcome.

In terms of transparency regarding the operation of any agreement, it is one thing to negotiate new disciplines and standards, but it is quite another to ensure that such disciplines, in practice, can be enforced. Our experience in attempting to enforce commitments China made in its accession to the WTO is that, in opaque societies, it is very difficult to prove that a government favors its SOEs. The parties involved have every incentive to keep such favoritism secret.

If we can't see into the true relationship between SOEs and government ministries how will we know when governments have their hand on the scale and fail to provide fair opportunities for

US firms? How will we know when an SOE investment abroad is supported at non-commercial terms or motivated by other than commercial objectives?

In a sense, we need to work backward from the enforcement perspective and ask, is there sufficient transparency afforded by our trade agreement to ensure that our legal teams can develop the proof needed to prevail in a dispute settlement proceeding when necessary?

Conclusion

Mr. Chairman. Despite the length of my testimony, it only begins to scratch the surface of the issues and concerns that must be addressed as part of any TPP negotiations. Issues like access to intellectual property rights and access to medicines, regulations on a wide range of important issues, the digital economy and many, many other issues are either on the table directly, or impacted by the potential agreement. And other issues, such as currency manipulation, should be included.

I welcome the opportunity to work with the Members of the Committee and your able staff as the consideration of the TPP continues.

Thank you.

Chairman BRADY. Thank you to each of the witnesses for your insight and your testimony. We will be conducting, with Mr. McDermott's permission, a second round of three-minute questions so that all the members of the panel have the opportunity to ask our witnesses questions.

I want to talk—ask Ms. Boughner or Ms. Marshall Hofmann. Two unique characteristics of this agreement. One, it is a plug-and-play agreement where other markets, other countries, after it is

concluded, can plug into the agreement, should they meet high standards and the ambition of the agreement. A second unique characteristic is it really focuses on a 21st century view of trade, where it is not simply enough to open the door, to create market access, relax import quotas. But too often we find beyond that door a series of hurdles, obstacles, and fences that slow down trade, deny access, drive up the costs. TPP focuses on streamlining that trade, facilitation of trade.

Could you both remark on the importance of that focus on facilitation, and how American companies might benefit from lowering those barriers beyond the door, and streamlining the process, going forward? Ms. Boughner. Ms. Marshall Hofmann.

Ms. BOUGHNER. Well, thank you, Chairman Brady. You are absolutely right about the plug-and-play component, and the importance of getting this agreement—as we are using the terminology—21st century, such that if additional economies in Asia choose to join, they are joining a club with a very high standard.

As it relates to trade facilitation, maybe I can give a couple examples from the food and agriculture sector, and then have Angela address it from their perspective.

In particular, what we are finding more and more is that the 21st century trade barriers go beyond just tariffs, as you are well aware. They go to the behind-the-border issues. And in our case, it would be situations where each country is applying their own food safety standards, or their own regulatory applications or approvals for ingredients, et cetera.

What we see as a great facilitator for trade, and for taking some of those pinch points out of the supply chain would be to get a common agreement on food safety standards, and sanitary and phytosanitary standards. As the ambassador mentioned earlier, looking at ways to enhance the risk assessment processes, increasing the transparency of the processes, all of these would facilitate trade of food and agriculture products in a way that it is not happening today.

And we would like to add a new one to the mix. In particular, it is when there is a disagreement on a standard being applied at the port or at the border—for example, a vessel being stopped for some reason—that there is some sort of oversight. And I don't like to use the word "dispute settlement mechanism," but there is some sort of TPP oversight that can quickly, rapidly come in and assess the—assess whether or not some of these standards are being based on sound science, and quickly address the issue to make sure trade is facilitated and gets on track within a matter of days, not a matter of months or, as we have seen, years.

Chairman BRADY. Thank you. And I am running out of time. Ms. Marshall Hofmann.

Ms. HOFMANN. I would similarly echo that what we are seeing in the 21st century now is a movement away from your traditional tariff barriers. We are seeing many more of the non-tariff barriers, regulatory requirements, testing, and other utilization that makes it very difficult for us to take, say, an individual U.S. exporter and be able to serve all of our retail markets.

So, we are keenly interested in simplifying several of the rules of origin that would allow us to further help build some of these export platforms into the retail markets.

Chairman BRADY. Thank you. And so, at the end of the day, not only are there more open markets, the goal is to move those goods and services without delay and at lower cost. Correct?

Ms. HOFMANN. That is correct.

Chairman BRADY. That is the goal. Thank you. Mr. McDermott.

Mr. MCDERMOTT. Thank you, Mr. Chairman. I thank the witnesses for coming.

Mr. Wessel, I know your history enough to know that you have been around a while. So you remember some of the things that have gone on in the past. And in your testimony you said almost nothing about Japan. Would you please talk about Japan for three minutes?

[Laughter.]

Mr. WESSEL. I would be happy to. And thank you for that question. Yes, I have been around maybe too long, and remember the history of the 1980s, was recalling to somebody the other day that at one point Japan blocked the export of U.S. skis to their market, because they said their snow was different. And so we have had a long 30-plus year history of intractable problems in Japan.

When one looks at our auto trade deficit, the vast bulk of it is with Japan. We welcome their cars here. And, in fact, the Members here know, when we had the cash for clunkers bill, the Japanese autos were allowed in. When Japan put their program in, they refused to allow foreign cars access to the benefits of their program.

Over many years, we have tried to address the Japan problem. And they are a great friend and ally, but they have a keiretsu system, they have a closed market that benefits their people. It is not tariffs that are the major problem, usually. It may be in rice and some other areas, but it is a system of interlocking, homogenous attitude towards imports that, in the past, had to be broken down with what was called the market-oriented, sector-specific talks, where there were actually targets.

We talked about earlier, you know, a plug and play approach. The chairman mentioned that. I am all for plug and play approach, if it works. But I don't know that a one-size-fits-all agreement works with Japan. I think we need to have them prove in advance that they are willing to accept the responsibilities of an agreement, with all that that means, meaning us and other TPP partners getting access before we give them enhanced access to our own market.

Mr. MCDERMOTT. I yield back the balance of my time.

Chairman BRADY. Thank you, Mr. McDermott. Mr. Davis.

Mr. DAVIS. Thank you, Mr. Chairman. I appreciate the witnesses coming, especially Cargill and Wal-Mart. I am much more familiar with Wal-Mart's internal operations, information technology and supply chain from my 20-plus years of business experience in supply chain integration. And certainly your company set a worldwide standard of innovation in this area.

But one thing that I would like to do, though, is go a little bit deeper. I have no doubt that your two businesses will do fine, whatever the final framework in this is, because of the innovation

and also scale. But when we come to small and medium-sized enterprises, I think of my friend, Dan Janka, who leads MAG Industrial Automation Systems in Hebron, Kentucky; Dave Barnes, who leads Tv One in Erlanger, Kentucky; and Steve Barnett, who leads Indy Honeycomb in Covington, Kentucky. All three of those businesses work extensively across the TPP region.

And what I would like you all to comment on is examples of how this will benefit the small and medium-sized enterprises that you work with in your supply chain, here in the United States.

Ms. BOUGHNER. Thank you very much for the question. And certainly appreciate the opportunity to dispel the myth that just because we are large, that we will be okay. What I always like to remind people of is that here in the United States Cargill is a collection of 675 local facilities, where our local production managers are duking it out every day to cover their profit, to make sure that their P&L, their profit and loss, turns out on the right side.

And one example that I can give to you that links our investments and our exports to SMEs would be in Ottumwa, Iowa, whereby we have a program, a special export program for pork, where it involves about 4,000 head per day that we are tailoring for the Asia-Pacific market. That plant, in particular, is linked to local suppliers that are supplying our facility with inputs, local distributors, and also our local employees.

And so, when we think of ourselves as maybe large organizations, we do need to break it down, because these have community impacts. So I could submit several examples, if you would like afterward, of our facilities throughout the United States that are impacting SMEs, if that would be something you would be interested in.

Mr. DAVIS. That would actually be very helpful.

Ms. BOUGHNER. Thank you very much.

Mr. DAVIS. Ms. Marshall Hofmann? We have about 30 seconds left here on the clock.

Ms. HOFMANN. I will speak quickly. Just to give you one example, actually, utilizing one of the TPP partners of Chile. We have been actually able to work with our private brand on diaper production to help them target a specific consumer segment in Chile, and we are now exporting that product from a Waco, Texas facility into Chile.

We have also worked with several other of the small businesses to help them meet a specific market niche, or help them better understand a specific consumer need in the market. So there is ample room to grow with these partners in each of the countries.

Mr. DAVIS. Great. Thank you very much. Yield back.

Chairman BRADY. Thank you, Mr. Davis. Mr. Reichert.

Mr. REICHERT. Thank you, Mr. Chairman. I want to focus a little bit on the jobs issue, too, and the small businesses.

There is an educational process that needs to take place, obviously, throughout this country as to the benefits of trade. What are your companies doing, individually, to help spread the word that trade is a good thing? For example, I meet with longshoremen quite frequently. They are against trade agreements, even though their paycheck is 100 percent related to trade, right? If they

weren't unloading ships and loading ships, they wouldn't have a job.

So, how do we get past that, and what are you doing to support the idea that trade is a good thing for America and—to Mr. Wessel's point, and I think that both of you made—creating jobs here in America? That is what we want to do. What are you each doing?

Ms. BOUGHNER. I will give you a couple examples. It starts with our employees, first. We have an internal trade education program called "Trade Works"—we actually have the trademark on it—whereby we are educating our 55,000 U.S. employees on the benefits of trade. Just as you cited the longshoremen, often some of our employees are confused about the facts. And so it starts at home.

In addition, we are bringing the facts forward, Congressman. Sixty percent of our plant and maintenance workers are union in our animal protein facilities. We were not letting the myths stand in front of the facts. And so we are comparing this to a national average of 7 percent among companies. So we are unionized, and we support free trade. We don't believe trade is about—is an "or," trade or jobs. We believe it is trade and jobs.

Mr. REICHERT. Yes.

Ms. HOFMANN. And yes. At our company, we—of our 2.1 million associates, the vast majority of those associates are affiliated with the supply chain. So whether it is our logistics division, our global distribution centers, or certainly those in our operational units around the world, we have a keen sense of how trade can benefit our organization.

I would also say we have been actively participating in a number of the business coalitions here in Washington, and we are starting to do that as well into the states where our key suppliers are also benefitting from exports and the key product categories that have seen growth in their jobs and opportunities.

Mr. WESSEL. Congressman, much of my testimony was talking about some of the risks. There are certainly great benefits from trade. There are also a lot of risks that often go understated.

One of the problems that we have had going into these negotiations is the—working with many stakeholders, is actually the lack of data and the lack of analysis. When Mexico began or looked at joining the NAFTA agreement, they commissioned 99 sector surveys to look at what the challenges and opportunities were for their producers and their workers. Alcoholic beverages, farm products, you know, telecom, autos, up and down the spectrum we haven't done any of that.

As you know, at the end of the process we get an ITC study that looks at the macro benefits, but doesn't really allow this committee and others to do a deep dive to understand the challenges, the market opportunities, and how we best respond to that. I think we need to have a better data dive, if you will, at the front end.

Mr. REICHERT. Thank you.

Chairman BRADY. Thank you, sir. Mr. Herger.

Mr. HERGER. Thank you, Mr. Chairman. Ms. Boughner, could you—why is it important for TPP rules on sanitary and phytosanitary measures to go beyond WTO rules?

Ms. BOUGHNER. Well, first and foremost, the WTO rules do set a very high standard and expectation that countries comply with the agreement on sanitary and phytosanitary measures. And that means that countries commit to what we call the three sisters: international standards in the IPPC; the OIE, which is the Organization of International Epizootics; and Codex.

So, we are still continuing to use international forums. It would complement it. But where this agreement goes beyond it is to actually get countries to commit to processes of—and agree on those processes—around areas like regulatory coherence, application of standards by industry.

And an example that I can give you is we are all well aware of what has happened with the animal protein trade over the years. Each country—I have been to our plant in Dodge City, Kansas, where I see my facility managers have to stop the line each time this one goes to Japan, this one goes to Korea, this one goes to China. And what this agreement will do is it will create an opportunity for—and every time we stop that plant, it is \$1,600 a minute. So what this agreement will do is it will take out some of those inefficiencies, and countries will agree on a set of standards.

And then, as Ambassador Marantis mentioned, they are going to actually hold their—these countries' feet to the fire that these risk assessments, these practical risk assessments, are based on sound science. So I think, with this collective group of countries, they are going to commit to not only upholding the WTO, but going beyond with some of these practical measures.

Mr. HERGER. I want to thank you very much. And I have to emphasize what Mr. Congressman Reichert commented. I think we have so much work to do with the businesses we work with, that they—work as many of you are doing—that their employees are aware of the jobs that are being created. Because we are really taking a beating, as we know, in the public media. The American public is not aware of how incredibly crucial trade is to us, and that we work on and pursue these trade agreements for the very reasons that you have just mentioned.

So thank you very much. And, Mr. Chairman, I yield back.

Chairman BRADY. Thank you, Mr. Herger. Mr. Buchanan.

Mr. BUCHANAN. Yes. Thank you, Mr. Chairman. I—you know, I was reading the other day, or someone mentioned to me yesterday that a lot of the growth is going to be in this part of the world in the next 5, 10, 20 years. So, as it relates to trade barriers, some of these countries are a little more open, some have much more aggressive trade barriers.

How do you see, by moving this agreement forward as it relates to these countries, the TPP countries, moving that forward and reducing some of these barriers through trade agreements will create jobs? Because, at the end of the day, this is about creating jobs in America. We want something that works for everybody that is not only free trade, but fair trade.

But removing some of these barriers is—how do you see that creating jobs?

Yes, you can start first. And take about 30 seconds. We—

Ms. BOUGHNER. Sorry, I tend to be long-winded.

Mr. BUCHANAN [continuing]. Don't have much time.

Ms. BOUGHNER. I love this topic. As I mentioned, Congressman, every \$1 billion of export is linked to about 9,000 jobs in the agriculture sector. So when you think about—and I mentioned Japan—when you think about Japan, and just the opportunity to tap into that market, and reduce some of these—what we see as 100 percent tariffs and regulatory barriers, et cetera, for every \$1 billion, that means 9,000 jobs. I can't think of a more compelling statistic for you.

Mr. BUCHANAN. That is a good point. Ms. Hofmann.

Ms. HOFMANN. And just quickly, we have seen this as we grow into the retail space into new markets, whether it has been in the CAFTA countries or several of our new trading partners. We also were able to provide a better growth platform for exports. So we are very optimistic about having a high-level standard that also ensures a level playing field across the countries in the Asia-Pacific—

Mr. BUCHANAN. Mr. Wessel, real quick.

Mr. WESSEL. I would say the flip side of the \$1 billion of exports creating 9,000 jobs is that every \$1 billion of a trade deficit displaces 9,000 jobs, as well. We can't just do this as a referee calling one side's score.

Expanding exports is key. The President has said that is part of his national export initiative. This committee works hard on it. We need to do better to make sure that we can balance the results, not only making sure that we have the liberal trade that we have always had here, but get much greater access with certain results in—among our trading partners.

Mr. BUCHANAN. Again, I want to thank the witnesses today. And I yield back, Mr. Chairman.

Chairman BRADY. Thank you. Mr. Smith.

Mr. SMITH. Thank you, Mr. Chairman. Very briefly, if the panel could comment in terms of the comparison of opportunity and potential in these small number of countries, certainly in comparison to some other trade agreements that have already passed, my concern is, you know, often times we hear about trade agreements, you know, you take current policy in many cases—you know, status quo, basically—which I find unacceptable, and not just because I represent a lot of beef producers in rural Nebraska, and how that product has been tossed about in Asia, but because in the bigger picture, I mean, I think it is important to note that for every country we have a trade agreement already established, we have a trade surplus. I learned that in the run-up during the debate to the last three trade agreements.

And so, I think it is very compelling. But if you could, speak to, you know, going beyond the status quo and how we can improve our trade policies through trade agreements, and also in terms of opportunity in comparison to other trade agreements.

Ms. BOUGHNER. I will just—I will give you one statistic on the comparison, and that is it is the access to the population. At the moment, the current TPP economies account for about 500 million people. So that is—that goes well beyond any agreement we have had. And then, if we start to add significant economies—Japan, Canada, and Mexico—that will get us to 779 million.

So, when we think about the fact that nearly 80 percent of the world's growth is outside of the United States, let's think about the fact that we could get to nearly 800 million consumers through this agreement, if it is done right.

Mr. SMITH. Very good. Mr. Wessel.

Mr. WESSEL. I think the agreement has the opportunity, as a template, to set what our trade policies are, going forward. Again, this is a—as they called it—a 21st century trade agreement, and hopefully will upgrade the disciplines in a number of areas, and make sure that there is an enforcement regime to back that up.

In the past, unfortunately, we have negotiated agreements that have not been well enforced. And, therefore, the benefits have not been fully achieved. It is a template, going forward. We need to get it right. Even though the number—the four countries that we do not have TPP agreements with represent a fairly small volume of trade in the scheme of things, it is a template. So, you know, it is important.

Mr. SMITH. Ms. Marshall Hofmann.

Ms. HOFMANN. And I would just quickly add I think the one unique opportunity here is that this would be an agreement without product or sector exclusions. In some of the agreements that we have seen recently, while very well-intended, we have not been able to leverage the benefit of the agreement for either the countries involved or the producers involved.

Mr. SMITH. Very good. Thank you. I yield back.

Chairman BRADY. Thank you, Mr. Smith. Ms. Jenkins.

Ms. JENKINS. Thank you, Mr. Chair, and thank you all for joining us today. And thanks for the shout-out to Dodge City, Kansas.

Ms. BOUGHNER. You are welcome.

Ms. JENKINS. I am from the great state of Kansas. Just a couple of quick questions for Ms. Boughner and Marshall Hofmann.

Could you just give us some examples of new and emerging trade challenges that you face, and how the TPP can address them?

Ms. BOUGHNER. Sure. One I will raise is on the technology front. And I do believe that you referenced that earlier. What the TPP will do and what we are supporting as part of the TPP is to create an innovative technologies working group that would establish a forum to address trade issues related to technology and food and agriculture.

These are new—the technology will continue to evolve. And so this agreement needs to continue to be able to be dynamic enough to address the advances and the innovations that the American industry is making. And so, technology would be one area.

As I mentioned earlier, dispute settlement mechanism for sanitary and phytosanitary measures, which would allow a rapid response to some of these non-science-based application of standards. And rules of origin, which Angela mentioned earlier, as well, going well beyond to make sure that those rules of origin are really about rules of origin, and not coded ways to protect particular interests in particular countries.

Ms. JENKINS. Okay, thank you. Ms. Marshall Hofmann.

Ms. HOFMANN. And I would just touch briefly on, in addition to the market access for goods, we also have the services side. So we are seeing some markets where you will have performance re-

quirements, you will have hiring and management requirements, or economic means tests that also could be addressed through the TPP.

Ms. JENKINS. Okay, thank you. I yield back.

Chairman BRADY. Thank you. Mr. Schock.

Mr. SCHOCK. Thank you, Mr. Chairman. Ms. Boughner, I appreciate your company's investment in my district. We have one of the largest pork-producing facilities in the world. I had the opportunity of recently visiting that facility. Quite impressive.

And so, I want to speak to not only your investment in my district, but also to hopefully your investments around the world, and perhaps even more investments you and other companies might make as a result of TPP in some of these Asia-Pacific countries.

The International Trade Commission staff recently found that investment abroad by U.S. service firms generate over 700,000 jobs in the United States, supporting those investments overseas. In addition, we know that a global presence by U.S. firms is essential in maintaining our number one status, globally, as the most competitive economy to be a hub. A global presence by U.S. firms helps them sell our exports around the world. And the more we export, the more jobs we create here at home.

Given the importance of U.S. firms having a global presence, I would like to ask you whether Cargill and the U.S. Business Council on TPP believe that the U.S. investors need the protection of investor state dispute settlements in all these TPP countries.

Ms. BOUGHNER. Thank you for the question, Congressman, and for rightfully recognizing that U.S. investment actually drives new opportunities such as trade. And, in fact, U.S. companies overseas, our investment actually accounts for 45 percent of all U.S. exports. So that should not go unstated.

And certainly one of our main priorities in this is to receive investor state dispute settlement protection. Not just dispute settlement, but investor state protections. And I can't think of why we wouldn't want to do that. Why wouldn't we want to protect our American investments overseas, if we know, indeed, as Mr. Wessel mentioned, that there are other forces out there like SOEs, and places and spaces where we may face unfair competition or unfair action by governments.

So, we certainly believe—and we know it is a difficult lift. We know that particular countries do not want the investor state provision included. But I can't see how the United States would accept an agreement without that provision.

Mr. SCHOCK. Mr. Wessel.

Mr. WESSEL. If I could just make a quick comment—and going back to my earlier comment about needing to have a broad debate about the data, the ITC study that is referred to was a staff study and not open to critique. And looking at some data in preparation for the hearing, I saw that multi-national companies more than doubled their exports of services to their foreign affiliates at the same time that they reduced their U.S.-based employment by 1.9 million.

So, we have to really go deeper and understand, again, what our competitive challenges and our opportunities are, and understand where we need to go in the future.

Ms. BOUGHNER. Actually, we have increased our employment year on year since the two largest trade agreements, NAFTA and when WTO was implemented. We have actually increased our employment 1,000 employees year on year.

And so, again, I think the facts state it for itself. It is not trade or jobs, it is trade and jobs. And investment. Thank you.

Mr. SCHOCK. Excellent points. Excellent points. Thank you, I agree.

Chairman BRADY. Thank you. Mr. Paulsen, you have the final question.

Mr. PAULSEN. Thank you, Mr. Chairman. And first of all, I should mention that Cargill is headquartered in my district, just a few miles from my home, actually. And I want to compliment you for your leadership, not only in educating your employees in the opportunities for trade and your participation in trade around the world that grows jobs, but also for being out front in hosting Ambassador Han this summer, actually, with the South Korean agreement, as that was going forward. And I think you have really laid out the case.

Everyone on the panel has laid out the case of why southeast Asia is so important, why TPP is so important, Mr. Chairman, because I think some of our colleagues don't understand or appreciate that southeast Asia is going to be the center of economic gravity in the near future for a lot of future jobs.

And maybe you can just elaborate. Anyone on the panel. I know that many of you face significant barriers in China. And even though China is not a part of TPP, how does establishing these strong rules in TP help us address China's barriers? On the panel?

Mr. WESSEL. Let me just take that quickly, in that the U.S. has always had a fairly consistent approach to trade and rules, that we may upgrade the rules as we move forward trade agreement to trade agreement, but there is a consistent application.

What we do on SOEs, what we do on indigenous innovation, IPR, and many other issues is going to set the enforcement template, as well as the legal policies that we use, transfer pricing, which is a subject under the jurisdiction of this committee.

So, this is vital to addressing the China challenge, long term, creating better rules than we currently have, more automaticity to enforcement, and certainty and consistency, in terms of the application of our law.

Ms. BOUGHNER. What I think, Congressman, it does is really creates a system of peer pressure in the region. And I absolutely agree that if we get the provisions right, and some of these new additions that we are making, it is going to create a system where other countries are going to want to be in the club. And, as that happens, China will ask itself the question. Everyone is already asking the question.

So it is critical we get this right, because I do think that this TPP system of peer pressure will come to bear and come to benefit the U.S.

Mr. PAULSEN. Ms. Hofmann, anything to add before we close?

Ms. HOFMANN. And just a final note, too. With both operations that are—a growing retail presence and a sourcing presence with China, we see this as an opportunity to simplify the rules, to have

better access, and to clarify the expectations for a 21st century agreement.

Mr. PAULSEN. Thank you, Mr. Chairman.

Chairman BRADY. Thank you. I want to thank the Members for their thoughtful questions. And let me note for our witnesses that Members may submit questions for the record. If they do, I hope you will respond promptly.

Our witnesses today made clear the Trans-Pacific Partnership offers significant benefits. We need to move ahead as quickly as possible. We should also welcome new members to the TPP, as long as they will meet the Trans-Pacific Partnership's high standards, and not delay the partnership's progress, can adequately address outstanding bilateral issues.

With that, the committee is adjourned.

[Whereupon, at 12:05 p.m., the subcommittee was adjourned.]

MEMBER SUBMISSIONS FOR THE RECORD

House Committee on Ways and Means Trade Subcommittee
Hearing on the Trans-Pacific Partnership
Wednesday December 14, 2011
Questions for the Record

Questions from Rep. Erik Paulsen:

Paulsen Question 1: Ambassador Marantis, in response to my question during the hearing on apparel and the yarn-forward rule of origin, you stated, *"We believe that the yarn-forward rule of origin has a demonstrated record of success in attracting investment and helping, again, that we can encourage production and trade within the region."* This is not what I hear from industry sources. Please provide detailed information supporting the claims that the yarn-forward rule has a "demonstrated record of success" and that it "can encourage production and trade within the region."

A: The yarn-forward model has demonstrated a record of success in promoting trade under our Free Trade Agreements (FTAs). The U.S. imported over \$14 billion in apparel under the yarn-forward rule of origin in the first ten months of 2011, and yarn-forward imports increased by over 16 percent between 2009 and 2010. Further, we have considerable evidence that FTA regions with yarn-forward rules of origin attract intra-FTA investment in textile production and manufacturing, as well as investment from non-parties to FTAs. For example, the U.S. textile industry has made significant investments in the Dominican Republic-Central America FTA (CAFTA-DR) region. Unifi, Inc., Asheboro Elastics, George C. Moore Co., Fruit of the Loom and Avery Dennison, among others, have built manufacturing facilities in the region to integrate the supply chain and take advantage of the yarn-forward rule of origin, and this has also benefited investment in the U.S. Not only have domestic companies invested further and upgraded manufacturing to take advantage of the regional opportunities, foreign companies have invested in the U.S., creating additional jobs. Hermann Bühler AG, a Swiss textile company built a plant in Jefferson, Georgia, to take advantage of the yarn-forward rule in CAFTA. Additional investments from Korea and Canada, among others, have been made in the U.S. and throughout the entire CAFTA-DR region.

Paulsen Question 2: Industry sources report that yarn-forward is a difficult rule because it severely limits the ability to source the best inputs, even if they are produced partially in the FTA countries. The combination of the restrictive rules and the difficult compliance associated with those rules usually leads apparel companies to do business outside of the FTAs. How do you plan to improve the customs, documentation, and enforcement provisions in the TPP for all products—including apparel—to reduce the documentation burdens for legitimate American importers?

A: We have reached out to the importing community to understand in greater detail their concerns with Customs compliance requirements under our Free Trade Agreements (FTAs). These requirements are essential to ensure that these agreements are enforced effectively and that the benefits of our FTAs flow only to Parties to the agreements, and not to third parties. Nevertheless, we are considering how to make these requirements work better, in close collaboration with U.S. Customs and Border Protection and U.S. businesses.

Paulsen Question 3: Last year, I joined with 29 other Members of Congress in urging the Administration to move away from the yarn-forward rules of origin in the TPP. The yarn-forward rule is widely perceived as offering limited apparel opportunities for the TPP partners because it incentivizes those partners to make less than ambitious offers in other sectors that are U.S. priorities. In response to our letter, are you planning to work with Congress to develop a fresh approach to the rules of origin for apparel in the TPP so we can incentivize more trade and investment in apparel in the TPP and enable the United States to better achieve its offensive priorities?

A: Our goal is to create and expand market access opportunities for U.S. and other TPP producers of yarn, fabric, and apparel. We believe an approach that includes a yarn-forward rule of origin, with flexibility in cases in which it is appropriate based on commercial realities, will best encourage production and trade throughout the TPP region. We have asked U.S. industry for input where certain flexibilities may be necessary in order to support the development of production and trade in the region by U.S. and other TPP businesses, and intend to consult closely with Congress as we move forward. We have existing free trade agreements with our TPP partners Australia, Chile, Peru and Singapore and the yarn-forward rule of origin is at the foundation of the textile and apparel market access component of those agreements. Each of these countries currently exports qualifying textile and apparel products to the United States, meaning that exports meet the applicable rule of origin. As we seek to expand beyond these free trade agreements to a regional TPP, we increase the yarn and fabric resources available to the region.

Questions from Rep. Ron Kind:

Kind Question 1: As you continue to make progress on the TPP Agreement, I want to underscore the importance of ensuring a high standard of intellectual property rights protection for America's innovative companies, including those in the biosciences industry that support four million jobs here in the U.S. With respect to biologics, U.S. law is very clear in providing for 12 years of regulatory data protection. It is critically important that the Administration strongly pushes U.S. law as the model for the TPP. What is the Administration doing to ensure that U.S. posture on IPR in the TPP, particularly in the area of biologics, are consistent with U.S. law and exemplary of a 21st Century Trade Agreement?

A: Creating a climate for innovation is a top priority in the TPP negotiations, and we expect all of our TPP partners to participate fully in that effort. Effective IPR protection and enforcement, including regulatory data protection for biopharmaceutical products, is an important element in encouraging innovation in new technologies and will stimulate investment in research and development, facilitate exports of U.S. products, and contribute to the creation of American jobs. Biologic drugs are a vital area of pharmaceutical innovation and will remain an important focus of discussions with our TPP partners.

Kind Question 2: We are seeing a growing threat to our dairy export markets with the EU trying to block our use of many traditionally used cheese names such as parmesan. Can USTR provide an update on what is being done in TPP to preserve our rights to keep using these common names and how that effort is currently being received in the TPP talks?

A: We have consulted closely with the U.S. dairy industry and other U.S. stakeholders about the challenges created by the EU's efforts to enforce geographical indications. Building on those discussions, we have worked cooperatively with other TPP partners to develop and advance innovative proposals that go beyond our past FTAs in seeking to ensure that trademark and geographical indication systems in the TPP region respect the territorial nature of intellectual property rights and do not unfairly favor products of other countries at the expense of U.S. exports, including dairy exports.



Congress of the United States
Washington, DC 20515

October 7, 2011

The Honorable Ron Kirk
 United States Trade Representative
 600 17th Street, N.W.
 Washington, D.C. 20508

Dear Ambassador Kirk:

We write to express our strong opposition to requests to exclude products, specifically tobacco, from the Trans-Pacific Partnership Agreement (TPPA) negotiations. Excluding specific products from the TPPA could have a serious impact on future trade agreement negotiations and significantly damage Kentucky's economy.

It is our understanding that those seeking to exclude specific products from the TPPA base their request on the Doggett Amendment. This is a misinterpretation of the Doggett Amendment that could set a dangerous precedent for future trade negotiations.

The Doggett Amendment does not require the United States to carve tobacco out of free trade agreements. Inclusion of tobacco in a comprehensive trade agreement does not fall within the definitions of "promotion" or "marketing" as those terms are used in the Doggett Amendment. In fact, it is important to note that tobacco products were not excluded from eleven of the trade agreements negotiated since the adoption of the Doggett Amendment.

We also have concerns that excluding tobacco from the TPPA could set a precedent for other industries and future trade negotiations. We have already heard concerns that the exclusion of alcohol and dairy products is under consideration. Excluding tobacco from the TPPA would establish a broad and possibly economically debilitating precedent potentially applicable to any industry.

Kentucky is one of the largest tobacco producing States with tobacco leaf production supporting thousands of jobs across the Commonwealth. As over eighty percent of tobacco grown in Kentucky is exported to other countries, the exclusion of tobacco products from the TPPA threatens our growers' business and could harm the communities where they live and employ Kentuckians.

At a time when Kentucky's unemployment rate hovers near 9.5 percent we urge you to consider the serious impact excluding tobacco will have on the Commonwealth and the national economy. Thank you for your consideration.

Sincerely,


 Geoff Davis
 Member of Congress


 Mitch McConnell
 U.S. Senator

PRINTED ON RECYCLED PAPER


 Rand Paul
 U.S. Senator


 Harold Rogers
 Member of Congress


 Ed Whitfield
 Member of Congress


 Ben Chandler
 Member of Congress


 John Yarmuth
 Member of Congress


 Brett Guthrie
 Member of Congress



FOR IMMEDIATE RELEASE:
December 14, 2011

CONTACT: Trent Wisecup
(248) 631-7723

Tobacco Growers Warn Obama Administration of Economic Costs of Excluding Them from Trans-Pacific Partnership

LEXINGTON, KY – The Burley Tobacco Growers Cooperative Association called on the Obama Administration today to defend the economic interests of farm families in the United States by ensuring that tobacco and tobacco products are not excluded from the Trans-Pacific Partnership Agreement (TPPA). Excluding tobacco and tobacco products from the tariff reductions as well as from protections on intellectual property rights and investments would have a negative impact on tobacco farmers, resulting in lost opportunities, jobs and income. The TPPA is a comprehensive regional trade agreement currently being negotiated among the United States, Australia, Brunei, Chile, Malaysia, New Zealand, Peru, Singapore and Vietnam. Tobacco has traditionally been included in U.S. trade agreements.

"If the Obama Administration turns its back on American tobacco growers by excluding us from this important agreement, there will be severe economic consequences in several states, said Roger Quarles, the president of the Burley Tobacco Growers Cooperative Association. "Jobs are at stake for tobacco growers and communities, and we will be watching the Obama Administration's actions very closely as the negotiations on the TPPA continue."

The Burley Tobacco Growers Cooperative Association's message to the Obama Administration comes at a time when lawmakers on Capitol Hill are taking a closer look at the TPPA process. Today, the House Ways and Means Subcommittee on Trade will hold a hearing on the TPPA at which the Office of the United States Trade Representative will testify.

Quarles noted that a large bipartisan group of lawmakers in Congress from several states where tobacco farming is a major source of jobs have written to the Obama Administration urging that tobacco leaf and products not be excluded from the TPPA. Copies of those letters are attached to this press release.

"Our elected officials in Washington have expressed their strong opposition to a tobacco carve out in the TPP because of the negative impact it would have on jobs in their states," Quarles continued.

"Tobacco growers have become more dependent on exports just as other farmers have in the global marketplace. We simply must have fair access to foreign markets to remain competitive in today's economy. Excluding tobacco leaf and tobacco products from the TPP will do nothing to promote public health in these countries, will destroy agriculture jobs in states like Virginia, North Carolina, Ohio and Missouri. It will also set a dangerous precedent for future trade deals that will place American agriculture jobs at greater risk of being destroyed for no good reason," Quarles concluded.

The Burley Tobacco Growers Cooperative Association is the preeminent advocacy organization representing the interests of burley growers in the United States.

PUBLIC SUBMISSIONS FOR THE RECORD

Hearing on the Trans-Pacific Partnership

December 14, 2011

**Written testimony before the House Ways
and Means Committee Subcommittee on
Trade**

Ed Black

President & CEO

**Computer & Communications Industry
Association**

I. Introduction

Today the Internet is the most powerful force in the global economy, and the United States has been at the center of the Internet revolution since its beginning. According to the OECD, the Internet is a “general purpose technology enabler,” which is defined as a once in a generation technology that reorganizes world economic activity and spurs productivity. In fact, the OECD expects the positive effects of the Internet to surpass those of prior general purpose technology enablers, such as the printing press, the steam engine and the electrical grid.¹

As an enabler, the Internet not only spurs growth in Internet industries, but it also enhances the productivity of other industries and creates jobs. In fact, a recent McKinsey study highlighted the transformative nature of the Internet and found that the Internet has accounted for over one-fifth of the GDP growth of mature nations over the last five years and has created 2.6 jobs for every job lost. Furthermore, 75% of the productivity increases arise from the Internet’s effect on other sectors and, more specifically, the Internet has led to a 10% increase in productivity for small and medium size businesses.²

The Internet also has had drastic effects on world trade. One prominent study found that a 10% increase in Internet penetration is associated with a 1.7% increase in service exports,³ and this effect is only likely to rise over time as the Internet becomes more and more entwined in the day-to-day business of the world. The Internet’s effect on the export potential of small businesses has also been profound. McKinsey concluded that small businesses that rely heavily on the Internet export twice as much as those that do not. More and more, the Internet is allowing small businesses access to markets that were once reserved for major multinational corporations.

The Internet industry itself is big business for America. Google with a market value of \$174 billion is the 28th most valuable business in the world, while Facebook’s estimated valuation is higher than both Citigroup and Goldman Sachs. Also, approximately half of the overall revenue generated by these companies comes from abroad, and overseas revenue has been rising faster than domestic revenue. This makes sense as the lower cost of Internet technology, particularly wireless Internet and smart devices, means that more and more of the developing world is coming online. With 420 million people online, China already has more Internet users than the entire population of the United States.⁴ For U.S. Internet companies to continue their growth, it becomes vitally important that the barriers to their expansion into overseas markets be stripped away.

¹ OECD, “Broadband and the Economy,” Ministerial Background Report, May 2007, *available online at* <<http://www.oecd.org/dataoecd/62/7/40781696.pdf>>

² McKinsey Global Institute, “Internet Matters: The Net’s Sweeping Impact on Growth, Jobs and Prosperity,” May 2011.

³ Caroline Freund and Diana Weinhold, “The effect of the Internet on International Trade,” *Journal of International Economics* 62(2004): 171-189.

⁴ Frederick Erixon and Hosuk Lee-Makiyama, “Digital Authoritarianism: Human Rights, Geopolitics and Commerce,” *European Centre for International Political Economy*, 2011.

Although the numbers referenced above are relatively new, the theme that the Internet is transforming the world is quickly becoming cliché. However, the international trade apparatus has been slow to evolve. Although the WTO opened a Work Programme on E-Commerce in the 1990s, virtually no progress has been made at updating WTO commitments to reflect the growth of the Internet. As progress at the WTO stalls, especially with the collapse of the Doha Round, the USTR needs to become a vocal force pushing for strong pro-Internet language in both bilateral and regional trade agreements. If the TPP is really going to set the gold standard for 21st century trade agreements, it must address the issues pertinent to the most dynamic element of the 21st century economy.

II. Free Flow of Information

Concerns over impediments to the free flow of information over the Internet continue to grow as communications and commerce over the Internet increase. Numerous restrictions on this flow harm U.S. trade and commerce, as well as innovation in Internet communications and services. CCIA has long advocated for the need to work with foreign governments and multilateral organizations to fully enforce existing trade agreements; close gaps in existing trade agreements in the area of Internet communications and trade; and negotiate stronger rules in future trade agreements to protect e-commerce, limit ISP liability, and stop Internet censorship.

The development of the Internet has led to a revolution in the way we conduct international commerce and trade. In the new world of electronic commerce, removing obstacles and helping trade flow as freely as possible means safeguarding the free flow of information. Government efforts to disrupt this flow should be characterized as barriers to trade, and must be addressed in trade agreements.

The United States is an information economy, and U.S. companies are leading vendors of information products and services. In this context, information discrimination by a foreign government fundamentally undermines U.S. economic interests, such as the interests of U.S. Internet companies engaged in electronic commerce seeking to access that market. Filtering American Internet content and services has the effect of filtering out American competition, and poses a clear threat to U.S. businesses' ability to deliver goods and services to overseas markets. Whether it is bananas or bytes that are stopped at the border, the economic effect on U.S. interests is the same. While CCIA maintains the view that the current trading regime already prohibits censorship, filtering, blocking, and other impediments to the free flow of information, we also believe that this needs to be made more explicit in U.S. trade policy.

This issue has been discussed this year in both bilateral and multilateral fora. In April 2011, trade negotiators from the U.S. and the E.U. issued a joint declaration on "Trade Principles in Information and Communication Technology Services," which included "Open Networks, Network Access and Use" and "Cross Border Information Flows." In

June 2011, the Organization for Economic Cooperation and Development (OECD) released (and adopted as Recommendations this month) a Communique on Principles for Internet Policymaking, calling on members to “promote and protect the global free flow of information.”

As part of a collaborative effort involving a group of associations and companies chaired by the National Foreign Trade Council, CCIA helped craft a list of Priorities for the Business Community in Promoting Cross-Border Data Flows. The priorities include:

prohibiting measures that restrict legitimate cross-border data flows or link commercial benefit to local investment; addressing emerging legal and policy issues involving the digital economy; promoting industry-driven international standards, dialogues and best practices; and expanding trade in digital goods, services and infrastructure.⁵

CCIA has long called for a framework to address the issue of information flow and to establish new rules of the road to adapt the timeless goals of the rules-based trading system to the new online reality. These priorities are a formula for that framework and need to be pursued in any trade negotiations going forward.

At the very least, U.S. policy should be to commit to the blueprint established in the Korea-U.S. Free Trade Agreement, under which parties agree to refrain from unnecessary barriers to cross-border information flows. Not only has the administration touted the Trans-Pacific Partnership as “an ambitious, next-generation, Asia-Pacific trade agreement that reflects U.S. priorities and values,”⁶ it has explicitly stated that a key feature is “to promote trade and investment in innovative products and services, including related to the digital economy.”⁷ As such, the TPP must address the issue of free flow of information, and should include making the KORUS commitment mandatory and the implementation of strong, enforceable commitments to permit the free flow of information over the Internet and the unfettered exchange of digital goods and services.

III. Balanced IP Provisions

The fastest growing sectors of the Internet rely heavily upon balanced IP law. Because the international trade regime has generally lacked flexible IP provisions to promote innovation, it is necessary to modernize the IP provisions of the aging trade framework to be consistent with Internet and high-technology innovation.

Innovative Internet and technology businesses depend on copyright limitations and exceptions just like publishers depend on copyright protection. Just as the robustness of

⁵ See <http://www.nftc.org/default/Innovation/PromotingCrossBorderDataFlowsNFTC.pdf>

⁶ Office of the United States Trade Representative, “The Trans-Pacific Partnership Framework”, available online at < <http://www.ustr.gov/about-us/press-office/fact-sheets/2011/november/united-states-trans-pacific-partnership>>.

⁷ Office of the United States Trade Representative, “Outlines of the Trans-Pacific Partnership Agreement”, available online at <http://www.ustr.gov/about-us/press-office/fact-sheets/2011/november/outlines-trans-pacific-partnership-agreement>.

copyright protections may affect how strong each TPP nation's copyright-dependent industries are, the robustness of copyright exceptions will affect how successful technology and Internet industries are. The rapid, dynamic expansion of the Internet industry in the United States is in part attributable to robust U.S. exceptions and safe harbors.

These balanced IP provisions are the glue that holds together the Internet. Search engines rely on balanced copyright in order to index the web to help users find information. Internet browsers copy (without permission) copyrighted web pages onto users' computers so users can view them. ISPs make countless copies of millions of copyrighted email messages every day.

The Internet industry is not alone in depending on balanced copyright; industries depending upon the various balancing provisions in U.S. copyright law ("fair use industries") produce revenue of \$4.7 trillion, generating \$2.2 trillion in "value added" to the U.S. economy.⁸ This figure represented one-sixth of total 2007 U.S. GDP. Fully 17.5 million people – 1 in 8 U.S. workers – were employed by industries that depend upon balanced copyright. Exports of trade-related services, including Internet or online services, increased nearly ten-fold from \$578 million in 2002 to \$5.2 billion in 2007.

Copyright exceptions do not threaten author's rights. At a 2009 meeting of the World Intellectual Property Organization, a U.S. official rejected the view

"that any international consensus on substantive limitations and exceptions to copyright law would weaken international copyright law. The United States does not share that point of view. The United States is committed to both better exceptions in copyright law and better enforcement of copyright law."⁹

There is ample precedent in international law for mandatory limitations and exceptions exist in international IP law. For example, the Berne Convention *requires* that countries permit *free* quotation from published works (art. 10(1)), and also contains a mandatory exception for news of the day and press information (art. 2(8)).

Accordingly, the Trans-Pacific Partnership should contain mandatory provisions that:

1) Encourage Innovation by Promoting Fair Use.

The fair use doctrine and related limitations and exceptions provide critical protection from unjustified copyright infringement liability for innovators in information technology and Internet industries. Fair use also balances copyright protection against constitutional free speech principles and promotes education and research – essential elements for the

⁸ Thomas Rogers and Andrew Szamoszegi, *Fair Use in the U.S. Economy: The Economic Contribution of Industries Relying Upon Fair Use* (CCIA 2010), at 8-9; discussed in Shayerah Ilias & Ian F. Fergusson, United States Congressional Research Service, *IP Rights and International Trade*, (RL34292), Feb. 17, 2011, at 12.

⁹ Statement of U.S. Delegation, WIPO Standing Committee on Copyright and Related Rights, 19th Sess., Dec. 14- 18, 2009, available online at <<http://www.wo.ala.org/districtdispatch/wp-content/uploads/2009/12/WIPO-Statement.pdf>>

advancement of technology.

The Korea-US Free Trade Agreement contained such a provision in Chapter 18, footnote 11, which stated that “For greater certainty, each Party may adopt or maintain limitations or exceptions to the right described in this paragraph for fair use...” While this permissive rule indicates the right direction for future trade agreements, the merely permissive nature of the rule will lead to a patchwork of inconsistent laws, which will not provide sufficient protections for Internet and technology enterprises.

The TPP must enshrine mandatory limitations to intellectual property rights, including fair use, to provide adequate protection for online services, e-commerce platforms, device manufacturers, and ISPs.

2) Protect Innovators and Users from Unjustified Secondary Liability.

“Secondary liability” is the principle of punishing one person for another person’s misconduct. Some nations’ versions of secondary liability law aggressively penalize third parties, such as tech innovators and internet services, for the misconduct of infringers who happen to use the service in their actions. To the extent that nations elect to adopt second liability rules, it is essential to institute safe harbors that protect innovators from unjust liability.

These protections safeguard jobs and revenues associated with the flourishing technology and Internet industries. Intellectual property law should not inhibit legitimate commerce. Disharmony in international law currently results in businesses and users around the world facing liability for new business models, product features, and activities that are permitted under U.S. law.

International IP agreements must therefore contain appropriate safe harbors to ensure that online services, e-commerce platforms, device manufacturers, and ISPs are not held liable for the misconduct of other parties who use their product or service.


3) Protect the Rights of Consumers to Resell Lawfully Purchased Goods.

The Internet has not only been a boon to companies of all sizes seeking to sell their goods or services over the Internet, but it has also given consumers the ability to better participate in secondary markets where they can buy and sell previously purchased goods. In the United States, the “first sale doctrine” allows consumers to resell copyrighted works (as long as they work is being transferred and a copy is not made). As a result of the first sale doctrine, the growth of the Internet has given rise to a robust industry focused on providing consumers platforms for reselling lawfully purchased goods (as well as items made by small businesses or individual craftsmen and women).

eBay, the most well known U.S. company in this market, not only is a thriving business in its own right, with a market valuation of nearly \$40 billion, but has also created a sizable ecosystem of sellers and resellers of goods. These operations, primarily

individuals and small businesses, use such websites as eBay or Etsy as their primary (and often only) means for accessing the global marketplace. In fact, more than 700,000 people use eBay as their primary source of income and over 1.5 million more use it as a secondary source of income. Of the small businesses with employees operating on eBay, more than 30% use it as their only sales channel.¹⁰ Consequently, US trade negotiators should fight for the inclusion of the first sale doctrine into the TPP as a means of protecting and expanding market access for these important U.S. exporters.

¹⁰ See <http://investor.ebay.com/releasedetail.cfm?releaseid=170073>



Comments for the Record to the Subcommittee on Trade of the Committee on Ways and Means

Hearing on the Trans-Pacific Partnership Agreement (TPPA)

Submitted by:
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Introduction

The United States' proposed text on intellectual property for the Trans Pacific Partnership Agreement (TPPA) will harm people living in the United States and other TPPA member states. The lack of transparency in the negotiation is appalling and unequal, particularly where corporate interests have preferred legal access to information about the negotiations while providing information about the negotiation to the general public is illegal, and subject to career ending sanctions and the possibility of long prison terms.

USTR has proposed several measures that will clearly increase prices and restrict access to medicines. These proposals go beyond the requirements of the WTO Agreement on TRIPS, limit the applicability of the Doha Declaration on TRIPS and Public Health, and abandon the May 10th Agreement between the Bush Administration and the House of Representatives which agreed that certain TRIPS-plus mechanisms should not be part of a mandatory protocol, which places the Obama Administration closer to the pharmaceutical lobby than the Bush Administration, as regards trade policy

In addition, USTR's text contains multiple proposals that are inconsistent with current U.S. law. These areas would give greater privileges to owners of patents, copyrights and other intellectual property rights, undermining consumer rights and protections.

I. Transparency

The TPPA has been negotiated in secret and the proposed texts have not been officially released to the public. The negotiations are conducted behind closed doors and the general public is not permitted to view the texts. Transparency is a necessary for stakeholders to evaluate the proposals that will ultimately affect them and provide feedback. The secrecy of the negotiations denies the general public access to information and the opportunity to effectively engage in the democratic process.

The TPPA currently involves negotiations between nine countries—the United States, Australia, Brunei, Chile, Malaysia, New Zealand, Peru, Singapore and Vietnam—of diverse economies and resources. It is expected that the TPPA will be expanded to include an even larger group of countries; in fact, Japan, Canada and Mexico have already expressed interest in joining. The norms set by the TPPA could expand beyond these countries as well, to include numerous additional countries in Latin America and Asia. With a negotiation that will set norms of such magnitude, transparency is critical to ensuring that the general public is informed of the proposals that will affect them.

A. The US proposals should be released to the general public and USTR should invite comment on its proposed texts.

This lack of access to information has been intentionally unequal. Although the general public is routinely denied access, some corporate interests have had the opportunity to have “cleared advisors” and others view the texts, provide comments and influence the negotiations.

While it is true that some texts have been leaked, including several outlining the United States position on areas related to intellectual property and access to medicines or medical technologies, the public should not have to rely on leaks as a source of information. Furthermore, when these texts are made available through leaks, their unauthorized disclosure may be subject to government sanctions, including potential career ending consequences or imprisonment for persons leaking the documents. Leaks are therefore an infrequent and unreliable source and the public should not be forced to rely on information through this channel.

The refusal to release negotiating texts puts the public at a disadvantage because it is difficult and, at times, impossible to provide meaningful comments to USTR and other US agencies. The precise wording of the provisions, references to other documents and instruments, and cross-references throughout the text are vital in fully understanding the impacts of the agreement. Without access to the negotiating texts, the public’s involvement and engagement in the process is hampered. Transparency is needed to legitimize the process of the negotiations and the US government should release its proposals and accept public comment.

B. The United States would greatly benefit from public comment on the proposed texts

A period for public comment on the proposed texts would enhance the agreements by allowing the United States to draw upon the expertise of academics and practitioners across diverse fields. These individuals and civil society organizations can offer their knowledge and specific expertise to improve the agreement.

C. Texts of agreements negotiated in other fora have been released

The secrecy of the TPPA negotiations is unnecessary and the texts of various other agreements were released to the public without harm to the negotiations. In multilateral fora such as the World Intellectual Property Organization (WIPO) and the World Health Organization (WHO), negotiating texts are widely distributed to the public, published on the website or reported in the minutes.

In another trade agreement for the Anti-Counterfeiting Trade Agreement (ACTA) to which the United States is a party, the negotiating texts were eventually made public after intense pressure to release the documents. The release of these documents did not cause negotiations to break down and, in fact, ACTA was eventually concluded and several countries signed the agreement—including the United States, Australia, Canada, Japan, Morocco, New Zealand, Singapore and South Korea—during a signing ceremony on October 1, 2011. Despite claims to the contrary, public release of negotiating texts did not stall the negotiations or eventual conclusion of the agreement.

The United States has, in fact, sought public comment on other agreements negotiated at the multilateral level. For example, in March 2011, WIPO created a “wiki” for its proposed treaty on traditional cultural expressions and posted the actual draft language to this site. WIPO invited the public to comment on each article. The day that comments were due on the “wiki,” the US Patent and Trademark Office (USPTO) held a stakeholder meeting to discuss the drafted treaty language. A broad range of stakeholders attended to share their views on each article and the diverse expertise provided USPTO with the information necessary to strengthen the document.

By following these examples, the United States can legitimize the process of its negotiations and allow the public to engage in the democratic process.

II. Access to Medicines

One of the primary concerns of the intellectual property chapter text tabled by the U.S. on February 10, 2011 and in September 2011 includes the effect these norms will have on access to medicines. The U.S. proposal for the TPPA includes numerous provisions that go well beyond the TRIPS Agreement. TRIPS reflects international standards for protection of intellectual property and provisions that mandate stricter rules upsets the balance between rights for right holders and development or public health concerns. These proposals would erode existing public health safeguards and greatly endanger access to affordable medicines.

References to U.S. proposed TPPA text reflect the leaked copies of the text tabled in February¹ and September.²

¹ <http://keionline.org/sites/default/files/tpp-10feb2011-us-text-ipr-chapter.pdf>

² <http://www.citizenstrade.org/etc/wp-content/uploads/2011/10/TransPacificIP1.pdf>

A. Expanded scope of patentability

Article 8.1 and 8.2 of the text tabled by USTR in February 2011 broadly defines the scope of patentability beyond the requirements of TRIPS. It would make “new forms, uses or methods” patent eligible “even if such invention does not result in the enhancement of the known efficacy of that product” which would effectively extend monopoly power over existing products.

Article 8.2 would specifically require parties to make patents available for plants, animals, diagnostic, therapeutic and surgical methods which directly contradicts the exclusion provided for in Article 27.3 of TRIPS. Requiring patents on surgical methods not only raises serious ethical concerns but also draws into question the proposal’s consistency with U.S. law which does not enforce patents against medical professionals.

Article 8.3 provides only a very narrow exclusion from patentability under the TPPA and creates an exhaustive list of what may be excluded, also going beyond the language of TRIPS. This expanded scope of patentability coupled with the limitations on exclusions creates a scenario where monopoly power is strengthened and extended over products, delaying entry of generic medicines into the market and raising costs.

B. Patent term extensions

USTR proposed text in September 2011 that would require parties to provide patent term extensions to compensate for “unreasonable delays” in the granting of a patent. According to the language of the U.S. proposal, patent term extensions would be mandatory and no exceptions are provided for, other than those delays attributable to the patent applicant. Patent term extensions are not required under TRIPS and serves only as a benefit to the patent-owner, extending the monopoly on life-saving medicines. Thus, it would delay entry of generic medicines, keeping costs out-of-reach for many patients in developing countries. The proposal would also likely put undue pressure on parties to grant patents, even absent a thorough examination, which could result in overpatenting of patent of poor quality.

Notably, this proposal represents a backtracking from the “May 10th” Agreement between the Bush Administration and Congress on May 10, 2007. Under the May 10th Agreement, patent term extensions were voluntary, rather than mandatory.

C. Exclusion of pre-grant opposition

Article 8.7 from the February 10, 2011 proposal would prohibit pre-grant opposition systems. Although pre-grant opposition can improve patent quality and reduce the granting of substandard patents, the U.S. would seek to eliminate these systems through its free trade agreements. Elimination of pre-grant opposition benefits pharmaceutical companies by increasing the cost of challenging patents and giving the right holder the presumption of patentability. Even where a patent challenge is successful, during the period between the grant of the patent and successful post-grant opposition, a period of monopoly will exist on a product that should never have been granted a patent.

D. Exclusive rights in test data

Article 9.2, proposed in September 2011, would provide for mandatory grant of exclusive rights in test data. The proposal goes beyond the requirements of TRIPS which requires for protection only on “undisclosed test or other data, the origination of which involves a considerable effort.” Furthermore, countries only need to protect “against unfair commercial use.” Although Article 39.3 of TRIPS requires parties to provide protection, it does not specify the mechanism for protection and does not require exclusive rights over test data.

The U.S. proposal could permit protection beyond “undisclosed information” and may also extend protection of data to more than just that which requires “considerable effort.” The US proposal would provide for exclusive rights in test data, which has serious implications for medical ethics that prohibit the unnecessary duplication of clinical trials. This TRIPS-plus measure of creating a period of exclusive rights in test data make it costly, time consuming and typically impossible to register new medicines without duplicating clinical studies, even where the product is not protected by patents.

In addition to a mandatory five years of exclusive rights in test data, the U.S. proposal also provides for an additional three years of protection submitted for second indications or uses for a previously approved chemical entity. The three years of protection for second uses is particularly objection in the context of developing countries.

Our concerns about test data protection extend both to developing countries, which high prices have the most severe impact on access, and to the U.S. and other high income countries, where high prices for medicines also harm the public, as consumers and taxpayers.

The language of the TPPA proposal would limit legislative efforts to reform our system of protection in test data. In the 111th Congress, Senator Sanders introduced S.3921, the Ethical Pathway Act of 2010. This bill would eliminate exclusive rights in test data where repetition of the clinical trial would violate medical ethics. This Act seeks to ensure that applicants seeking regulatory approval for a pharmaceutical or biological product would not be forced to repeat clinical trials in violation of the Declaration of Helsinki on Ethical Principles for Medical Research Involving Human Subjects. Instead, the Ethical Pathway Act of 2010 would institute a cost-sharing mechanism that would be TRIPS compliant but allow a fair and ethical method for generic entry while also compensating the originator of the test data.

E. Patent linkage

Article 9.5 of the USTR proposal would make patent linkage mandatory, a serious retreat from the May 10th Agreement where patent linkage was only optional. Patent linkage is a burdensome system for drug regulatory authorities because there are often very large numbers of patent families on a single medicine. These requirements could present particularly high costs for the authorities of less developed countries.

Patent linkage is another measure that goes beyond the requirement of TRIPS and can delay entry of generic medicines into the market. The May 10th Agreement recognized that patent linkage was more appropriate as a voluntary measure, rather than a mandatory obligation.

F. Access window

USTR claims that the provisions relating to patent term extensions, exclusive rights in test data and patent linkage are part of an access to medicines strategy because these rights are provided when the pharmaceutical company registers within an “access window.” However, the “access window” merely provides stronger monopolies for right holders and will actually delay access to affordable medicines.

This window purportedly operates by allowing a party to require registration within a specified period of times (currently undefined and to be negotiated) in order to receive these benefits. However, it applies only for countries that use reference registration, which is reliance on evidence of prior registration in another country. Countries that do not use reference registration may not require applicants to register their drugs within the “access window” in order to receive the TRIPS-plus benefits of patent term extensions, exclusive rights in test data, and patent linkage. Thus, they will be forced to provide monopoly-enhancing rights regardless of when the drugs are registered.

Even for the countries that do use reference registration, application of the access window is merely voluntary whereas provisions for these three TRIPS-plus measures are mandatory. Furthermore, applicants registering their drugs need not complete the process for registration within the access window in order to qualify for patent term extensions, exclusive rights in test data and patent linkage. The U.S. proposal provides only that patent holders need to “commence the process of obtaining marketing approval” and that “while a Party may impose reasonable additional requirements or deadlines . . . satisfaction of those additional requirements or deadlines . . . shall be recognized by the Party as necessarily occurring after the commencement of the marketing approval.” Under the U.S. proposal, a company does not need to complete the process within a specified time, but rather, the commencement is enough to satisfy the “access window” and receive the TRIPS-plus benefits.

This so-called access to medicines strategy will likely endanger lives by extending monopoly protections on live-saving medicines. It is more focused on market access than access to medicines and by making TRIPS-plus measures such as patent term extensions, exclusive rights in test data, and patent linkage mandatory requirements, the TPPA will delay entry of generic drugs into the market which keeps prices on medicines high and unaffordable for those in developing countries. It is quite unfortunate that the USTR has proposed these measures for the TPPA which represent a serious retreat from the public health balance agreed upon in the May 10th Agreement.

G. Doha declaration and measures to protect public health

The text relating to public health understandings and the Doha Declaration on the TRIPS Agreement and Public Health could be read as intent by USTR to limit the application of this Declaration to “cases such as HIV/AIDS, tuberculosis, malaria, and other epidemics as well as circumstances of extreme urgency or national emergency.”³ Although the Doha Declaration applies to all diseases, the limitations in this language could be seen as an effort to limit its application to a narrow handful of diseases and as excluding, for example, non-communicable diseases.

While USTR makes efforts to possibly limit the Doha Declaration, it should consider that compulsory licenses have been issued recently in the U.S. for medical treatments outside of “HIV/AIDS, tuberculosis, malaria” or cases of emergency. For example, compulsory licenses have been issued for contact lenses⁴ as well as a device to treat aortic valve stenosis.⁵

The possible limitation of this text is highly concerning for access to medicines and any language that could serve to limit applicability of the Doha Declaration should be eliminated from the text.

III. Inconsistencies with United States Law

In addition to our serious concerns with respect to the negative impact the proposed text would have on access to medicines and the public health, we believe that the USTR inappropriately pushes norms that are inconsistent with current US law. US norms are often inappropriate in the contexts of developing countries; the proposals are even more inappropriate when they would introduce backdoor changes into our own laws or block current legislative reform efforts. Although we have highlighted some selected areas of concern with respect to inconsistencies between the USTR proposal for TPPA and current US law in these comments, additional examples and our analysis is available in our August 30, 2011 paper, *Inconsistencies Between the U.S. Proposal for the IP Chapter of the TPPA and U.S. law*,⁶ which can be found at <http://keionline.org/node/1306>. Changes to our current laws and interpretations of our current laws are best left to the purview of our Legislative and Judiciary branches, respectively, and not to be negotiated behind closed doors by our Executive branch.

³ Article [X].2 of the U.S. text tabled in September 2011.

⁴ <http://keionline.org/node/1219>

⁵ <http://keionline.org/node/1218>

⁶ Note that this paper was written prior to USTR's tabling of its “placeholder” text for several controversial areas that impact access to medicines, including those on patent term extensions, protection of regulatory test data, and patent linkage. These proposals, as noted in the preceding section, do not comport with the “May 10th Agreement.”

A. Copyright

The USTR proposal would give copyright owners of books, journals, sheet music, sound recordings, computer program, and audio and visual works the exclusive rights over parallel importation. Although the U.S. Copyright Act grants numerous specific rights in copyrighted works, subject to limitations and exceptions, it is unsettled as to whether the right to prohibit parallel importation of lawfully acquired works exists.

B. Technological Protection Measures

USTR's proposal contains several provisions with regard to technological protection measures (TPM). While some of these provisions replicate current U.S. law, others go beyond our current requirements.

For example, Article 4.9(c) of the February 10, 2011 USTR draft explicitly provides that a violation of a TPM is a "separate cause of action, independent of any infringement that might occur under the Party's law on copyright and related rights." Thus, a person could be found liable for circumventing a TPM even where such conduct is considered to be legitimate and not an infringement of copyright, undermining the important and existing copyright limitations and exceptions under U.S. law. Whether an underlying infringement is required under the Digital Millennium Copyright Act (DMCA) to find a person guilty of circumventing a TPM is currently unsettled in the United States with the Courts of Appeals for the Federal Circuit and Ninth Circuit coming to opposite conclusions.

The provisions for civil remedies for circumvention of a TPM do not contain the same limitations and exceptions as provided for by the DMCA.⁷ Under the DMCA, damages may be reduced or remitted for "innocent violations." The TPPA proposal, by contrast, envisions an exception only for nonprofit libraries, archives, educational institutions or public noncommercial broadcasters.

C. Injunctions

Depending on how Article 12.2 of the U.S. proposed February 2011 text is read, if parties are required to provide injunctions in all cases of infringement, then it is inconsistent with several current U.S. laws that eliminate injunctions even where infringement occurs. These examples extend to trademarks,⁸ copyrights,⁹ patents,¹⁰ plant breeder rights,¹¹ designs,¹² or mask works fixed in a semiconductor chip product.¹³

⁷ 17 U.S.C. §1203(c)(5)

⁸ 5 U.S.C. §1114 (innocent infringement by publishers)

⁹ 17 U.S.C. §512 (limitations on liability relating to online material); 17 USC 907 (innocent infringement of semiconductor chip design) and 28 U.S.C. §1498(b) (use by or for the government)

¹⁰ 35 U.S.C. §271(e)(3)(safe harbour exception for uses of patents related to development and submission of information concerning sale of drugs or veterinary biologic products); 35 U.S.C. §271(e)(6)(B)-(C) (non-disclosed biological product patents); 35 U.S.C. §272 (temporary presence in the United States, meeting obligations under Chicago and Paris Conventions); 35 U.S.C. §287 (limitation on damages and other remedies; no injunctions for patent infringement by medical practitioners); 42 U.S.C. §2184 (regarding nuclear energy); and 28 U.S.C. §1498(a) (use by or for the government).

D. Damages

USTR's proposal would likely increase damages beyond that which would be granted under current U.S. law in several instances. For example, under Article 12.3 of the USTR proposal, judicial authorities would be required to take into account the suggested retail price of an infringing product. Under current U.S. law, a reference to "suggested retail price" as consideration for damages appears only in reference to importation of goods bearing an infringing trademark under the Tariff Act of 1930. With respect to infringing copyrighted goods, U.S. law currently uses "actual damages" as the appropriate benchmark.¹⁴ Similarly, under U.S. patent law, the phrase "damages adequate to compensate for the infringement" is used.¹⁵

Furthermore, the USTR proposal flips the presumption of the grant of attorney's fees and court costs. Article 12.5 of the February 10, 2011 proposal mandates court costs in patent, trademark and copyright fees as well as attorneys fees for copyright and trademark cases "except in exceptional circumstances." Under current U.S. trademark law, by contrast, these fees are only allowed in exceptional cases rather than in the majority of cases. Similarly, U.S. copyright law does not require the grant of court costs or attorneys fees, but rather, is merely a discretionary award.

E. Enforcement in the Digital Environment

In its proposed text, USTR defines "service provider" more expansively¹⁶ than the DMCA. The expansive definition in the TPPA would impose greater liability for transmission of online material and does not make a distinction between an entity and an individual person, unlike the DMCA.

F. Current legislative reform efforts for orphan works.

As noted above, there are several concerns with regard to the implementation of the damages provisions. These concerns extend not only to current U.S. laws, but also to those areas in need of reform and under consideration by Congress.

¹¹ 28 U.S.C. §1498(d)(use by or for the government)
¹² 28 U.S.C. §1498(e) (use by or for the government).
¹³ 28 U.S.C. §1498(e) (use by or for the government).
¹⁴ 17 U.S.C. §504(b).
¹⁵ 35 U.S.C. §284.
¹⁶ Article 16.3(b)(xii) of the USTR February 10, 2011 draft text.

The U.S. proposal could eliminate the possibility of reforms for changes to U.S. law to address the problem of what is known as “orphan works,” copyrighted works where it is difficult or impossible to locate the owner of the copyright. Congress has considered legislation that would expand access to these orphaned works. Limitations on injunctions and damages are central to these proposals, but the U.S. proposal for the TPPA would create a system that would calculate high damages or provide for large statutory damages. In 2008, Marybeth Peters, Registrar of Copyrights noted in a statement before the House of Representatives noted that statutory damages may be an inappropriate calculation of damages for orphan works.¹⁷ Similarly, the Library of Congress found that large monetary damages substantially deterred use of orphan works and “reasonable compensation” was a more appropriate measure of damages.¹⁸

The TPPA text, as proposed by USTR in February 2011, would be inconsistent with efforts to reform U.S. copyright law, such as the Shawn Bentley Orphan Works Act of 2008. Although the Shawn Bentley Orphan Works Act would not provide for court costs and attorneys fees in the cases of orphan works, under the TPPA, both may be permitted under Article 12.4 of the U.S. proposal. Damages may also be higher, as measured by suggested retail price, actual damages or statutory damages under the TPPA than would be under Congressional efforts to address orphan works.

¹⁷ Statement of Marybeth Peters, Registrar of Copyrights, before the Subcommittee on Courts, the Internet and Intellectual Property, Committee on the Judiciary, United States House of Representatives, 110th Cong., 2nd Sess., March 13, 2008, *The “Orphan Works” Problem and Proposed Legislation*, available at, <http://www.copyright.gov/docs/registrar031308.html>.

¹⁸ Library of Congress, Report of the Register of Copyrights, *Report on Orphan Works* (Jan. 2006) at 12-13, available at <http://www.copyright.gov/orphan/orphan-report-full.pdf>.

**Testimony to the Trade Subcommittee
Ways and Means Committee
U.S. House of Representatives**

for:

**Hearing on the Trans-Pacific Partnership Agreement
December 14, 2011**

by:

**American Academy of Family Physicians
American Academy of Pediatrics
American College of Preventive Medicine
American Society of Addiction Medicine
Center for Policy Analysis on Trade and Health (CPATH)**

**Exclude Tobacco From Trade Rules
To Protect Public Health;
Represent Medicine and Public Health on Trade Advisory
Committees**

Testimony to the Trade Subcommittee, Ways and Means Committee,
U.S. House of Representatives
Trans-Pacific Partnership Agreement:
Implications for Tobacco Control, and Comment on Trade Advisory Committees
 Submitted December 28, 2011

On behalf of the American Academy of Family Physicians, the American Academy of Pediatrics, the American College of Preventive Medicine, the American Society of Addiction Medicine and the Center for Policy Analysis on Trade and Health, we thank Subcommittee Chair Kevin Brady (R-Texas), Ranking Member Jim McDermott (D-Wash.), and members of the Trade Subcommittee of the Committee on Ways and Means for the opportunity to provide comments regarding the Trans Pacific Partnership Agreement (TPPA). Representing the perspective of medical and public health experts nationwide,^{1 2 3} we ask the Subcommittee to recommend that Ambassador Kirk and the office of the United States Trade Representative (USTR) ensure that all tobacco products, including tobacco, cigarettes, cigars, smokeless tobacco, and other tobacco products are excluded from all provisions of this and any other Free Trade Agreement (FTA), that tobacco control measures be specifically exempted from any trade rules protecting intellectual property including trademarks and also exempted from any investor-state dispute resolution processes, and that our trading partners' current applied tariffs on these products not be reduced or eliminated.

Trade-based challenges to health policies represent a growing threat against efforts to curb tobacco use. Ongoing trade-based tobacco arbitration and contemporary U.S. trade agreements challenge health principles by treating tobacco—a lethal and addictive product—the same as any other good.

Our comments convey the following:

1. Tobacco is a deadly product.
2. Countries around the world are enacting increasingly strong and effective tobacco control policies that are proven to reduce tobacco use.
3. Such measures are being contested as violations of international trade agreements.
4. To reduce worldwide tobacco consumption, tobacco must be carved out from all protections afforded under the TPPA.

1. Tobacco is a deadly product

The scourge of tobacco-related morbidity and mortality is a present and persistent threat. Tobacco use remains the world's leading preventable cause of death and disease. Teenage smoking is a serious public health problem in developed and developing nations and contributes to the global burden of noncommunicable diseases (NCD), extending into adulthood. Tobacco use accounts for 5.2 million deaths worldwide each year, or one in ten adults.⁴ There are 438,000 tobacco-related deaths each year in the U.S., more than deaths from HIV, illegal drugs, alcohol, motor vehicle injuries, suicides, and murders combined.⁵ On average, American adult smokers die 14 years earlier than nonsmokers.⁶

Use most often begins in youth. Exposure to tobacco smoke in childhood is correlated with increased asthma attacks, respiratory infections, and a higher incidence of Sudden Infant Death Syndrome.⁷ Kids who smoke are more likely to consume alcohol and use illicit drugs; they also have a higher likelihood of suffering from mental illnesses including anxiety and depression.⁸

Global tobacco consumption is rising. Almost 80 percent of the world's tobacco consumers live in low- and middle-income countries.⁹ Many TPPA partners are low- and middle-income countries.

The World Bank estimates that the total health care cost from smoking typically constitutes between 1 and 1.5 percent of a country's GDP.

2. Countries around the world are enacting increasingly stronger and more effective tobacco control policies that are proven to reduce tobacco use.¹⁰

The US and TPP partners all recognized the prospect for concerted action to address the public health tragedy of tobacco use when each signed the world's first public health treaty, the Framework Convention on Tobacco Control (FCTC), a function of the World Health Organization (WHO). The FCTC supports international tobacco controls intended to reduce the demand for tobacco, which also represent the democratic will of the people in free societies around the world.

Increased cigarette prices are the single most effective strategy for reducing smoking, particularly among teenagers and young adults. Indeed, the Framework Convention on Tobacco Control (FCTC) states that "price and tax measures are an effective and important means of reducing tobacco consumption by various segments of the population, in particular young persons." The FCTC provides that its parties should maintain measures which may include tax policies and price policies on tobacco products so as to reduce tobacco consumption, and prohibit or restrict duty-free sales of tobacco products to travelers. Reducing prices for cigarettes by cutting tariffs on tobacco or cigarettes will only undercut this evidence-based health initiative.

Several countries have experienced significant success in discouraging smoking and motivating current smokers to quit by using graphic warning labels, that also include toll-free phone lines that support quitting. The U.S. has taken steps in that direction. Furthermore, Australia has proposed plain packaging on cigarette packages.

The FCTC also supports bans on "low tar" or "mild" labeling, designs of warning labels, and restriction on mass-media advertising. The United States and over 120 other countries have instituted limits including bans on ad campaigns, particularly marketing that targets younger people. These measures are effective. A systematic review of research indicates that nonsmoking adolescents who were more aware of or receptive to tobacco advertising were more likely to become smokers later, compared with who are less exposed to tobacco ads.¹¹

Public health research demonstrates that warning labels on cigarette packages increase awareness of the harms of tobacco use, and increase the likelihood of attempting to quit smoking.¹² To date, more than 100 countries have placed warning labels on cigarette packages.

3. However, such measures are being challenged as violations of international trade agreements.

Unless explicitly excluded, tobacco products are subject to all trade rules, which have implications for tobacco control measures on distribution of tobacco products, trademarks, and advertising. Provisions regarding intellectual property as they relate to advertising, trademarks and labeling, services rules on product regulation and distribution, and rules on market access, and national treatment, could all interfere with tobacco control measures. Tobacco control measures have been subject to trade challenges in the past, under the investment provisions, and continue to be vulnerable since they are not explicitly excluded.

Around the world, tobacco corporations are using trade rules to file charges against effective tobacco control measures. Phillip Morris International is using the investor-state dispute mechanisms available through trade agreements to challenge these effective tobacco control measures, relying on the intellectual property provisions related to trademarks enshrined in some existing bilateral investment treaties. Trade-based lawsuits are ongoing in Uruguay and Australia, where arbitration focuses on whether cigarette packaging regulations impinge upon trademark displays. In Norway and Ireland, trade-based lawsuits question the governments' ability to enact retail display bans.

Trade agreements also reduce tariffs on tobacco products, making them less expensive. The agreements therefore promote and facilitate greater tobacco consumption.

Eight of the TPPA partner nations, but not yet the US, have ratified the FCTC. It would be inconsistent with American support for the FCTC and with those nations' obligations under the FCTC for our country to negotiate a trade agreement with TPP partners that would lower tariffs on tobacco and increase the incidence of smoking.

4. To reduce worldwide tobacco consumption, tobacco must be carved out from all protections afforded under the TPPA.

Unless tobacco products are excluded from all of its provisions, the TPPA has the potential to validate trade-based challenges to tobacco control measures and limit the ability of sovereign governments to use proven tactics of discouraging tobacco use. If tobacco products are granted protections under the TPPA, there is a serious prospect for losing ground and exacerbating current tobacco use around the globe. The Trans Pacific Partnership Agreement (TPPA) has the potential to undermine much of the progress made in tobacco control by limiting the ability of sovereign governments to use proven measures to discourage tobacco use.

The U.S. has the opportunity to forge a trade agreement for the 21st century, that promotes progress in public health. We should lead the way forward by eliminating the prospect for tobacco companies to manipulate trade rules in order to thwart the sovereign authority and obligation of states to protect health.

To reaffirm America's position as a global leader in tobacco control, we ask that the U.S. exclude tobacco products from all provisions of the TPPA. US trade negotiators should not ask any nation to weaken its current anti-smoking or alcohol control strategies.

In this event tariffs and other price controls designed to decrease tobacco use will remain in effect. New intellectual property rights would also not be extended to tobacco manufacturers, which they could otherwise use to challenge effective product controls on marketing and packaging such as warning labels. Hard fought victories in tobacco control must not be sacrificed the interest of promoting free trade.

It is imperative that the United States play a leadership role to reduce tobacco use and its devastating consequences around the world. Accordingly, notwithstanding any language to the contrary, nothing in the TPPA should block, impede, restrict, or modify the ability of any party to take or maintain any action, including tariffs or domestic content requirements, relating to manufactured tobacco that is intended or expected by the trading party to prevent or reduce tobacco use or its harms, or that is reasonably likely to prevent or reduce its use or harms. Moreover, if there occurs a conflict between provisions of this TPPA and any party's efforts to comply with the Framework Convention on Tobacco Control, the terms of the FCTC must prevail. Trade liberalization should not trump the goal of saving lives and promoting and protecting public health.

The US has already exempted other harmful products such as firearms from coverage by intellectual property rules and investor-state challenges. This should be our consistent position with regard to tobacco products and leaf tobacco.

Finally, the medical professions and public health would benefit from being well informed about trade policy, and are well positioned to advise the US Trade Representative on policies and measures that would safeguard health while promoting economic growth. We continue to advocate for full public health representation on trade advisory committees.

In conclusion, USTR should exclude tobacco and tobacco products from the TPPA and from all future free trade agreements.

Thank you for your consideration. We look forward to continued discussion on this important topic.

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¹ Report 18 of the Board of Trustees, American Medical Association, (A-04), International Trade Agreements, (Resolution 219-A-03), 2004.

² Joseph Brenner and Ellen Shaffer, co-directors, Center for Policy Analysis on Trade and Health (CPATH), Comments to USTR: Proposed United States-Trans-Pacific Partnership Trade Agreement [Docket: USTR-2009-0041] (January 25, 2010), available at:

³ <http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480a83af2>

⁴ Matthew Meyers, President of Campaign for Tobacco Free Kids, Comments to USTR: Proposed United States-Trans-Pacific Partnership Trade Agreement [Docket USTR-2009-0041] (January 25, 2010), available at:

⁵ <http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480a831a4>

⁶ <http://www.who.int/mediacentre/factsheets/fs310/en/index2.html>

⁷ http://www.cdc.gov/tobacco/data_statistics/fact_sheets/health_effects/tobacco_related_mortality/

⁸ http://www.cdc.gov/tobacco/data_statistics/fact_sheets/health_effects/tobacco_related_mortality/

⁹ http://www.cdc.gov/tobacco/data_statistics/fact_sheets/secondhand_smoke/health_effects/

¹⁰ <http://www.nlm.nih.gov/medlineplus/smokingand youth.html>

¹¹ World Health Organization (2011). Tobacco Fact Sheet. Available at www.who.int/mediacentre/factsheets/fs339/en/index.html

¹² http://whqlibdoc.who.int/publications/2011/9789240687813_eng.pdf

¹³ <http://summaries.cochrane.org/CD003439/does-tobacco-advertising-and-promotion-make-it-more-likely-that-adolescents-will-start-to-smoke>

¹⁴ http://www.who.int/tobacco/global_report/2011/en/index.html

