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# THE TRANS–PACIFIC PARTNERSHIP AGREEMENT: CHALLENGES AND POTENTIAL

## JOINT HEARING

BEFORE THE

SUBCOMMITTEE ON TERRORISM, NONPROLIFERATION, AND TRADE

AND THE

SUBCOMMITTEE ON ASIA AND THE PACIFIC

OF THE

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# THE TRANS–PACIFIC PARTNERSHIP AGREEMENT: CHALLENGES AND POTENTIAL

**THURSDAY, MAY 17, 2012**

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON TERRORISM,
NONPROLIFERATION, AND TRADE AND
SUBCOMMITTEE ON ASIA AND THE PACIFIC,
COMMITTEE ON FOREIGN AFFAIRS,
*Washington, DC.*

The committee met, pursuant to notice, at 2 o'clock p.m., in room 2360 Rayburn House Office Building, Hon. Donald A. Manzullo (chairman of the Subcommittee on Asia and the Pacific) presiding.

Mr. MANZULLO. We are having a joint subcommittee hearing with the Subcommittee on Terrorism, Nonproliferation, and Trade, chaired by Mr. Royce of California, and the Subcommittee on Asia and the Pacific, chaired by me. We are going to start with opening statements, and then there will be a series of votes, and then we will come back. I am sure Mr. Royce will have an opening statement, and then we can just have you stick around for about 35 minutes and watch the excitement on C–SPAN. We appreciate you coming.

The Trans-Pacific Partnership free trade negotiation is one of the most significant opportunities we have for trade liberalization in the world today. The nine-country pact, if successfully completed and passed by Congress, will offer more direct benefits to the United States than many prior free trade agreements. TPP brings together the U.S. and eight Pacific Rim nations in a high quality, 21st Century legal framework that promises to shape the future of Asia, and possibly of the rest of the world.

It is in this part of the world, the Asia-Pacific region, that has the fastest-growing economies and most populous nations; and, it must be our mission to help American companies succeed in exporting to these markets so that we grow more jobs here at home. In fact, direct exports from Illinois, the Land of Lincoln to TPP countries more than doubled from 3.4 billion in 2005 to 7.7 billion in 2011, making Illinois the third-largest exporting state in the nation to the TPP countries, after Texas and California.

The importance of TPP for America's long-term economic future is clear. First, the TPP offers the U.S. an invaluable opportunity to shape the development of trade rules in the fastest-growing region of the world. If we abdicate this responsibility and opportunity, we stand a real chance of allowing our competitors to write the rules of the game.

We need to take a leadership role so that we can ensure American priorities, such as strong protection for intellectual property, open markets, and economic freedom, are incorporated into the foundation of regional trade. I cannot stress how important this is, and what an opportunity this represents for our nation.

Second, we must proactively work together to reduce onerous regulations and trade barriers in Asia, so that American exporters and investors can recognize the benefits of growing markets. TPP promises to lower the cost of American exports overseas by reducing tariffs and other trade barriers, thus making our goods more competitive.

In addition, TPP negotiators must address preferential treatment of state-owned enterprises and key market access concerns in order to level the playing field for American companies.

I have no illusions about the challenges of negotiating a nine-country free trade agreement. The reality is that free trade agreements face tremendous political opposition here at home and abroad. Important sector-specific issues must be dealt with, and difficult decisions must be made by all negotiating parties in order to achieve a final agreement. The possible inclusion of Japan, Canada, and Mexico complicates matters exponentially, and may even threaten the viability of the agreement.

I worry that Japan does not have the political will to make difficult reforms in its automotive, financial services, and agriculture sectors to meet the demands of our industry stakeholders. If Japan can pull it together, I am fully supportive of their inclusion in TPP.

I look forward to hearing the testimony of our distinguished witnesses and the opening statement of our co-committee host.

Mr. ROYCE [presiding]. Thank you. Thank you, Mr. Manzullo. I appreciate that. Let us go to Mr. Sherman from California.

Mr. SHERMAN. You would think that having gone from the largest trade surplus in the history of mammalian life to going to largest trade deficit, the elites of this country would understand that we are getting something wrong. But nothing prevents a person from understanding so much as that their livelihood depends on not understanding it, and the elites in the foreign policy world and in the business world have a big chunk of their livelihoods dependent on not understanding why we are running the largest trade deficit. And we can create a phony economic model in our minds—it happens to fit economic theory as long as you ignore the practice—that if we open up our markets by lowering our published tariffs and other published rules, that other countries will be opening their markets by changing their published laws and rules, as if every country in the world is just like us and matches an Adam Smith model.

The fact is that if you are a businessperson in Vietnam or a decisionmaker in Vietnam, it doesn't matter what is on the tariff schedule. You are not going to buy American goods if it is politically incorrect. You are not. You can get a phone call from Hanoi telling you what to buy. Imagine if one of us called a manufacturer in our area, or called an auto dealer in our area, and said, "Don't buy the European goods. Don't buy the Asian goods." Either we would be laughed at, or there would be a press conference: "Congressman Tries to Pressure Local Businessperson."

What happens in Vietnam when a phone call is made from Hanoi? Do you think they hold a press conference to denounce the Communist Party of Vietnam? I don't think so. So we will construct in our minds this phony world, this theoretical world, in which every country is just like us, and in which, if we can just get other countries to change their statutes and open their markets, and we will cling to this phony belief because understanding the real world undermines the livelihoods of the elites that our running our trade and foreign policy.

We were told by the U.S. International Trade Commission that giving MFN to China would increase our trade deficit by only $1 billion. They were only off by 20,000 percent, and they will be off again today.

America is in the driver's seat in trade negotiations, but we have given the wheel to Wall Street. We are in the driver's seat because what every country wants is access to the U.S. market, but have we used that to open other markets? Only in a phony way. Only in a theoretical way.

Numbers don't lie. We have given control of this international trade policy to elites that have not just run the car into a ditch, they have run it over the cliff and down into the Grand Canyon: The most spectacular failure ever in economic policy.

And why don't we talk about it? Because the elites that run this country don't want to. Because you are called a protectionist if you actually look at the results of our trade policy. As if you are too stupid to understand the theoretical beauty of these trade agreements. If you look at the results, you must be stupid. You must be a protectionist.

I look forward to the day when we have balanced trade. If we had balanced trade, we would have a labor shortage in this country, and rising wages. We would return to the optimism of my youth, when everybody expected that every generation would live better than the generation before, not just every generation of Wall Street executives living better than that before.

And finally, this is an agreement where we don't know what the rules of origin will be. But we do know that in the Korea Free Trade Agreement, goods can be 65 percent made in China, 35 percent finished by Chinese workers living in barracks in South Korea, and get free entry into the United States. And this agreement as well may give China all the benefits of a free trade agreement with the United States—or, one would argue, only 65 percent of those benefits—while giving us not even theoretical access to the Chinese market.

There is a reason why the middle class in this country has not achieved what we expected it would when I was young, and there is a reason why you are not allowed to talk about it without being labeled too stupid to understand the theoretical beauty of free trade. I look forward to real open markets, and this TPP is not the way to do it.

I yield back.

Mr. ROYCE. I thank the gentleman. And in terms of free trade agreements, I guess one of the questions is how you structure the agreements. We have a $23-billion surplus in manufactured goods with our 17 FTA partners. One of the things that is problematic

for the United States is our dependency on oil. Imported oil accounts for our trade deficit in terms of the 17 current trade agreement partners.

If we exclude oil, then we have a surplus. As I say, in manufacturing, we have got a surplus. But we have got a problem in terms of the importation, and the cost of importation, of oil with respect to FTA partners. I don't know.

I just got the data from the Department of Commerce, and they claim with Australia, with our trade agreement, our change in U.S. exports went up 59 percent. Imports went up 41 percent. Bahrain, which was another relatively recent agreement, our exports went up 48 percent, the imports actually came down 20 percent. In terms of CAFTA, exports went up 50 percent, the imports came up 7 percent. As I say, this is the Commerce Department analysis. With Chile, exports went up 341 percent, imports went up 122 percent. Morocco, exports went up 199 percent, and imports went up 97 percent. And with Singapore, exports went up 68 percent, and imports came up 5 percent.

So yes, we have to do a better job in terms of the way we negotiate these agreements. But there is a reality that the Asia-Pacific region is tough to ignore. It is 60 percent of the global gross domestic product. It is 50 percent of international trade. And the forecasts show that half of the world's $22 trillion in economic growth over the next 5 years is going to be in Asia.

So unless the United States acts, and acts wisely—we have got to negotiate this to our interests—but we could face the prospect of being locked out of this dynamic region. And here is the concern that we have heard from a former Secretary of State. He said, "Don't allow a line to be drawn down the middle of the Pacific."

Asian countries have aggressively pursued trade agreements among themselves, and as a consequence, a line can be drawn. A hundred and eighty of these agreements are currently in force in Asia. Twenty are awaiting implementation there. Seventy are being negotiated as they work out free trade agreements throughout the region, and it is no coincidence that the U.S.'s share of exports to Asia has declined by 10 percent over the last decade.

We are currently party to three free trade agreements in Asia. So the Obama administration, and prior to that the Bush administration, have backed TPP. TPP countries are our fifth-largest trading partner. If Japan were added, the bloc would represent one third of global GDP. Other countries want in.

The preeminent trading bloc in the world's fastest-growing region offers the United States considerable economic benefits, but diplomatic and strategic benefits, too. And it is ambitious in content. It would contain provisions that would go beyond traditional tariff reductions, covering issues of cross-border services, of labor, and of intellectual property. TPP's diverse countries will have to tackle other issues, such as supply chain management, government procurement, and state-owned enterprises. It is tough to see Vietnam's state-owned enterprises representing 40 percent of output being acceptable.

But there is an opportunity to change that in terms of inclusion into the agreement. And the goal, obviously, with TPP, for the countries in it, is to reach a final text by year's end, and this would

require strong leadership out of the executive branch. We haven't had a request for trade promotion authority out of the administration. I think some of the witnesses will raise that issue.

The U.S. has placed great importance on TPP. In many respects, it has become more than a trade agreement: It is linked to our security and diplomatic goals in Asia. Ninety-five percent of the world's customers live outside of the United States, but according to a study of global competitiveness, America ranked a disastrous 121st out of 125 countries in terms of tariffs faced by our products overseas. This is the area where we have to lean in and get trade agreements that open markets for the United States, so we need to be doing all we can do to hammer away at these barriers.

And I thank everyone. We are going to have to recess for these votes, and we will come back afterwards. Thank you.

[The prepared statement of Mr. Royce follows:]

*Joint Subcommittee Hearing*
Terrorism, Nonproliferation, and Trade & Asia and the Pacific
***The Trans-Pacific Partnership Agreement: Challenges and Potential***
May 17, 2012

Opening Statement – Rep. Ed Royce

Today, we examine the Trans-Pacific Partnership, a promising trade initiative now involving nine countries.

The economic importance of the Asia-Pacific region cannot be overstated. The region accounts for nearly 60 percent of global gross domestic product, and roughly 50 percent of international trade. Forecasts expect approximately *half* of the world's $22 *trillion* in economic growth over the next five years to be in Asia.

Unless the United States acts, however, U.S. workers face the prospect of being locked-out of this dynamic region. In the late 1980s, then-Secretary of State James Baker warned not to allow a "line to be drawn down the middle of the Pacific." Recently, as Asian countries have aggressively pursued trade agreements among themselves, that line is being drawn. By one estimate, 180 of these agreements are currently in force, 20 are awaiting implementation, and 70 are being negotiated. It's no coincidence that U.S. share of exports to Asia has declined by over 10 percent in the last decade. Indeed, the U.S. is party to only *three* free trade agreements in Asia.

Faced with a lock out, the Bush and Obama Administrations have backed the TPP. Taken together, TPP countries represent our fifth-largest trading partner. If Japan were added, the bloc would represent over one-third of global GDP. Other countries want in. The preeminent trading bloc in the world's fastest growing region offers the United States considerable economic benefits, but diplomatic and strategic benefits too.

TPP is ambitious in content. The TPP would contain provisions that go beyond traditional tariff reductions – covering issues of cross-border services, labor, and intellectual property. TPP's diverse countries will have to tackle other issues, such as supply chain management, government procurement and state-owned enterprises. It is tough to see Vietnam's SOE's – representing 40 percent of output – being acceptable.

TPP countries aim to reach a final text by year's end. This would require *strong* White House leadership. To date, this Administration has not requested trade promotion authority, a problem several of our witnesses raise.

The U.S. has placed great importance on TPP. In many respects, it has become more than a trade agreement, being linked to our security and diplomatic goals and prestige in Asia.

Ninety-five percent of the world's customers live outside the United States. But according to a study on global competitiveness, America ranked a disastrous 121st out of 125 economies in terms of "tariffs *faced*" by our products overseas. We need to be doing all we can to hammer away at these barriers. TPP must help.

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[Recess.]

Mr. ROYCE. We will reconvene at this time.

Mr. MEEKS. Thank you, Mr. Chairman, for this well-timed hearing, coming just a day after the 12th round of TPP negotiations closed in Dallas, Texas. And it is good to see some of our witnesses—two of our witnesses, Ms. Menghetti and of course Ambassador Schwab—to see them here, today, to testify. And I definitely look forward to hearing from your views, and Dr. Levy's and Ms. Drake's testimony as well.

I will start by saying that I see TPP through the prism of job creation first and foremost. It just makes sense to me that deepening our trade ties in a region that makes up 50 percent of global GDP is the right thing to do. It makes sense to me that the American people benefit when American companies—small, medium, and large alike—get greater access to such a large portion of the world's consumers. That is why I am a strong supporter of President Obama's export initiative, and I believe TPP is crucial and critical to that initiative. We cannot neglect the region that has 40 percent of the world's population and some of the fastest-growing economies.

It is always the case that trade agreements are about more than the exchange of goods and services. When we negotiate trade agreements, we are not just looking to deepen economic ties. TPP is also a promising prospect from the security and foreign policy aspects. Each of the TPP countries have a role in U.S. strategic interests in Asia. Over the years, Asian nations have negotiated nearly 200 trade-related agreements. The United States is a partner in only three of those agreements, most recently the Korea FTA. Australia and Singapore are the other two.

It is in our best interests to quickly change this reality. Eight partner countries is a good place to begin with. I am aware that there are many challenges involved in negotiating an agreement with such a diverse group of countries. In today's hearing, I look forward to the perspective of our prestigious witnesses on the many challenges ahead. I believe the benefits of moving forward outweigh the costs, but I want to hear how we might address those concerns.

And I know, for example, when it comes to a nation like Vietnam, the disciplines on state-owned enterprises is a critical issue, as evidenced by the intense discussions during the Dallas round this week. I also know that we must carefully consider how we address labor issues as we proceed, and I would like to hear our witnesses consider how the May 10th, 2007 deal figures in addressing labor concerns with TPP.

Investors, inter-state dispute settlement, and the possibility of Canada, Japan and Mexico joining: The list of challenges is certainly significant. However, I am convinced that this agreement is worth doing, and Mr. Chairman, I can't wait to hear the witnesses.

Mr. ROYCE. Fair enough, Mr. Meeks. Thank you very much. Let me just tell you all a little bit about Ambassador Susan Schwab, a professor at the School of Public Policy at the University of Maryland. And before rejoining the University of Maryland, she served as the United States Trade Representative, where she successfully concluded bilateral FTAs with Colombia, Panama, and South Korea. She also served as a Trade Policy Officer in the U.S. Em-

bassy in Tokyo, and under her leadership the U.S. began negotiations with the TPP members.

Ms. Linda Menghetti is vice president of the Emergency Committee for American Trade. She advises companies and works with administration officials on trade and investment legislation, and on policy. Prior to that, she was Chief Minority Trade Counsel and Minority Trade Counsel for the Senate Finance Committee.

Ms. Celeste Drake is the Trade and Globalization Policy Specialist at the AFL–CIO. Prior to joining the AFL–CIO, she served with Congresswoman Linda Sanchez as Legislative Director, and was responsible for advising the Congresswoman on her work on the Ways and Means Committee. We welcome her here.

Dr. Phil Levy teaches international trade at Columbia University's School of International and Public Affairs. He was a scholar at the American Enterprise Institute, and he served as Senior Economist of Trade on the White House's Council of Economic Advisors. He served at the State Department on policy planning staff there. So thank you very much, Dr. Levy.

Ambassador Schwab, would you like to begin?

Ms. SCHWAB. Thank you, Mr. Chairman.

Mr. ROYCE. I will ask you one favor. If you would summarize your testimony in 5 minutes, and then we have got the record here, and then we will go to questions.

**STATEMENT OF THE HONORABLE SUSAN C. SCHWAB, PROFESSOR, SCHOOL OF PUBLIC POLICY, UNIVERSITY OF MARYLAND (FORMER UNITED STATES TRADE REPRESENTATIVE)**

Ms. SCHWAB. Mr. Chairman, thank you very much. Mr. Chairman, thank you. I am very pleased to be here. Congressman Meeks, it is great to see you again as well. I will summarize my testimony, and I have submitted more detailed testimony for the record. As you noted, the Trans-Pacific Partnership was initially outlined and launched in the latter part of the Bush administration, where I had the great privilege to serve as the U.S. Trade Representative.

We had both defensive and offensive objectives, and motivations, for launching such a negotiation. We had free trade agreements at the time with Singapore and Australia. We had negotiated the KORUS FTA, but we really were concerned about the growing network of bilateral and regional deals being negotiated without us. We were concerned that we could see a situation where U.S. companies—U.S. industry, agriculture, services, investment—were going to be locked out of preferential trade deals that were being negotiated in the region.

Meanwhile, on the multilateral front, the Doha round was stalling out in Geneva, and we saw the TPP as an opportunity to open markets and to maintain access for U.S. exports of agriculture, of manufactured goods, services, and investment opportunities, particularly for small and medium-size companies, as well as for larger companies. Because if you think about tariff and non-tariff barriers, they have a bigger negative impact on small and medium-size companies than on large companies, which can invest behind those barriers. My written testimony has a chart that shows the benefits

that have accrued to small- and medium-size U.S. companies from these kinds of agreements.

We also saw it as a potential for building precedents for future bilateral, plurilateral and multilateral negotiations. I continue to support the Trans-Pacific Partnership, and am delighted to see that the Obama administration has gone ahead with these negotiations.

But I would note, I am not in government. I am not privy to any of the negotiations going on, and therefore I am not in a position to second-guess the progress that is being made. That really is what our statutory private-sector advisory committee system is for, along with congressional hearings and formal consultations. And while it is very easy to second-guess one's predecessors and successors as trade negotiators, each negotiation is unique.

What I would like to do, therefore, is just offer a couple of observations that helped to guide me as a trade negotiator, and our motivations when we launched the TPP. First and foremost, the objective was to create precedents. A high-bar, high quality, high standard agreement. Creating precedents when it came to market access, comprehensive enhanced market access for U.S. exports of goods, services and investment. The protection of intellectual property, particularly in this era of knowledge-intensive growth, and the importance of knowledge-intensive value-added sectors. Leveling the playing field when it came to private firms competing with state-owned and state-supported enterprise; government procurement; science-based sanitary and phytosanitary standards, not allowing them to be used against our agricultural commodities, and so on.

And I would note, given the moderate size, the sort of modest size of markets currently involved in the TPP negotiations, and the fact that we already have FTAs with several of those countries, precedents are particularly important. And these issues should be negotiated with the likes of China, India, Brazil, the EU and future negotiations in mind.

And I would note, there is no reason why the TPP ultimately needs to stay in the Asia-Pacific region. If a country and countries outside of the region are willing to become a part of this negotiation later, as we build concentric circles around this deal, it could ultimately become a WTO-plus template for a broader, multilateral agreement.

I am going to close with that. I think this has the potential of being an extremely important trade agreement for the United States. And while it is no substitute for a strong and vibrant multilateral trading system, it can ultimately contribute to such a strong and vibrant multilateral system.

[The prepared statement of Ms. Schwab follows:]

**Testimony of**

**Susan C. Schwab**

**Former U.S. Trade Representative and**
**Professor, School of Public Policy, University of Maryland**

**on**

**"The Trans-Pacific Partnership Agreement: Challenges and Potential"**

**Before the Subcommittee on Terrorism, Nonproliferation, and Trade and the Subcommittee on Asia Pacific of the Committee on Foreign Affairs of the U.S. House of Representatives**

**May 17, 2012**

Good afternoon. Mr. Chairmen, Ranking Members, and Members of Congress. I want to thank you for the opportunity to participate in this hearing and I also want to thank my fellow panelists for their participation in this hearing today.

I appreciate this opportunity to offer some thoughts on the Trans-Pacific Partnership negotiations.

As Members of the Committee know, we initially outlined and launched the negotiation of the Trans-Pacific Partnership (TPP) during latter part of George W. Bush Administration, when I had the privilege to serve as the United States Trade Representative (USTR) from 2006-2009.

Initially TPP began in 2007 as an exploratory services and investment negotiation between the P-4 (Brunei, Chile, New Zealand, and Singapore) and the United States. By September 2008 the TPP had become a P-8 negotiation involving the P-5 along with Australia and Peru, and Vietnam interested. By then we had also made overtures to Japan, Mexico, and Canada.

At the time, the U.S. already had FTAs with Chile, Peru, Singapore and Australia, and was awaiting Congressional approval for KORUS FTA. But we were concerned about a growing network of Asia-Pacific bilateral/regional agreements that would exclude the U.S. At the same time, progress had stalled in the Doha Round of multilateral trade negotiations.

We thought then, and I still believe, that the TPP represented an opportunity to open markets and maintain access for U.S. trade and investment interests in the Asia-Pacific region. The TPP will create WTO-plus precedents for future bilateral, plurilateral, and multilateral negotiations, and lay the groundwork for a potential Free Trade Area of the Asia-Pacific (FTAAP).

While I support TPP in concept, I am no longer in government. And despite USTR's commitment to transparency, I am not privy to any insider information about the negotiations and am not in a position to comment on progress being made until it is public. That is what the statutory private sector advisory committee system is for. It is why we were here today, it is why there are congressional hearings and formal, and informal, consultations.

It is very easy to second guess ones predecessors and successors as trade negotiators and often very unfair because each negotiation is unique. While I defer to Ambassador Kirk and the experts at USTR in the conduct of this negotiation, I am happy to share some general thoughts that were my own guides in deciding to launch this negotiation.

Most important, the key was to create a high standard, high bar trade agreement, building on the standards that were set in agreements such as the KORUS FTA, to create a WTO-plus caliber deal. This agreement has always been about setting the right precedents. This should be as true whether it is in relation to maintaining strong protections for intellectual property; delivering market access; leveling the playing field when it comes to private firms competing with state owned (SOEs) and state supported enterprises (SSEs); or opening government procurement. We need science-based sanitary and phytosanitary (SPS) standards, rather than facing SPS barriers that block trade. We must set high standards for the entire range of cross-border services and investment issues. While TPP directly affects U.S. trade interests with the current TPP

participants, in my view, this agreement should be negotiated with other countries – China, India, Brazil, Indonesia and the EU, for example - and future trade agreements in mind. This focus on precedents makes particular sense given the modest new market potential involved in the current talks.

It is perhaps inescapable that the result of the most recently concluded negotiation becomes the starting point – or at a frame of reference -- for the next agreement. A high-standard TPP is crucial to set the bar for future negotiations.

It was never our intent to stop at P-5 or what one could today call TPP-9 or TPP-11 (with Canada and Mexico) or TPP-12 (with Japan, if they choose to come in). The idea is that any country willing to accept a high bar agreement should be able to join. The bigger, the better, although sequencing issues can get sticky.

In fact, there is no reason TPP needs to stay within the Asia-Pacific region if a country outside the region wants to embrace this high standard agreement. The original vision kept open the prospect of ultimately using TPP precedents to help revitalize the WTO and the multilateral trading system.

Which gets me to the issue of multilateral vs. bilateral and regional trade agreements. I am proud of the exceptional trade agreements negotiated during the Bush Administration. At the beginning of our administration, the U.S. had free trade agreements with three countries. By the time we left office, the U.S. had concluded FTAs with seventeen more and fourteen of those were in effect.

The FTAs with Colombia, Panama and Korea that we negotiated and signed were finally submitted by the Obama Administration for Congressional approval last year and signed into law. The KORUS FTA went into effect in March; and the Colombia Trade Promotion Agreement went into effect Tuesday. All three received significant bipartisan support in Congress.

So as of today, the U.S. has FTAs in effect with 19 countries. As you can see from the attachments to my testimony, our FTAs have made important contributions to the U.S. economy. Small and medium businesses have benefited from the export opportunities, and in the past five years, the U.S. has even run a manufacturing trade surplus with our FTA partners.

According to the National Association of Manufactures, even though U.S. trade agreements only cover 12.5% of GDP outside the U.S., they account for nearly 55% of U.S. manufactured goods exports and a $30 billion manufactured goods surplus.

Bilateral and regional agreements tend to be broader in scope and more ambitious than multilateral agreements. That said, they are no substitute for a vibrant and expanding multilateral system – hence my continued focus on making the U.S. TPP strategy and integral part of a broader multilateral strategy that should include sectoral agreements like expansion of the Information Technology Agreement (ITA), a services sectoral agreement, and a trade facilitation agreement.

Multilateral agreements involve more countries and are more readily enforced. They also help to stem the commercially damaging proliferation of rules of origin that damage global supply chains and skew commercial transaction based on comparative advantage. The noodle bowl of bilateral and regional deals is alive and well and both helping and hurting the cause of free and fair trade around the world.

Before I close, I'd like to flag three institutional factors that concern me related to the TPP.

First: The absence of Trade Promotion Authority. It is almost too late in the negotiation process for the Administration to seek the fast track authority for an up or down vote without amendments for implementation of a TPP agreement. This should worry negotiators from all countries and Members of Congress alike.

Second: The Obama Administration's decision to exclude registered lobbyists from the statutory private sector advisory committees that advise our trade negotiators. This means that those registered to lobby Congress cannot directly influence the negotiations and those influencing the negotiations cannot lobby Congress – so there is now a disconnect between input received by the Executive and Legislative branches of government from the designated representatives of industry, labor, environmental, consumer, agriculture and other NGO groups.

Third: The Obama Administration's highly ill-advised trade reorganization proposal to fold USTR into the Commerce Department is surely a drag on the morale and attention of the superb career negotiators at USTR and the other agencies involved in the TPP talks.

All three of these issues represent self-inflicted wounds that arguably undermine U.S. negotiators and the strength of our stance at the negotiating table.

Mr. Chairman, thank you for the opportunity to appear before you today, and I would be pleased to answer any questions you or the Members of the Committee may have.

Mr. ROYCE. Thank you, Ambassador.
Ms. Menghetti?

**STATEMENT OF MS. LINDA MENGHETTI, VICE PRESIDENT, EMERGENCY COMMITTEE FOR AMERICAN TRADE**

Ms. MENGHETTI. Thank you, Mr. Chairman, Chairman Royce, Chairman Manzullo, members of the subcommittees. I will be summarizing my full written testimony.

I am vice president of the Emergency Committee for American Trade, ECAT, an organization of the heads of leading U.S. business enterprises representing all major sectors of the U.S. economy. ECAT also serves as a secretariat to a much broader U.S. Business Coalition for TPP.

The United States' successful participation in the TPP negotiations is critically important for the U.S. business community, to America's role in the Asia-Pacific and the international economy. There are over 100 free trade agreements in negotiation or in force in the Asia-Pacific, most of which exclude the United States, although we are in a stronger position, given the work of many members of your two subcommittees, including Chairmen Royce and Manzullo and Congressman Meeks, in securing the U.S.-Korea FTA last year.

For the business community, the TPP is important in its own right and as a building block that could eventually bring in other major trading nations that share the same ambitious vision. The TPP negotiations also provide an unparalleled opportunity to forge a stronger template for regional trade and deal directly with how businesses operate in the 21st century.

The discussions that many of my colleagues and I held with numerous delegations in Dallas indicate that there is momentum in the negotiations in progress. It is crucial that that momentum continue, and that several key principles are incorporated into the final TPP.

First, the final TPP should open markets comprehensively, for all goods and services, and investment, and apply the core rules to all countries. Such a result will have enormous benefits for U.S. ranchers, farmers, manufacturers, and service providers in every state. Yet, such an ambitious result is threatened. If the United States excludes, wholly or effectively, major manufactured or agricultural products, be it sugar, dairy or apparel, Australia excludes investor state enforcement, or the ASEANs exclude financial services, what else will other countries take off the table, let alone a Japan, Canada, or Mexico, which seek to join the TPP? We simply do not see a successful conclusion to the TPP on a less than comprehensive basis.

The second issue is the ultimate standard for all the key rules. I will just focus on two, although there are many being negotiated. Of particular importance to the U.S. business community are the TPP investment rules, that should seek to ensure that U.S. companies have access to foreign markets and consumers, are treated with the same types of base-level protections that we enjoy through our Constitution and laws here in the United States, and that they have access to impartial enforcement mechanisms when difficulties arise.

U.S. investment overseas is vital. It helps drive our exports. It increases pay scales. And contrary to conventional wisdom, U.S. investment overseas is largely used as a platform to make sales overseas, not to displace production in the United States. As reflected in a February 2012 letter to the President from the business community, a strong outcome on investment is absolutely critical.

Similarly critical are strong protections for intellectual property and their effective enforcement, building off of the world-class provisions that we've seen in the U.S.-Korea FTA. As the heads of 33 business associations, including my own, recently wrote to the President, more, not less, rigorous IP rules are needed to thwart the explosion in IP infringement, piracy, and counterfeit products throughout all sectors of the economy.

Third, it is vital to achieve concrete progress on the new 21st century issues being addressed in the TPP negotiations, from regulatory coherence and state-owned enterprises to supply and production chains and e-commerce. Of particular interest to all internationally engaged businesses are e-commerce and related issues that trade agreements have not fully addressed, despite increasing barriers overseas.

The final TPP should incorporate commitments to spur innovation and eliminate barriers to cloud computing, cross-border data flows, as well as more traditional issues.

Fourth, it is important that the TPP be a living agreement, both in terms of its admission of new members, but also in its continued ability to open markets.

Fifth, time is of the essence in concluding these negotiations. None of us want the TPP negotiations to become the next Doha that never concluded, so we must work to promote their timely confusion on a comprehensive and ambitious basis.

The lapse of trade negotiating authority for trade agreements has been, without a doubt, a drag on the ability of the United States to pursue a robust trade agreement agenda. While it is vital for the TPP negotiations to continue apace, it is also imperative that Congress and the administration work aggressively and quickly to restore the congressional-executive branch partnership that trade negotiating authority represents.

Thank you.

[The prepared statement of Ms. Menghetti follows:]

Emergency Committee
for American Trade

**TESTIMONY OF LINDA MENGHETTI**
**VICE PRESIDENT OF THE**
**EMERGENCY COMMITTEE FOR AMERICAN TRADE (ECAT)**

**ON**
**THE TRANS-PACIFIC PARTNERSHIP AGREEMENT: CHALLENGES AND POTENTIAL**

**BEFORE THE SUBCOMMITTEE ON TERRORISM, NONPROLIFERATION, AND TRADE AND THE SUBCOMMITTEE ON ASIA PACIFIC OF THE COMMITTEE ON FOREIGN AFFAIRS OF THE U.S. HOUSE OF REPRESENTATIVES**

May 17, 2012

Mr. Chairmen and Ranking Members, Members of Congress. Thank you for the opportunity to appear before both your Subcommittees today. My name is Linda Menghetti and I am Vice President of the Emergency Committee for American Trade – ECAT.

Founded in 1967, ECAT is an organization of the heads of leading U.S. international business enterprises representing all major sectors of the American economy. Their annual worldwide sales exceed $3.0 trillion and they employ more than 6.4 million persons. ECAT's purpose is to promote economic growth through the expansion of international trade and investment. ECAT also serves as the secretariat to the broader U.S. Business Coalition for TPP that represents U.S. agricultural producers, manufacturers and service providers that seek a comprehensive, ambitious and high-standard outcome from the TPP negotiations.

International trade and investment are important because they significantly improve the lives of the American people. Participation in international commerce not only sustains many American jobs, it raises the pay scales for millions of workers and saves the average American family thousands of dollars per year. Workers at companies engaged in global commerce earn, on average, almost one-fourth more than those working in U.S. firms only engaged domestically. International trade and investment also create new opportunities that help sustain and build jobs in the United States, helping to overcome the losses in U.S. employment which result from low-economic growth in the U.S. market, combined with higher rates of productivity. Many of our companies seek the growth in markets overseas – which can generate 40, 50 and even 70 percent of our U.S. companies' global revenues. And all Americans benefit from the lower prices, inflation and interest rates that international trade helps generate. Expansionary international trade and investment policies are also important for the United States to continue to serve as the world's leading example for achieving economic success and prosperity through freedom, free-market principles, the rule of law and economic engagement. The United States' successful participation in the Trans-Pacific Partnership (TPP) negotiations, therefore, is a critical part of sustaining American leadership on these issues which are so important economically to the United States.

The Asia-Pacific region is one of the most dynamic regions in the world in terms of economic and population growth, as well as accelerated international economic integration. In the Asia-Pacific region, there are over 100 free trade agreements in negotiation or in force, most of which exclude the United States and leave our farmers, manufacturers, service providers and workers at a competitive disadvantage. Major agreements include the ASEAN-Australia-New Zealand free trade agreement, the China-New Zealand free

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trade agreement and agreements between ASEAN and China and ASEAN and India. Just this week, Japan, China and Korea announced that they would be working together on a new free-trade pact. These agreements reflect a deepening of commercial ties amongst these partners, which leaves the United States at risk of being excluded from these vital growth markets.

Thanks to the work of many members of your two Subcommittees, including Chairmen Royce and Manzullo and Congressman Meeks, the United States was finally able to approve the Korea-U.S. Free Trade Agreement last year and bring it into force in March 2012. That brings to three the number of trade agreements the United States has in Asia – with trade agreements already in place with Singapore and Australia. We've done a bit better in our own part of the Pacific, with trade agreements with Canada and Mexico (NAFTA), Chile and Peru.

But as important as movement on the Korea-U.S. FTA and the other trade agreements is, the United States remains far behind the curve in the Asia Pacific. The successful conclusion of the TPP is critical to reversing that trend. Together, the TPP countries already represent the United States' fourth-largest trading partner by value, with over $210 billion in goods and services trade with the United States and more than 196 million new consumers, which will generate new opportunities for businesses throughout the U.S. economy and every state in the nation.

The TPP negotiations also provide an unparalleled opportunity to forge a stronger template for regional trade agreements that truly takes account of the international integration that will only increase throughout the 21st century. Achieving a Trans-Pacific Partnership agreement that is all-inclusive, high-standard and commercially meaningful will bring substantial benefits to U.S. businesses and their workers, as well as support broader U.S. interests in the Asia Pacific. In addition, an agreement that deals directly with how businesses operate in the 21st century – including through global supply and production chains, electronic commerce and cloud computing – will help the United States and its TPP partners better innovate and compete in the global marketplace.

The vision of the TPP is that it will extend over time to the other countries of the Asia Pacific, becoming a building block for regional integration and potentially the long-envisioned Free Trade Area of the Asia Pacific. Establishing a template based on expanded trade, investment, transparency and the rule of law for all of the Asia Pacific is very much in America's interest and a top business priority.

An East West Center working paper predicts that the conclusion and eventual expansion of the TPP agreement would allow "global benefits [to] grow from $16 billion in 2015 to $84 billion in 2020 and $104 billion in 2025." The Center also estimated that trade with Asia supported 27 percent of U.S. export-related jobs, a figure which had expanded 12 percent from 2002 to 2006.

## I. Background on the TPP Negotiations

Brunei, Chile, New Zealand and Singapore had completed their own free trade agreement, commonly referred to as the P-4 (or Trans Pacific Strategic Economic Partnership) in 2005, except for the chapters on investment and financial services which the parties continued to negotiate. The United States joined the P-4 negotiations on investment and financial services in February 2008 and, at the end of 2008, the Bush Administration announced that the United States would join negotiations to participate in an enlarged P-4, and was later joined by Australia, Peru and Vietnam. The Obama Administration reviewed the negotiations, sought public comment and consulted with Congress before making its announcement in late 2009 that the United States would participate fully in the TPP negotiations. Malaysia formally joined the negotiations in

October 2010. Canada, Japan and Mexico have requested to join the negotiations; those requests are being considered by the existing TPP negotiating partners.

Together, the current eight TPP negotiating countries already represent the United States' fourth-largest trading partner, with two-way goods trade in 2011 of $196.5 billion. U.S. goods exports to the TPP countries totaled $105.4 billion in 2011, and U.S. goods imports from the TPP countries totaled $91.1 billion that same year. U.S. cross-border services exports to these countries totaled nearly $29 billion and U.S. imports of services from these countries equaled approximately $13.5 billion in 2010. U.S. foreign direct investment in the TPP countries exceeded $297 billion and their investment in the United States equaled over $72 billion in 2010. Sources: U.S. Department of Commerce, Trade Stats Express (http://tse.export.gov); Bureau of Economic Analysis, Trade in Services (http://www.bea.gov/international/international_services.htm); Bureau of Economic Analysis, U.S. Direct Investment Abroad, Historical Cost Basis (http://www.bea.gov/international/di1usdbal.htm).

Over the last decade, U.S. trade with each of these countries has increased. What is most notable, as displayed in the chart below, is that U.S. exports to those countries with which the United States has already signed and implemented trade agreements – Australia, Singapore, Chile and Peru – have increased significantly in dollar value. Just those four countries accounted for 85 percent of the total increase in U.S. goods exports to the TPP countries between 2000 and 2011.

**U.S. Goods Exports to TPP Countries**
**2000-2011**
*(In US$ millions)*

| Country | 2000 | 2011 | Dollar Value Change 2000 - 2011 |
|---|---|---|---|
| Singapore | $15,999 | $28,224 | $12,226 |
| Australia | $11,684 | $25,491 | $13,807 |
| Chile | $3,183 | $14,498 | $11,315 |
| Peru | $1,580 | $7,412 | $5,833 |
| Vietnam | $331 | $4,153 | $3,823 |
| Malaysia | $10,122 | $12,326 | $2,203 |
| New Zealand | $1,900 | $3,350 | $1,450 |
| Brunei | $155 | $181 | $27 |
| **Total** | **$44,953** | **$95,636** | **$50,683** |

**Source:** Data from U.S. International Trade Commission (dataweb.usitc.gov) (Note that there are slight discrepancies in the reporting of data by the Commerce Department and the U.S. International Trade Commission which results in slightly different figures.)

## II. Vision of the TPP Negotiations

At the APEC Leaders' meeting in November 2011, the leaders of all the TPP countries laid out a strong vision for the TPP. In particular, the leaders affirmed the goal of the TPP negotiations is:

*". . . to establish a comprehensive, next generation regional agreement that liberalizes trade and investment and addresses new and traditional trade issues and 21st-century challenges."*

The leaders went on to explain:

*" We are confident that this agreement will be a* ***model for ambition*** *for other free trade agreements in the future, forging close linkages among our economies,* ***enhancing our competitiveness, benefitting our consumers and supporting the creation and retention of jobs, higher living standards, and the reduction of poverty in our countries."***

**Source:** *Trans-Pacific Partnership Leaders Statement, Honolulu, HI, November 2011* (emphasis added).

The "Broad Outlines" of the TPP agreement released in Honolulu were more detailed and ambitious than many had expected.

Before and after the Honolulu Leaders met, hundreds of negotiators from all nine countries have been working tirelessly to move toward these objectives. In March, the 11th round of negotiations was held in Melbourne, Australia, which I had the opportunity to attend. And I just returned over the weekend from the 12th round of negotiations being held in Dallas, Texas. The nine TPP countries have developed an ambitious negotiating agenda for the rest of the year, with the aim of completing the negotiations, as the President called for at the November APEC meetings.

For the business community, the TPP is important in its own right and as a building bloc that could eventually bring other major trading nations that share the ambitious vision to create a common set of rules and market opening more broadly throughout the Asia Pacific, providing even greater economic opportunity and benefits for the United States.

## III. Status of the TPP Negotiations

In many ways, the TPP negotiations are the most complex and challenging that the United States and our TPP partner countries have faced outside of the World Trade Organization and the now moribund Doha development agenda.

There are more than 24 chapters under negotiation, many dealing with ambitious market-access provisions and highly detailed rules, along with brand new issues on the table, including electronic commerce, supply and production chains and regulatory coherence. With multiple negotiating partners at different levels of development and economic openness, the challenges are many.

The discussions that my colleagues and I held with numerous delegations in Dallas indicate that there is momentum in the negotiations and concrete progress is being made in many chapters, albeit on smaller and medium-sized issues. It is crucial that those issues are resolved quickly so that decisions can be made on the bigger issues – many of which are politically sensitive.

While progress is certainly being made, the TPP negotiations are at a critical crossroads. The essence of the issue is that there appears to be a great gap between the ambitious vision of our Leaders and what is being proposed at the negotiating table. And virtually every country appears to have areas where its current negotiating proposals are far below the Leaders' vision. Let me just note some of the more obvious areas of divergence, recognizing that there are many others for each country:

- For the United States, limited or non-existent market access for imports of apparel, footwear and agricultural products like dairy and sugar are not a "model for ambition."
- For Chile and New Zealand, the standards sought on intellectual property protection are not a "model for ambition."
- For Australia, the rejection of investor-state arbitration (which I would note was recently reaffirmed by both the European Union and the United States as a core part of a strong international investment policy) is not a "model for ambition."
- For several of the ASEAN countries, approaches on liberalizing financial and other services are not a "model for ambition."
- The list could go on and on.

While some of the gap between the Leaders' ambition and individual-country negotiating positions may well reflect the stage of the negotiations – that some issues won't be resolved until the very end – there is great concern that the ultimate outcome may diverge from the vision and be far less than comprehensive, far less than high-standard and far less economic-growth and job creating.

As these negotiations continue I urge you consider several principles as you discuss and provide your views to our own Administration and the other TPP negotiating partners.

As part of our work as the Secretariat to the U.S. Business Coalition for TPP, we developed early on key principles that we in the business community believe are critical to achieve for these negotiations to be successful. I have appended those principles to my testimony, but I'd like to highlight several here today.

- Comprehensiveness for market opening and application of rules;
- high standards;
- concrete progress on new issues;
- creation of a living agreement; and
- timeliness.

**1. <u>Comprehensiveness or an Agreement that Excludes all Countries Sensitive Products and Issues</u>**

A key challenge to these negotiations and their potential to be built out successfully to other important Asia-Pacific economies is whether the end-result can truly be comprehensive or whether each country will continue to seek to exempt special products or rules, making for an end-result that will be neither ambitious nor in our country's economic interest.

From our perspective, the final TPP should open markets for all trade in goods, services and investment and apply the core rules to all countries. Such a result will have enormous benefits across the U.S. economy. For farmers and ranchers, a successfully concluded agreement will create new markets for beef, pork, chicken, grains and other key agricultural crops. For our manufacturers of everything from consumer goods, medical equipment and medicines, to transportation and other heavy equipment, an ambitious TPP will eliminate tariffs and non-tariff barriers, making U.S. goods more competitive. For our service providers – be they information and communications technology, insurance and financial, express delivery, or other key services, a successful TPP will eliminate trade and investment barriers that block greater access and opportunity

Such an ambitious result is threatened; if the United States excludes wholly or essentially through rules of origin or other devices major manufactured or agricultural products – be it sugar, dairy and/or apparel,

or Australia excludes investor-state enforcement or the ASEANs exclude financial services, what else will other countries currently negotiating the TPP – let alone a Japan, a Canada or a Mexico – take off the table?

We simply do not see a successful conclusion to these negotiations on a less-than-comprehensive basis. This is not a bilateral agreement, like many that the United States has done where products were left off wholly or largely. These negotiations are too big and will only get bigger.

I know that these issues are sensitive for some districts and states and the Members of Congress that represent them. As these negotiations continue, it is imperative, I would submit, that all of us need to consider how successful we can be as a nation if do not embrace a more-open economy here at home. We believe countries, including the United States, can seek appropriate phase-ins and other accommodations, but not broad-based exclusions from either market access or core rules.

Take the issue of textiles, apparel and footwear, where U.S. negotiators have proposed a rule of origin – the rule that defines which apparel and footwear products benefit from tariff cuts –that is based on outdated rules that would effectively exclude most trade in apparel products from coverage because the rules ignore the highly international production and supply chains in which these products are produced and sold. Continuing on such an approach will lead other countries to walk away from an ambitious outcome and impede the ability of the TPP countries to achieve a comprehensive and successful outcome. We are urging the Administration to develop creative proposals that address the development of international production and supply chains in this sector and that will incentivize U.S. supply chains and U.S. value. Overall, the Administration should seek to produce a simpler rule that will increase trade of these products and not result in their effective exclusion. This can be done in many ways, including by:

- Adopting a regional value-content rule;
- Adopting a tariff-heading shift or single-transformation rule;
- Covering products made with significant U.S. or other TPP inputs, such as U.S. cotton and yarn and U.S. exports, even if some of the product is processed in non-TPP countries; and
- Including tariff-preference levels.

Or take the issue of sugar where we've seen confectionery companies moving their operations out of the United States and into Canada because of high U.S. sugar prices brought on by Federal government-trade and other restrictions on sugar. Such limits are now costing U.S. consumers and food manufacturers as much as an additional $3.5 billion per year. The United States' refusal to even talk about the issue undermines as well a strong outcome, as well as the interests of many U.S. businesses and workers.

**2. <u>High Standard or Least-Common-Denominator Rules</u>**

The second issue is the ultimate standard for all the key rules. Will the TPP negotiations achieve a high-standard or a least-common-denominator outcome? Let me just note two areas where we believe that a strong outcome is critically important to the productivity, economic-growth and job-creation goals of the United States, as well as the other TPP countries. These issues are investment and intellectual property. Although I would hasten to add that there are other important rules from transparency, sanitary and phytosanitary, technical barriers to trade, competition policy and beyond.

***a. Investment***

So much of our attention in the United States and elsewhere has been on the cross-border trade of goods and services – and then usually just exports. Yet the success and competitiveness of U.S. industry will

not be won by exports alone. Imports and investment are critically important, especially where successful manufacturing and services models increasingly rely on global supply and production chains to help drive innovation, efficiency and competitiveness.

Of particular importance are the investment and the investment rules that the TPP can help promote to ensure that U.S. companies have access to foreign markets and customers, are treated with the same type of core fairness and related principles set forth in our own constitution and law and have access to impartial enforcement mechanisms when difficulties arise.

Consider just three facts about U.S. companies that invest overseas (based on 2007 data, the last year for which such information is available):

- Our globally invested companies drive U.S. exports. While accounting for only about of quarter of all U.S. private-sector output, globally-invested companies generated nearly half (45.2 percent) of total U.S. goods exports in 2007.
- U.S. companies that invest overseas pay their workers about 18.7 percent more than purely domestic companies.
- U.S. companies that invest overseas are predominately using those overseas platforms to make sales overseas. In 2007, U.S. foreign affiliate sales equaled $4.7 trillion – almost four times U.S. goods exports that year of $1.2 billion. And only a small percentage (about 10 percent) of those sales came back to the United States.

**Sources:** *Global Investments, American Returns (GIAR)* (1998 and 1999 Update), Matthew Slaughter, Published by Emergency Committee for American Trade; *U.S. Multinational Companies: Operations in* 2006, Raymond J. Mataloni Jr., BEA (Nov. 2008); *How U.S. Multinational Companies Strengthen the U.S. Economy: Revised Update* (2010), Matthew Slaughter, Published by Business Roundtable and United States Council Foundation.

As well, over the last quarter century, expanding foreign direct investment has become an increasingly important catalyst of global economic integration, poverty reduction, employment and new economic growth and opportunity.

Given the importance of international investment to the U.S. economy and other TPP economies, it is critical for the TPP to achieve world-class investment standards to continue to attract the type of quality investment that all the TPP countries seek. Yet, the challenges are many. Australia continues to refuse to adopt the basic investor-state enforcement mechanism included in about 3,000 international instruments worldwide. As well, there are differences over the coverage of this enforcement mechanism for certain sectors or types of investment and there remain questions about whether to foster the free flow of capital or allow for significant restraints beyond the prudential flexibilities that provides governments substantial flexibility to take actions to protect the integrity of their economies. For the U.S. business community – as evident from a February 2012 letter that the heads of thirty-one associations, including ECAT, sent to the President before the Melbourne Round – a strong outcome on investment is absolutely critical.

b. ***Intellectual Property***

Equally vital are strong protections on intellectual property and their effective enforcement. These protections relate to patents, trademarks, copyrights and trade secrets. High levels of intellectual-property protections have been an essential element in fostering the explosive growth in new and more efficient technologies, increased productivity, life-saving medicines and other health technologies, as well as a wide

variety of creative and educational works. High-standard intellectual-property protections are a key driver of economic growth in the United States and overseas. As recently highlighted in the March 2012 U.S. government report – *Intellectual Property and the U.S. Economy: Industries in Focus* – U.S. IP-intensive industries support more than one in every four jobs, over one-third of GDP, and approximately 60 percent of exports. Such protections are linked to the creation and retention of jobs in industries focused on everything from consumer and industrial products, educational products and entertainment to scientific products, medical products, including newly developed biotechnology products, and information and communications technology. For consumers, strong rules are also vital to protect against counterfeit products in numerous areas from pharmaceuticals to automotive parts. As well, there are important domestic and national-security interests in ensuring strong enforcement mechanisms against illicit trade, which has been linked increasingly to international crime networks.

In short, high-standard intellectual-property protections raise our standard of living. The strong intellectual-property protections sought by the United States in the TPP agreement are based in significant part on the U.S-Korea FTA, do not represent a threat to public health, the development and expansion of the Internet or free expression. Rather, we believe that they are a much-needed response to increasingly sophisticated threats to intellectual-property protection throughout the world that undermine the very creativity and innovation that is meant to be protected. As the heads of thirty-three associations, including my own, just wrote to the President. "More, not less, rigorous IP rules are needed to thwart the explosion in IP infringement, piracy and counterfeit products throughout all sectors of the economy." In particular, ECAT advocates that the TPP incorporate provisions equivalent or better than those included in the Korea-U.S. FTA, including ensuring transparent and consistent enforcement procedures, anti-camcording and strengthened signal-piracy language and authority to seize and destroy not only counterfeit goods but also the equipment used to produce them. In addition, strong protections on medicines and biotechnology products, including provisions on patent-term extension, patent linkage and data protection, are critical.

**3. <u>Tackling New and Emerging Issues</u>**

Also vital is to achieve concrete progress on the new issues being addressed front and center in the TPP negotiations. There are several new issues – regulatory coherence, competitiveness, state-owned enterprises, supply and production chains, e-commerce, small- and medium-sized enterprises. To meet its promise, TPP must tread new ground on each of these issues with new commitments and paths forward. Let me just focus on two of these today: regulatory coherence and e-commerce.

***a. Regulatory Coherence***

As tariffs are reduced and eliminated, regulatory inconsistencies, conflicting standards and other related barriers gain increasing prominence and will, if unchecked, limit the benefits that any trade agreement can provide to the United States and the other parties. For that reason, the TPP countries are seeking to reduce such barriers through work on regulatory coherence. In the negotiations, progress is being made to foster the development within each of the TPP countries of a centralized system to review and seek public input on and require transparency in rulemaking. Here in the United States, we have a strong, centralized mechanism to assure that regulations are developed in a fair and open process that considers all key issues. Not all of the other countries in the TPP have such systems and the hope is that they will commit to develop them as part of this negotiation.

As important as this part of the negotiations is, we are also looking for the TPP to create mechanisms with a built-in agenda and timetable to provide for ongoing sectoral work on regulatory issues. Our hope is

that this work would make continuous improvements, so that differences in regulations are minimized and they do not pose unnecessary barriers to U.S. exports or sales in foreign markets.

***b. E-Commerce, Cross-Border Information Flows and Cloud Computing***

We have all witnessed the incredible growth of information and communications technology (ICT) products and services. From new products to the ability to purchase virtually any product online, the growth of ICT trade and e-commerce has helped promote greater productivity, innovation and dynamism among industries across all sectors in the United States, as well as helping to expand the international economy. As a result, negotiations should ensure that trade and investment rules promote, rather than inhibit, the growth of the digital economy. Strong principles promoting e-commerce, cross-border information flows and technology will enhance the competitiveness of U.S. companies producing and consuming these goods and services for the benefit of the broader U.S. economy.

U.S. trade agreements have increasingly worked to incorporate such provisions through e-commerce and other parts of the agreements, but have yet to fully keep up with technological progress. The TPP provides an important negotiation to do just that, incorporating key commitments to spur continued innovation and prevent protectionist impulses that will undermine participation in the international economy. Among the new issues are ones that deal with cloud computing and the cross-border flow of information and data, as well as more traditional issues of market access, transparency and the need for independent regulators in telecommunications and other key industries. In particular, industry is seeking:

- The elimination of tariffs for all information and communications technology (ICT) not already covered by the Information Technology Agreement.
- Liberalization of key service sectors, including computer and related services, telecommunications services, ICT-enabled services, and "green" digital services.
- A permanent moratorium on customs duties on electronic transmissions and digital products and guarantees of national treatment and non-discrimination for such products.
- Liberalization of cross-border information flows that are vital for businesses to operate internationally, while ensuring that privacy is protected.
- Prohibitions on localization requirements that service providers use local computing/server infrastructure as a condition of supplying services.
- Improvements in regulatory transparency and the participation of all parties in standard setting.
- Elimination of technical barriers to trade.

**4. <u>Living Agreement</u>**

Another key issue is the importance of the TPP agreement being a living agreement, both in terms of its admission of new members, but also in its continued ability to open markets, eliminate barriers and reach new accords in areas where we may only have just begin to reach agreement.

To achieve its vision, the TPP must set forth a concrete path and mechanisms to allow for new members that seek the same type of ambitious outcome. It must also provide a concrete and time-limited path for continued work and improvements. While there appears to be genuine support for these goals among the TPP countries, it is important that these goals are fully operationalized in the final agreement, so that they do not just become unrealized aspirations.

**5. Timeliness**

Time is of the essence in concluding these negotiations. The world moves too quickly; new crises and challenges can develop overnight. None of us want the TPP negotiations to become the next Doha or Free Trade of the Americas negotiations that never concluded. The momentum that the TPP Leaders spurred in Honolulu is still helping push the negotiations forward, and we continue to support that work, as long as it promotes the goals of a comprehensive, ambitious and commercially meaningful agreement.

## IV. Trade Promotion Authority

The lapse of trade-negotiating authority (sometimes called trade promotion authority or fast-track authority) for agreements concluded after June 2007 has been, without a doubt, a drag on the ability of the United States to pursue a robust trade-agreement agenda. As we have seen with the TPP negotiations, the lack of such authority does not prevent negotiations from moving forward, but questions continue to be asked by America's trading partners about its lack of renewal and the implications for the ultimate approval by Congress of the TPP. We saw similar questions in the mid-1990s through 2002, when the "fast track" legislation also lapsed and, despite several attempts, was not renewed for six years. Only one trade agreement was negotiated during that time and that trade agreement – the U.S.-Jordan FTA – while certainly important on many levels is perhaps the weakest trade agreement the United States has negotiated, with long phase-outs and lacking even time-limited enforcement mechanisms.

While it is vital for the TPP negotiations to continue apace. It is also vital that Congress and the Administration work aggressively and quickly to reforge the Congressional-Executive Branch partnership that trade-negotiating authority represents. Updating and renewing trade-negotiating authority is important to:

- **Enhance U.S. Leadership.** Although only technically necessary to facilitate implementation of a final agreement by Congress, these trade-negotiating procedures have taken on a much greater role in the eyes of U.S. trading partners, many of which have refused to take U.S. negotiators seriously (particularly in the context of multilateral negotiations) during periods that the authority was not in force.

- **Empower U.S. Negotiators.** Trade-negotiating authority is particularly critical to provide U.S. negotiators the clout necessary to extract concessions and successfully bring back the best-possible agreements. While setting forth detailed negotiating objectives, trade-negotiating authority has *never* mandated any particular outcomes or tied U.S. negotiators' hands. As a result, U.S. negotiators have the flexibility to negotiate complex trade agreements and the authority to bring back agreements that must be accepted or rejected in a timely manner and without amendment. This balance strengthens the U.S. negotiating position and the ability of U.S. negotiators to conclude the best-possible agreements.

- **Improve Executive-Congressional Consultations and Congressional Oversight in an Area of Overlapping Constitutional Authority.** Trade-negotiating authority procedures also require the Administration to consult extensively with Congress and seek Congressional input on the conduct of trade negotiations. These consultation mechanisms were greatly expanded in the Trade Act of 2002; and provides Congress with the ability to limit the application of trade-negotiating authority procedures as a result of an Administration's failure to consult. At the end of every negotiation, Congress retains the final ability to approve or disapprove that final agreement.

- **Promote Effective Congressional Consideration of Trade Agreements.** Equally important is the role that trade-negotiation authority plays in facilitating Congress' implementation of trade agreements,

particularly in the U.S. Senate. With Congress' assent, trade-negotiating-authority legislation has limited certain congressional prerogatives, thereby expediting congressional consideration and implementation of trade agreements, preserving their integrity and preventing their renegotiation.

- **Promote New Economic Opportunities and Economic Growth.** Most essentially, trade-negotiating authority is vital to promote trade agreements that open markets and promote new economic opportunities for U.S. farmers, manufacturers, service providers and their workers. Since 1974, every major trade agreement concluded by the United States was done with trade-negotiating authority, except the U.S.-Jordan FTA.

We look forward to working with Congress and the Administration to update and achieve the timely renewal of trade-negotiating authority for the TPP and other trade agreements.

## V. Conclusion

ECAT strongly supports the negotiation of a comprehensive, high-standard and commercially meaningful TPP that will become the template for trade and investment throughout the Asia Pacific. The current negotiation and its expansion to other Asia Pacific nations that share the same ambitious goals is a priority for the business community because it provides an enormous opportunity for expanding U.S. economic engagement and improving U.S. competitiveness in the Trans-Pacific corridor.

Mr. ROYCE. Ms. Drake.

**STATEMENT OF MS. CELESTE DRAKE, TRADE & GLOBALIZATION POLICY SPECIALIST, AFL–CIO**

Ms. DRAKE. Thank you. Chairmen Royce, Manzullo, Ranking Member Sherman, members of the committee, good afternoon. I appreciate the opportunity to testify on the important issue of the Trans-Pacific Partnership free trade agreement. I have submitted written testimony for the record, and will summarize my comments here.

American workers live in a global economic environment. The key decision for policymakers is not whether to increase trade, but what rules should govern trade and who benefits. With this in mind, the AFL–CIO is especially interested in the TPP, as it represents President Obama's first opportunity to negotiate a trade agreement completely from scratch.

While the vast majority of trade among the current TPP participants and the U.S. is already covered by free trade agreements, the TPP is being specifically designed as an open-ended agreement. Given that countries like China, Burma, and Japan are potential new entrants, it is especially important to get the TPP right, as it may govern the majority of our international trade in years to come.

The world is still experiencing an economic slowdown as a result of the 2008 financial crisis. In the U.S., unemployment remains over 8 percent. Too many families continue to face foreclosure, and some employers are continuing to cut wages and benefits, even as some global corporations report record profits and pay record bonuses. Something is deeply wrong in our economy, and it is not something that can be fixed by simply focusing on increasing exports. We must increase net exports.

Trade deficits matter. Our nation's international trade deficit in goods and services was $560 billion last year, including a record $300 billion with China in goods alone.

Unfortunately, it has not been the practice of U.S. trade policy to engage in economic evaluations of trade agreements like the TPP until after an agreement is finished. Only when the text is complete do we learn of its potential to harm particular industries and their employees, or to increase our global trade deficit. That is why the United States Trade Representatives should evaluate the likely job and industry effects of a trade agreement first, and adjust its negotiating strategy accordingly.

This is imperative if we are to retain and rebuild our diminished manufacturing capacity. Given that trade agreements have replaced foreign aid as our primary economic development tool, it is also critical for workers globally. American workers have seen nearly 700,000 jobs displaced due to trade deficits with our NAFTA partners, while workers in our trading partners Colombia, Guatemala, Honduras, Mexico and Bahrain have experienced increasing labor repression. This repression varies from place to place, but includes detention, persecution, threats, and murder against union and human rights activists, and it keeps workers from sharing fairly in any gains from trade, and has seen global corporations keeping larger and larger shares of those gains.

Properly constructed, a trade agreement can be a force for progress. To achieve this, American and global workers need more than changes around the margins. We need a TPP approach that puts good job creation first. This means a focus on commercial terms that don't simply cut tariffs, come what may. Reciprocal market access and strong enforcement must be integral, not an afterthought.

It is also imperative that USTR address economic justice and the societal infrastructure that promotes it. This means that fundamental labor rights which empower workers to seek improved wages and benefits must be front and center. Enforcement when governments refuse to protect those rights must be swift, effective, and meaningful. Aggrieved workers should not have to hope and pray that a meritorious case will timely be resolved, as Guatemalan workers have had to do.

Labor rights are but one chapter of a trade agreement. The TPP will not help the American economy unless it also addresses a host of other issues, including disciplines for state-owned enterprises, strong rules of origin, no extraordinary rights for foreign investors, financial services rules that promote stability, and intellectual property rules that protect American innovation without making lifesaving medicines unaffordable for developing country partners like Vietnam.

Finally, for the TPP to work for working families, it must address it only in tandem with critical policies that have been omitted from past trade agreements, including currency manipulation, funding for customs enforcement, capacity-building, and domestic trade-supporting infrastructure, the creation of a robust industrial policy, and labor law reform, to ensure that U.S. workers can exercise the same rights we promote internationally.

I thank the committee for its time, and would be pleased to answer any questions.

[The prepared statement of Ms. Drake follows:]

**BEFORE THE HOUSE**
**TERRORISM, NONPROLIFERATION AND TRADE SUBCOMMITTE**

**TESTIMONY REGARDING THE PROPOSED**
**TRANS-PACIFIC PARTNERSHIP FREE TRADE AGREEMENT**

**CELESTE DRAKE**
**THE AMERICAN FEDERATION OF LABOR &**
**CONGRESS OF INDUSTRIAL ORGANIZATIONS (AFL-CIO)**

**MAY 17, 2012**

The American Federation of Labor-Congress of Industrial Organizations ("AFL-CIO") has long recognized that workers everywhere live in a global economic environment. The key decision is not about whether or not to increase trade, but about what rules should govern such trade and who benefits.

With this in mind, the Trans-Pacific Partnership Free Trade Agreement (TPP or Trans-Pacific FTA) is a particularly important agreement. Of course, the vast majority of the trade among the current TPP participants and the U.S. is already covered by free trade agreements. But the TPP, unlike past trade agreements, is being specifically designed as an open-ended agreement and potential new entrants, including China and the Philippines, are already being discussed. In that sense, it is especially important to re-examine our trade policy—as the rules set down in the TPP may govern the majority of our international trade in years to come.

Trade agreements must advance domestic economic development, increasing employment for American workers and improving our prospects for future sustainable growth—otherwise, why engage in them? If the TPP results in simply maximizing profits for global corporations, many of which are increasingly globalizing their supply chains and the jobs that support them, it will sadly be another trade agreement that exacerbates our trade deficit, promotes overseas investment, contributes to joblessness, and widens the income gap that exists in this country—and in others.

Unfortunately, it has not been the practice of U.S. trade policy to engage in such economic evaluations until after an agreement is finished. Only when the text is complete do we learn of its potential to harm particular industries and their employees or to increase our global trade deficit.[1] As a result, the United States Trade Representative (USTR) is typically flying

[11] And even then, the potential gains are often maximized while potential losses are minimized—as with the International Trade Commission's (ITC's) evaluation of the probable effects of China joining the World Trade

blind in the agreements, unsure exactly how the agreement would help our domestic economy or bolster American workers, but secure in the belief that free trade will always do so. Unfortunately, that confidence, largely based on David Ricardo's 1817 theory of comparative advantage, specialization, and mutual gains from trade, relies on a set of assumptions that do not accurately describe the global trading system.

In the 1990s, Ralph Gomory and William Baumol demonstrated how adversarial relationships, economies of scale, technological innovation, foreign direct investment, and indeed, even government policy, undermine the predicted Ricardian outcome of mutual gains from trade.[2] Under today's globalized system, there are winners and **losers**, instead of winners and **winners**.[3] And it is the workers of the U.S. and many of our trading partners who have been the losers—especially in the most recent decade, while global capital has taken an ever increasing share of the world's wealth.

American workers have seen nearly 700,000 jobs displaced by growing trade deficits with our NAFTA partners, while workers in the territories of trading partners Colombia, Guatemala, Honduras, Mexico, Bahrain, and other countries have experienced increasing labor repression, including the detention, persecution, and murder of union and human rights activists. This repression has kept workers from sharing fairly in any gains from trade—and has seen global corporations keeping larger and larger shares of the gains from our trade agreements.

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

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Organization. The Economic Policy Institute has called the ITC's predictions about trade with China "wildly optimistic and inaccurate." Robert E. Scott, *Trade Policy and Job Loss: U.S. Trade Deals with Colombia and Korea Will Be Costly*, EPI Briefing Paper, Economic Policy Institute, Feb., 25, 2010, 4 <http://www.epi.org/temp727/WorkingPaper289-2.pdf>.

[2] RALPH E. GOMORY AND WILLIAM J. BAUMOL, GLOBAL TRADE AND CONFLICTING NATIONAL INTERESTS (2000); CLYDE PRESTOWITZ, THE BETRAYAL OF AMERICAN PROSPERITY: FREE MARKET DELUSIONS, AMERICA'S DECLINE, AND HOW WE MUST COMPETE IN THE POST-DOLLAR ERA 168-174 (2010).

[3] PRESTOWITZ, *supra* note 2.

goal. For the vast majority of working Americans, the results of past trade agreements have been unacceptable. They have increased our trade deficit to the point that it is unsustainable over the long term and a major contributor to global financial instability and growing inequality. As our trade deficit has grown, real wages have stagnated, health benefits have shrunk, and retirement prospects have become increasingly insecure. Instead of re-evaluating its trade agenda, the U.S. government has sought ever more "free trade agreements."

The AFL-CIO has been working hard with the Administration, as well as our affiliates and allied advocacy groups, to ensure that the TPP embarks on a new course that includes not just more progressive trade rules, but an implementing bill and associated legislation that includes a robust industrial strategy; investment in needed infrastructure as well as lifelong training and education for all workers; a procedure to address currency manipulation—which artificially suppresses American exports by making American goods more expensive; and labor law reform that restores the promise and power of the original National Labor Relations Act.

The AFL-CIO believes that, regardless of whether the TPP concludes in the near term, it will not be possible to successfully exit the neo-liberal crisis and create a Global New Deal without generating the demand for new goods that high wages bring; the global slump should already be teaching us about the limits to low-wage growth. Trade policy should work to change, not reinforce, the incentives facing U.S. corporations and encourage more domestic investment in cutting-edge manufacturing jobs.[4]

The AFL-CIO has commented numerous times on the shortcomings of past trade agreements and the need for specific, achievable changes that would help domestic workers and producers who are competing in a global marketplace. I will not reiterate all of our specific

[4] Richard Trumka, Address to the Council on Foreign Relations (March 17, 2011) < http://www.aflcio.org/Press-Room/Speeches/Remarks-by-AFL-CIO-President-Richard-L.-Trumka-Council-on-Foreign-Relations-Washington-DC>.

concerns here, but suffice it to say that past agreements have failed to address our concerns regarding jobs, investment, services (including public and financial services), government procurement, intellectual property protection, worker rights, environmental safeguards, food and product safety, rules of origin, and other issues important to working families.[5]

Without addressing the still-secret text of the TPP, I will discuss a few of our concerns and recommendations with regard to some of the most pressing topics of the agreement. Before I do, I would note that this Administration deserves to be commended for the outreach in which it has engaged. The cleared advisors for the AFL-CIO and its affiliates have spent dozens of hours discussing with Administration negotiators the specific issues that are involved in the TPP talks and offering concrete recommendations. We have appreciated the spirit of cooperation and dialogue exhibited by the Administration at all levels. Of course, access does not equal influence, and it remains to be seen just how many of our suggestions will be incorporated into the final text. Moreover, the AFL-CIO has concerns about the overall secrecy of trade negotiations in general and would recommend broader sharing of USTR's negotiating goals and proposals beyond the cleared advisor community. However, the level of engagement has been noteworthy—particularly when compared to the prior Administration.

**Labor**

It is imperative that USTR address economic justice and the societal infrastructure that can promote or discourage it, not as an adjunct goal, but as a central part of its trade and economic development efforts. Freedom of association and the existence of free civil society organizations, including trade unions, are essential to a democracy. These institutions provide a venue for ordinary citizens to raise their voices collectively, claim their rights, advocate for

[55] For a more complete discussion of our suggestions in all areas, please refer to the AFL-CIO's Testimony Regarding the Proposed United States-Trans-Pacific Partnership Trade Agreement, submitted to the USTR, January 25, 2010.

policies that serve their constituents and the broader public interest, and hold government accountable. As large membership-based institutions advocating for social and economic justice for workers and citizens, independent trade unions are among the most important of these institutions. Their democratic nature provides an excellent model for citizens newly empowered, but without experience in self-government. As such, the USTR should nurture, support, and strengthen them as part of its larger economic development efforts.

To achieve these goals, the AFL-CIO recommends that the Trans-Pacific FTA should build upon the changes achieved in the U.S.-Peru FTA in 2007 (also known as the "May 10" provisions). These provisions represented an important step forward for labor rights, but did not contain all of the essential elements of an effective labor chapter. Specifically, the labor chapter should explicitly reference ILO conventions with respect to labor rights and omit Footnote 2 from the Peru text to clarify that ILO jurisprudence will help give meaning to fundamental labor rights. The labor provisions should also apply in the broadest context possible: limiting available redress solely to violations which are "sustained or recurring" and "in a manner affecting trade or investment," as is the case in the Peru agreement, should be modified because they exclude too many workers from coverage and make it exceedingly difficult to effectively pressure recalcitrant governments to do the right thing and protect their own workers. In addition, the Trans-Pacific FTA should include enforceable standards for acceptable conditions of work and the treatment of migrant workers.

The enforcement mechanism must be timely, accessible, and reliable—aggrieved workers should not have to "hope and pray" that a meritorious complaint will actually be advanced through the system, as has been the case with the Guatemala complaint. Four years after the AFL-CIO first raised problems in Guatemala, we are still awaiting action, and, because of the

lack of automatic access to dispute resolution, the Guatemalan government has been blocking resolution. Worker's livelihoods, whether in Guatemala or elsewhere, depend on swift justice; they do not have the luxury of time. Should countries not resolve their differences during consultations or dialogue and require resort to dispute settlement, the process must be at least as strong and swift as that available to business interests, and penalties should likewise be trade-related and high enough to encourage parties to resolve violations at the initial stages. Token fines unrelated to the economic sectors where the violations occur do little to encourage private sector compliance or deter future violations.

A final comment on labor: it is but one chapter in a multi-chapter agreement. The AFL-CIO strongly believes that, in addition to strengthening the labor chapter, it is crucial to address the other provisions that incentivize the offshoring of jobs, bolster monopoly power, promote a race to the bottom in regulations, and take other steps to weaken domestic policy space while failing to create jobs here in the U.S.

**State-Owned Enterprises**

The potential disciplines that will cover State-Owned and State-Influenced Enterprises (SOEs) represent, perhaps, the most important area for new disciplines in the TPP. Unlike in the U.S., SOEs are common in Vietnam, Malaysia, and Singapore. Moreover, given that USTR Ron Kirk recently indicated he "would love nothing more" than to have China join the TPP, SOEs are of increasing concern for U.S. workers. The AFL-CIO does not oppose SOEs *per se* and does not seek to privatize them. However, especially given America's lack of a comprehensive manufacturing strategy or adequate governmental support for that sector, without strict

disciplines on the behavior of SOEs, U.S. workers and producers remain at risk from those entities. The U.S. cannot afford to get disciplines in this area wrong.[6]

An SOE can be a threat to the U.S. economy when it "competes" in the commercial arena with a thumb on the scale that disadvantages U.S. businesses and their employees. That "thumb" can take many forms. For instance, China's SOEs may receive raw materials and other inputs at below-market rates and have access to preferential debt and equity financing, including soft "loans" from state-owned banks that do not need to be repaid.

Many SOEs consistently operate in a manner that gains them market share—rather than profits. A private enterprise would not long remain in business if it failed to respond to the market, but, because they are propped up by state resources, SOEs not only can, but do. While losing money by selling goods at below-market prices, they have forced numerous U.S. competitors out of business, gaining market share which can be exploited later.

I will concentrate my remarks on SOE activities here in the U.S. 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. The critical question for workers is the behavior of the employer.

If the U.S. imports a product from an SOE that injures a company and its workers, we have existing trade remedies (such as countervailing duties) to address the impact. But if that SOE instead becomes a foreign investor in the U.S. and produces a product at a cost far below that of an existing U.S. firm because of the subsidized capital or other inputs that SOE may enjoy, there is no existing remedy in U.S. law to address that harmful activity. In addition, in certain circumstances, an SOE invested and producing in the U.S. might have standing under our

[6] This is true as regards our so-called "defensive interests" as well: the disciplines on SOEs should not put at risk U.S. entities that could be considered SOEs, such as the Tennessee Valley Authority or Amtrak.

trade laws to challenge an action by a domestic producer here against unfairly traded products from overseas.

Several Chinese entities have already entered into or announced transactions that could pose problems for U.S. producers and their workers. Tianjin Pipe, a Chinese SOE, is investing $1 billion in a Texas facility. But we know little about its cost of capital and whether it will operate on the basis of commercial concerns. It is important that the TPP include appropriate rules to discipline non-commercial or anti-competitive behavior of SOEs that invest in the U.S. The AFL-CIO has recommended that all SOE transactions be based on commercial considerations. The AFL-CIO has also recommended that domestic laws be updated to ensure that an effective remedy is readily available to the private sector to fight for its interests when SOE behavior on U.S. soil injures U.S. businesses and their employees. We have also recommended increased transparency, the creation of a rebuttable presumption that an SOE is acting on its home country's behalf, not the interests of our workers, if it seeks to block action to protect an injured party in the U.S., and the consideration of a screening mechanism for SOE investments.

**Rules of Origin**

The TPP must include strong rules of origin that will target benefits to the parties to the agreement (particularly, of course, the United States)—rather than weak rules of origin that will allow non-parties, who have made no reciprocal obligations to the U.S., to reap the rewards. Our primary goal must not be to expand supply chains, but to expand employment opportunities here in America.

In a trade agreement with at least nine parties, it is critical that the rules of origin are carefully crafted to promote production within those parties. After all, given the rate of

economic growth in the Asia-Pacific region, this agreement is one in which strong rules of origin can create a "pull" factor that producers and service suppliers will use when making decisions regarding where to locate their production. Potential tariff benefits combined with strong rules of origin can tip the scale on a decision to build a new plant or keep a plant open in the U.S. or in a TPP country. On the other hand, a weak rule of origin undermines that "pull" factor and gives producers a free pass to locate in a non-TPP country, knowing that only a token percentage of the value of the product, or a token transformation of a product from one tariff line to another, will be required to occur within a TPP country in order to reap the tariff benefits of the deal without having to subscribe to the other disciplines and provisions of an agreement. Because workers bear the brunt of decisions to produce elsewhere, we cannot emphasize strongly enough the importance to American workers of strong rules of origin that promote production within the TPP.

Moreover, in a trade agreement which is designed to grow in membership, and has no maximum number of contracting countries, the proposed rules of origin must be designed to accommodate these potential changes. The rules of origin must take into account the promotion of domestic job growth in the U.S., not just for today or tomorrow, but for the next decade and into the future. Rules of origin that respond more to the corporate needs of today (looking forward only to next quarter's stock prices) than to the long-term needs of America's domestic economy and the workers who make it run will not achieve the domestic economic growth we need.

A decision based on a simple calculation of where a product is currently produced does nothing to provide the right incentives to locate production within the TPP in the future. Our goal must be to maintain and then reclaim supply chains that have outsourced and offshored U.S.

production and jobs. Simply cementing in place the status quo is not good enough. Given that the TPP model is designed to include an ever-growing list of countries, these rules of origin should also be aspirational. Like NAFTA's rule of origin on automobiles, some should be designed to become more stringent—not less so—over time, allowing TPP countries to bring more and more of their supply chains within the agreement, rather than incentivizing choices to maximize production elsewhere.

Without such a forward-thinking structure, the current trend of factory closures and depressed job growth is likely to continue. American workers have already seen 2.8 million jobs displaced due to growing trade deficits with China (1.9 million of them in manufacturing) since it joined the World Trade Organization (WTO). If the TPP is going to be an effective counterbalance to the powerful job-pull of China, it must be designed with domestic job creation at the forefront, not as an afterthought.

**Investment Rules**

There is nothing inherently good or bad about inward or outward bound foreign investment *per se*—but too often U.S. trade policy assumes all foreign investment is good, and promotes it for its own sake rather than on the basis of its effects on employment, wages, and standards of living either here or abroad. Past U.S. FTAs, such as the U.S.-Korea FTA, have protected broader concepts of property than would apply under U.S. takings law, have given wider latitude for determining whether an "indirect expropriation" has occurred, and have included the obligation to provide "fair and equitable treatment" as part of a "minimum standard of treatment" that foreign investors can claim a right to receive—but which domestic investors have no claim to. This minimum standard of treatment—an obligation whose scope is

determined by reference to "customary international law"—provides no fixed obligation.[7] Together, these provisions grant foreign investors with enhanced opportunities to seek compensation from the public purse for a variety of real or perceived injuries.[8, 9]

The investor-state dispute settlement mechanism ("ISDS"), however, is the investment provision in U.S. FTAs that the AFL-CIO finds most troublesome. ISDS allows foreign investors to bypass domestic courts and challenge a government directly before an international arbitration panel.[10] The right to bypass the judicial system is a right domestic investors do not have. Not only is the forum different, but so is the standard of review. Using the U.S. as an example, ordinary considerations, including the possibility of sovereign immunity and the "rational basis" standard, need not apply—nor is a panel required to consider whether the good of the public should outweigh the private right to make a profit. Since the panels are not governed by the principle of *stare decisis*, a foreign investor is always free to pursue a failed but potentially lucrative challenge, and a subsequent panel is free to rule favorably.[11] Moreover, past U.S. investment provisions have excluded minimal constraints, such as exhaustion of domestic remedies, a standing appellate mechanism, or a diplomatic screen, each of which could act to limit abuse of this private right of action.

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[7] Customary international law, like common law, can develop over time. However, due to use of arbitrators (who may cycle between acting as advocates and acting as neutrals) rather than judges and the lack of binding precedent in investment cases, bad arbitral decisions (e.g., decisions which expand the concept of customary international by taking inappropriate factors into account) can improperly expand the obligation a nation may owe as part of the minimum standard of treatment.

[8] For example, investors have claimed that a state ban on a toxic gasoline additive constituted an indirect expropriation. Methanex Corp. v. U.S. <http://www.state.gov/s/l/c5818.htm>.

[9] Even the very labor standards the U.S. fights for in its current trade model are not definitively exempt from an investor challenge should a foreign investor decide that a particular provision for the benefit of workers denies him or her fair and equitable treatment or goes too far in interfering with an assumption of risk or expectation of profit.

[10] Peru Trade Promotion Agreement, Chapter 10 (available at: <http://www.ustr.gov/sites/default/files/uploads/agreements/fta/peru/asset_upload_file78_9547.pdf>).

[11] Of course, the lack of *stare decisis* may cut in the opposite direction as well because it can result in a decision favoring government action even where a prior panel found for a private party. In the long run, however, the lack of binding precedent is likely to generate more challenges, greater costs to the public, less certainly for policymakers, and a stronger chilling effect against measures similar to those which attracted prior challenges.

Perhaps the most telling fact about the benefits of ISDS is that they ***only*** apply to investors. This special privilege to sue a national government in an international arbitration forum is denied to labor and human rights groups pursuing enforcement of the labor chapter, as well as to environmental advocacy groups seeking redress for a violation of environmental obligations. No credible legal or philosophical argument has ever been offered to explain this differential treatment of property rights and labor rights.

These investment provisions may provide U.S. producers an incentive to invest offshore (compounding the incentive provided by U.S. tax treatment of foreign income). Of course, lower wages, safety standards, and environmental regulations can provide incentives of their own, but businesses must also be aware of the power of the mere threat of an ISDS arbitration to stop new policies from being implemented. Such threats may be particularly effective in developing nations whose legal resources can be dwarfed by those of a large global corporation. Unfortunately for developing countries, the evidence is mixed on whether there is even a correlation—much less a causal relation—between granting extraordinary investor rights and attracting foreign direct investment and whether such foreign investment has had the desired development effects.[12]

**Government Procurement**

In its trade agreements, the U.S. must ensure that it and its trading partners retain the ability to stimulate their domestic economies through domestic infrastructure and spending programs. The AFL-CIO has long maintained that trade agreements should not constrain federal and sub-federal procurement rules that serve important public policy aims such as local economic development and job creation, environmental protection and social justice—including

[12] *See, e.g.*, FOREIGN INVESTMENT AND SUSTAINABLE DEVELOPMENT: LESSONS FROM THE AMERICAS (Kevin P. Gallagher, Roberto Porzecanski, Andrés López, and Lyuba Zarsky, eds., 2008).

respect for human and workers' rights. Rather than further blunting our ability to engage in economic stimulus, new trade agreements should protect Buy American policies for procurement projects and ensure that our trading partners can implement domestic stimulus programs to alleviate a recession or depression without running afoul of TPP obligations. On the basis of comments made at the recent TPP Stakeholders' Forum in Dallas on May 12, the Government of Malaysia agrees that government procurement policy is an important domestic policy tool. On this point, the accompanying statement that sub-federal procurement may not be included in initial TPP commitments is welcome news.

**Financial Services**

To protect the global financial system, the TPP should ensure that financial services provisions protect the right of governments to secure the integrity and stability of their financial systems. In particular, it would be helpful to clarify that prudential measures include the right of a nation to institute capital controls when necessary to stabilize the economic system in a time of crisis. As the IMF has recognized, capital controls can be and have been useful in addressing both macroeconomic and financial stability concerns.

**Appropriate Trading Partners**

The AFL-CIO believes that the choice of partners for any "free trade agreement" should be carefully weighed. In choosing such a partner, the USTR should analyze not only the likely commercial effects of reduced tariffs, increased investor rights, and the like, but also consider the human and labor rights conditions prevailing in the territory of the proposed partner. In this regard, the AFL-CIO has specific but very different concerns about including Vietnam and Japan in the TPP.

With regard to human and labor rights, due to existing commitments, the U.S. has already lost the use, in certain circumstances, of important economic tools such as boycotts and divestment, to address human rights goals. The AFL-CIO would not support further limits on our ability to exert economic, rather than military pressure, to address nations that engage in egregious human rights violations. That is why we believe that an open-ended agreement ought not to simply allow "any willing partner" to join.

The U.S. government should negotiate a democracy clause in the TPP. Linking market access and democracy is not without precedent in regional economic agreements. For example, the members of the Southern Cone Common Market (MERCOSUR), which includes Brazil, Argentina, Uruguay, and Paraguay, signed onto the Ushuaia Protocol on Democratic Commitment in the Southern Common Market in 1998.[13] In the event of a "breakdown of democracy" in any of the member states, Article 5 of the Protocol allows that the other state parties may apply measures that range from suspension of the right of the offending nation to participate in various bodies to the suspension of the party's rights and obligations under the Treaty of Asuncion (the MERCOSUR foundational agreement). We have also seen that economic engagement in the form of a trade agreement does not necessarily yield democratic reform and respect for human rights. The Dominican Republic-Central American Free Trade Agreement (DR-CAFTA) provides a tragic example, with violent repression of union and other human rights advocates increasing since implementation. The U.S. government has already accepted submissions under the labor chapter regarding violations in Guatemala, Honduras, and the Dominican Republic.

[13] Text of the Protocol is available online at http://untreaty.un.org/unts/144078_158780/20/3/9923.pdf. Associate Mercosur members Chile and Bolivia also signed onto the Protocol in 1998.

With respect to Vietnam, though we welcome cooperative efforts to further empower Vietnamese workers—who are already engaging in wildcat strikes to better their wages and working conditions when existing mechanisms fail them—the AFL-CIO is still unclear how Vietnam will meet anything close to minimum acceptable labor standards upon implementation of the agreement should it conclude in 2012, Ambassador Kirk's stated goal. We fear that Vietnam will go the route of Colombia, with the imposition of a Labor Action Plan that lacks measurable benchmarks for progress and fails to require sustained action or thorough implementation. Such a cursory approach would benefit neither the workers of the U.S. or Vietnam—and would likely encourage the transfer of U.S. jobs to Vietnam, where unscrupulous employers would take advantage of inadequate laws to abuse workers' rights.

With respect to Japan, our concerns are commercial in nature. Although it is a high wage nation with a well-unionized workforce, its markets are notoriously closed to foreign goods, and this is not the result of high tariff barriers. To gain significant and substantial market access to Japan, the USTR would have to adopt a new and revolutionary approach. It would have to address non-tariff barriers (NTBs) with an approach different to the simplistic and reflexive economy-wide deregulatory approach it has used in past trade agreements. There is no evidence that the status-quo approach has successfully pried open markets in ways that create jobs for U.S. workers.

Approximately 75 percent of the bilateral merchandise trade deficit with Japan is in automotive products. The U.S. auto trade deficit with Japan reached $44.2 billion in 2010, up 35 percent from 2009, as Japanese imports ($45.9 billion) greatly exceeded U.S. exports to Japan ($1.7 billion). The 2010 auto deficit with Japan far exceeded that of the next negative auto

trading partner, Mexico ($31.2 billion). The resulting loss of well-paying American automotive jobs is "multiplied" in related sectors and throughout the rest of the domestic economy.

The US currently imposes a light-truck tariff of 25 percent, a car tariff of 2.5 percent, and a 2.5 percent tariff rate on most auto parts. With the removal of these tariffs, it is likely that the U.S. automotive trade deficit with Japan would increase following the extension of the TPP to Japan. The 2.5 percent tariff on a small-to-medium-sized vehicle amounts to approximately $625, essentially the entire profit margin for a car sold by our domestic automakers. Maintaining American employment in this highly-competitive market segment would be extremely difficult following this windfall to the Japanese automakers.[14] Our trade relationship with Japan has failed, over many decades, to change, despite repeated negotiations and Japan's participation in the WTO. It could be considered economic recklessness to allow Japan to join the TPP without a sustained, measurable track record of market opening to foreign products and without reliable safeguard measures (such as snap-back tariffs).

**CONCLUSION**

USTR and its partners must embark on economic development policies that explicitly address the creation of good jobs, the development of a thriving middle class, and respect for domestic policy space. Such an approach would require abandonment of the status quo. It would also require the cooperation of global corporations, many of which are used to using their leverage to play off one nation against the other in a race to the bottom in wages, benefits, social protection strategies, conservation, and public health and safety measures. The AFL-CIO cannot recommend strongly enough that, for a trade agreement to benefit workers here and abroad, it

[14] Given the sheer magnitude of the U.S. economic relationship with Japan, which is dominated by international trade and investment in the automotive sector, there is a possibility that a bilateral approach to trade issues with Japan might better achieve the domestic job creation we seek.

must prioritize fundamental labor rights, the creation of high wage, high benefit jobs, and balanced and sustainable trade flows. When workers can exercise their fundamental rights, as well as have a secure and hopeful future and sufficient incomes, their demand will help businesses and the global economy grow in a sustainable way.

Mr. ROYCE. Thank you, Ms. Drake.

Dr. Levy?

**STATEMENT OF PHILIP I. LEVY, PH.D., ADJUNCT ASSOCIATE PROFESSOR, SCHOOL OF INTERNATIONAL AND PUBLIC AFFAIRS, COLUMBIA UNIVERSITY**

Mr. LEVY. Chairmen Royce and Manzullo, Ranking Member Sherman and members of the committee, thank you for the opportunity to testify today on the Trans-Pacific Partnership trade agreement. Mr. Chairman, per your request, I will offer a summary of my testimony, and I have submitted an extended version for the record.

The TPP is an agreement with enormous potential. If the agreement succeeds, it could help set the rules of trade for the 21st century and serve as a pillar of U.S. presence in the critical Asia-Pacific region. It can benefit America's companies and consumers, and help secure the country's vital interests.

This great potential is, as yet, unrealized. The challenges that remain are daunting. The administration's embrace of the TPP as its principal active trade initiative and the core of its commercial policy toward Asia also distinctly raise the stakes on the agreements.

In my remarks, I will comment on how far the TPP has come and what it has to offer the United States, and then offer some thoughts on what must be done to conclude the agreement successfully. There is a significant role for the U.S. Congress, as the branch constitutionally entrusted with trade policy, in laying the groundwork for TPP's success. I thus heartily commend the committee for holding this hearing.

To understand the potential of the agreement, I think it is worth putting the TPP in the context of a strained global trading system. The prolonged and fruitless efforts to strike a Doha deal at the WTO have left global trade powers wary of grand trade promises that bring repeated ministerials but no signing ceremony.

By the end of a decade of negotiations, Doha talks had repeatedly hit impasses. Among the key contentious issues splitting the participants were the level of ambition, how much the agreement should do about modern facets of trade regulation, and the appropriate role of economically successful developing countries.

The TPP is clearly situated on one side of these debates, the side the United States has favored. One of the TPP's core principles is that it embraces a high-standards approach. It deals with issues like service market access, intellectual property rights protection, and investment regulation, that are important parts of modern global commerce.

While the TPP has expanded to include a number of developing nations, including Malaysia and Vietnam, it expects those nations to participate in these high-standard commitments as well. Thus, a successful TPP would have important ramifications for the global trading system. It would demonstrate the possibility of concluding such an ambitious trade accord, and of bridging the north-south divide that has plagued the Doha talks.

The TPP also has captured the imagination of countries because of its other founding principle: An openness to new members. This

approach suggests that the TPP could serve as a template for how to build a sophisticated approach to opening markets.

It is natural to want to quantify the benefits the TPP has to offer the United States, and to ask just how close we are to achieving those benefits. Neither question is easy to answer. If we look at the potential benefits from an agreement, we cannot be satisfied by just looking at the extent of current trade among participants, or even market size, as an indicator of potential. After all, as we have heard, the United States already has agreements with Australia, Chile, Singapore, and Peru, and among new applicants with Canada and Mexico. That, alone, would suggest that gains might be overstated.

But one could equally argue that potential gains are understated for the agreement. When we talk about trade flows within the region, we usually discuss goods trade. We ought to be discussing services trade as well, something the United States is particularly good at, and that would capture much of the novelty in market opening throughout the TPP. But services trade is difficult to measure, and therefore often neglected. Nor are we well-equipped to quantify the benefits from harmonizing a spaghetti bowl of different trade rules into a coherent package, or the benefits from facilitating the sprawling global supply chains that characterize modern commerce. We do get a hint of the importance of such factors, however, when we see global supply chains interrupted by natural disasters in Japan or Thailand, and U.S. producers and consumers suffer.

How close are we to realizing the gains TPP has to offer, whatever they might be? For all the laudable technical progress that USTR negotiators have made, the most politically divisive issues remain unresolved. To give an example of one such core issue, there is the question of whether the TPP will be built around a single set of market access commitments, to which all members sign on, or whether it will consist of a patchwork of existing market access rules, augmented by new promises to fill in the empty spaces. This may seem just one issue in a long checklist, but it poses major political problems and will have an inordinate impact on the extent to which the TPP realizes its potential.

So, what needs to be done? A principal reason that so many important issues remain unaddressed is that no bipartisan consensus on trade has been reached here in the United States. Issues such as labor regulation, environmental provisions, and intellectual property rights protection all remain contentious. The appropriate way to address this would be through passage of new trade promotion authority. Such legislation would prompt an open discussion of the key issues, and would make clear to U.S. negotiators just how much room for maneuver they have in discussions with their counterparts. The very fact that the TPP may serve as a template for future trade agreements makes such discussions essential.

To conclude, the United States has played a leadership role in the Asia-Pacific for decades. Economically and strategically, there is no more important region of the world. The TPP has the potential to continue this tradition of leadership, while delivering significant economic benefits to the country. As a demonstration of a high-standards approach to trade globalization which addresses

modern concerns about global commerce and incorporates developing nations as full members, the TPP can set an example that will have positive repercussions well beyond the region.

Thank you.

[The prepared statement of Mr. Levy follows:]

# The Potential of the Trans-Pacific Partnership Trade Agreement

**Written Testimony of**
**Dr. Philip I. Levy**

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**Before the**
**House Committee on Foreign Affairs**
**Subcommittee on Terrorism, Nonproliferation, and Trade**
**Subcommittee on Asia and the Pacific**

**17 May 2012**

Chairmen Royce and Manzullo, Ranking Members Sherman and Faleomavaega, members of the committee, thank you for the opportunity to testify today on the Trans-Pacific Partnership trade agreement. It is an agreement with enormous potential. If the agreement succeeds, it can help set the rules of trade for the 21st century and serve as a pillar of U.S. presence in the critical Asia-Pacific region. It can benefit America's companies and consumers and help secure the country's vital interests.

This great potential is, as yet, unrealized. The challenges that remain are daunting. The administration's embrace of the TPP as its principal active trade initiative and the core of its commercial policy toward Asia also distinctly raised the stakes. The enthusiastic response that the TPP received last November in Hawaii showed the eagerness of the nations in the region to join in a U.S.-led endeavor. It also showed how U.S. credibility is on the line. The United States and its TPP partners have put forth an enticing vision. It is incumbent upon the United States to ensure that vision is realized, and soon. Failure would be costly.

In my remarks, I will describe the origins of the TPP, consider how far it has come and what it has to offer the United States, and then offer thoughts on what must be done to conclude the agreement successfully. There is a significant role for the U.S. Congress, as the branch constitutionally entrusted with trade policy, in laying the groundwork for the TPP's success. I thus heartily commend the committee for holding this hearing.

**The TPP: Origins and Progress**

I would like to take a moment to talk about the inception of TPP. I do this not exclusively out of pedantic academic habit, but because it can help explain some of the impatience that surrounds the TPP. While the agreement captured the attention of many U.S. policymakers after the passage of the free trade agreements with Korea, Colombia, and Panama last fall, it has been around far longer than that.

It began as an agreement between four small countries in the Asia-Pacific: Brunei, Chile, New Zealand, and Singapore (the so-called P4 countries). Their initial agreement was in 2005 and the agreement entered into force in 2006. Later, in 2008, as that group was negotiating a deepening of the agreement, USTR Susan Schwab announced U.S. interest in joining the negotiations. Then, as with much of U.S. trade policy, a dormant period began. The upshot is that, for a majority of the nine countries currently in the TPP negotiations, we are moving toward the fourth year of discussions. That is not an unreasonable time period for an agreement of this ambition, if the end is in sight. It is problematic, however, if one imagines a year or two of additional delay. I will describe later why such delay is a real possibility.

Before I do, though, it is worth putting the TPP in the context of a strained global trading system. As the TPP was coming to life as a significant, region-wide agreement, global trade talks were slipping into a comatose state. The Doha Development Agenda launched in November 2001. The prolonged and fruitless efforts to strike a Doha deal

have left global trade powers wary of grand trade promises that bring repeated ministerials but no signing ceremony. By the end of the decade, the Doha talks had repeatedly hit impasses. Among the key contentious issues were the level of ambition – how much the agreement should do about modern facets of trade regulation – and the appropriate role of economically successful developing countries.

The TPP is clearly situated on one side of these debates – the side the United States has favored. One of the TPP's core principles is that it embraces a "high standards" approach. It deals with issues like service market access, intellectual property rights protection, and investment regulation that are important parts of modern global commerce. While the TPP expanded to include a number of developing nations, including Malaysia and Vietnam, it expects them to participate in these high standards commitments as well.

Thus, a successful TPP would have important ramifications for the global trading system. It would demonstrate the possibility of concluding such an ambitious trade accord and of bridging the North-South divide that plagued the Doha talks. The TPP also has captured the imagination of countries because of its other founding principle – an openness to new members. This approach suggests that the TPP could serve as a template for how to build a sophisticated approach to opening markets. The trading area would be built from the ground up with willing participants, in contrast to the World Trade Organization's top-down approach. The TPP's openness to new members makes possible unlimited future spread.

By the time of the APEC summit in November 2011, there were nine countries involved in the TPP negotiations.[1] In 2011, U.S. merchandise exports to these partner countries were $105.4 billion.[2] That accounted for just over 7 percent of U.S. goods exports last year. But at the time of the summit, three of the top four U.S. trade partners – Japan, Canada, and Mexico – all expressed interest in joining the TPP talks. This demonstrates the heightened interest and potential of the agreement. With these countries, the agreement could encompass much of the trade in the broader Asia-Pacific, a region to which the United States exported nearly $900 billion in goods in 2011.

Beyond sheer trade volumes, it has been a long-standing goal of U.S. international economic policy to get Japan, a true commercial heavyweight, to commit to market opening reforms. At significant domestic political cost, the prospect of TPP membership has induced Japanese Prime Minister Noda to do just that.

**Measuring TPP Progress and Promise for the United States**

It is natural to want to quantify the benefits the TPP has to offer the United States and to ask just how close we are to achieving those benefits. Neither question is easy to answer.

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[1] The United States, Brunei, Chile, New Zealand, and Singapore were joined by Australia, Malaysia, Peru, and Vietnam.
[2] U.S. Commerce Department Export Fact Sheet, March 2012.

If we look at the potential benefits from an agreement, we cannot be satisfied by just looking at the extent of current trade among participants, or even market size as an indicator of potential. After all, the United States already has agreements with Australia, Chile, Singapore and Peru (and, among the new applicants, with Canada and Mexico). That suggests that gains might be overstated.

But one can equally argue that gains can be understated. When we talk about trade flows within the region we usually discuss goods trade. We ought to be discussing services trade as well; it's something the United States is particularly good at and it would capture much of the novelty in market-opening through the TPP. But services trade is difficult to measure. Nor are we well-equipped to quantify the benefits from harmonizing a spaghetti bowl of different trade rules into a coherent package or the benefits from facilitating the sprawling global supply chains that characterize modern commerce. We do get a hint of the importance of such factors, however, when we see global supply chains interrupted by natural disasters in Japan or Thailand and U.S. producers and consumers suffer.

Nor is it easy to quantify the benefits from preserving and extending a U.S. leadership role in the region, but that role is at stake in these talks and the benefits are surely significant. To measure them, one would want to have a counterfactual – where would the U.S. stand if it fails to deliver on the TPP vision? There are a number of unsettling possibilities. There are trade configurations and alliance groupings in the region that do not include the United States. A loss of U.S. credibility in the region would extend beyond the realm of commercial policy.

The one area where we should not count on the TPP is as a short-term macroeconomic stimulus. This is not a failing of the TPP; it is true of most trade agreements. Even were the TPP participants to reach quick agreement, many of the reforms would take time to implement and to pay off for the U.S. economy. In the case of the TPP, the most significant effects may lie in the precedents that are set for other economically powerful countries that aspire to join the high standards agreement. These gains will take even longer.

How close are we to realizing the gains TPP has to offer, whatever they might be? It is tempting to claim progress, citing the framework agreement that emerged in November, or the technical progress made by negotiators. This would be somewhat misleading. The various checkpoints toward reaching ultimate agreement need to be considered along with the degree of difficulty in reaching each one. There are technically complex issues on which there is broad substantive agreement, then there are issues that may be conceptually simple but on which there is strong political resistance to movement. There are issues dividing members of Congress from the administration, and there are issues that divide the United States from other countries.

For all the laudable technical progress that USTR negotiators have made, the most politically divisive issues remain unresolved. To give an example of one such core issue, there is the question of whether the TPP will be built around a single set of market access commitments to which all members sign on, or whether it will consist of a patchwork of

existing market access rules augmented by new promises to fill in the empty spaces. Most of the participants in the negotiations favor the former approach, but the United States has espoused the latter. It is not hard to see why. The United States already has agreements with many of the members. A single set of market access commitments would require revisiting politically difficult issues like Australia's access to the U.S. sugar market. But without a single set of commitments, the TPP loses much of its potency as a template. Any newcomer would feel free to negotiate its own market access deal. This may seem just one issue on a long checklist, but it poses major political problems and will have an inordinate impact on the extent to which the TPP realizes its potential.

**What needs to be done?**

A principal reason that so many important issues remain unaddressed is that no bipartisan consensus on trade has been reached here in the United States. Issues such as labor regulation, environmental provisions, and intellectual property rights protection all remain contentious. The administration committed to building a consensus when it undertook to renegotiate the three pending FTAs, but the split votes on those agreements, particularly in the House, demonstrate that the goal has not yet been met.

The appropriate way to meet this goal would be through passage of new trade promotion authority. Such legislation would prompt an open discussion of the key issues described here and would make clear to U.S. negotiators just how much room for maneuver they have in discussions with their counterparts. The very fact that the TPP may serve as a template for future trade agreements and will establish important new precedents for dealing with issues like state-owned enterprises makes such discussions essential.

In all likelihood, for the TPP to succeed, this will require more openness to compromise than the United States has been required to show in its recent bilateral negotiations. There are multiple countries at the negotiating table and many of them have already negotiated their access to the United States market (a strong threat point, in the parlance of game theory). The United States has defensive interests, but should approach the negotiations with the institution-building mindset that served it so well throughout the post-war era.

In the candid discussions between the administration and Congress, there should also be agreement about a realistic timeline. Resolving these difficult issues will take time. Traditionally election years have been an awkward time to make difficult trade compromises. Aside from using such a timeline as a means of counteracting impatience and skepticism, it is important in determining the appropriate stance toward Japan, Canada, and Mexico. If an agreement is nearly ready for conclusion, then we can plausibly tell these allies that they must wait until later. If, however, the TPP is unlikely to conclude before mid- to late-2013 (as I fear) then a stiff-arming of these important partners will prove unacceptable.

Finally, there is the People's Republic of China. It is not a member of the TPP negotiations and it reacted strongly in November to its exclusion from the talks. Here the Obama administration is to be commended on its handling of a sensitive issue. Of course, rules for Asia-Pacific trade that are set under the TPP could ultimately affect China, but it is China's choice whether it wishes to meet those high standards. China had the opportunity to help shape global rules in the Doha talks but unfortunately chose not to play a leadership role. The Obama administration has, quite rightly, averred that the TPP is not meant as a coalition directed against China. It would make no sense to "gang up" on China in this way, nor would most of the other members of the TPP wish to take part in such an effort. China would, ultimately, benefit from open service markets, strong intellectual property protections, and other features of a high standards agreement. If the TPP realizes its potential, it will be waiting when China is ready to undertake those sorts of obligations.

**Conclusion**

The United States has played a leadership role in the Asia-Pacific for decades. Economically and strategically there is no more important region of the world. The TPP has the potential to continue this tradition of leadership while delivering significant economic benefits to the country. As a demonstration of a high standards approach to trade liberalization which addresses modern concerns about global commerce and incorporates developing nations as full members, the TPP can set an example that will have positive repercussions well beyond the region. To realize this vision, however, will require prolonged and concerted efforts to bridge differences over trade both domestically and with other parties to the agreement. That political engagement needs to begin without delay.

Mr. ROYCE. Let me start with a question to Ambassador Schwab that goes back to the speech of the Deputy National Security Advisor earlier this year on behalf of the administration. He said that the administration was embracing this strategy of TPP because the U.S. faces the prospect of being locked out of Asia due to the large number of bilateral trade agreements that were being negotiated between Asian countries and signed without our participation, and I believe one of the fractures cited was the 10 percent decline in U.S. exports to the region.

How real, I was going to ask you, is the prospect of the U.S. being locked out as a result of these agreements within Asia, between trading partners which are liberalizing trade?

Ms. SCHWAB. I think it is a very real threat. One of the attachments to my testimony is a chart from the WTO Web site which shows the trajectory of the bilateral and regional deals being negotiated, and that have been implemented around the world. And I think we are closing on 300 in effect today, a lot of those—most of those—in the Asia-Pacific region, and most of those exclude the United States.

The one that is of the most prominence is the ASEAN agreement, and the one that is gaining the most focus is ASEAN-plus-three, which is ASEAN, Korea, Japan, and China. The prospect of ASEAN-plus-six, which would add Australia, New Zealand, and ultimately India. And just recently, this week, China, Korea, and Japan announced they were going to go ahead with their negotiation—and they are all of different qualities, so it is really hard to generalize, but there is the distinct possibility that these will be—some of these are in existence, some are under negotiation.

As I noted in my testimony, it is particularly damaging for small- and medium-size companies. Large, multinational corporations can go and invest behind the walls of preferential trade agreements. That really is damaging to U.S. workers. Better that we produce in the United States, or in terms of the supply chains, have the option of producing wherever there is comparative advantage, and that if the production is better done here, and part of it is done in a country within Asia as part of the supply chain—but unfortunately, it is a real risk and TPP is one of the ways of mitigating that risk, or at least partially mitigating that risk.

So yes, it is a real threat. It was a threat that we perceived in the Bush administration, and the Obama administration continues to see the same risk.

Mr. ROYCE. One of the points, Dr. Levy, that you raised, was that many of the TPP negotiating countries already have significant access to the U.S. market. If you go back, for example, to some of the arguments we had about the Colombia FTA, the argument was the U.S. had the most to gain because Colombia had preferential market access before its FTA went into effect. Once the FTA went into effect and knocked down the tariffs on the Colombian side, then we saw our exports grow at a considerable pace.

So the question I would have for you is, give us your take on that. Is it the U.S. that has the most to gain in terms of an agreement that ratchets down tariffs to barriers of entry, whereas in point of fact that access is already granted to TPP countries anyway? Let me get your take on that.

Mr. LEVY. I think you are quite right, Mr. Chairman, that that has traditionally been true of agreements, because the U.S. has fairly low tariff barriers. So to many of the countries with whom we are negotiating, there is an asymmetry, and it works in the U.S. favor in terms of new openness to exports. That should be true here, as well, for those countries where we have not already negotiated trade agreements. Of course, with a number of them, we already have those agreements.

Mr. ROYCE. All right. So your thesis, I will just ask, Ambassador, if you agree with that assessment that one of the phenomena that we see here, and maybe why we see in the most recent trade agreements the large increase in exports, as opposed to imports, is because of—at least from the data we got from the Chamber of Commerce, because of this phenomenon that, like with Colombia, the agreements that were already in force gave market access to our trading partners without guaranteeing us the ability to export into those markets. Were the barriers ratcheted down, and that's the main goal here for the FTA, is to get that kind of ubiquity out of the agreement? Or would it be in the agreement, so that at the end of the day, we don't end up bypassing that opportunity?

Anyway, I am going to recognize Mr. Sherman for his time.

Mr. SHERMAN. The American people know that the trade policy of the United States is destroying the American middle class. The elites know that it is in the elites' interest to continue this trade policy. There is no issue in American politics where the elites and the people of all parties differ more than on trade policy. There are four devices that the elites use to tell the people of this country what the people know is false, and that is to make the claim that these are somehow agreements in the interests of the American middle class.

The first is to simply be condescending, and assume that those who oppose these agreements are luddites, protectionists, or simply didn't pass Economics 101. In order to be effectively condescending, one must ignore the results of the last 20 years, something that can be done by those who have not been displaced by foreign imports.

The second way to do this is to be very selective as to what counts as our current trade policy. The worst part of our current trade policy is permanent MFN for China. The problems with that dwarf any of the supposed benefits of the FTAs, but the supporters of our current trade policy insist that we only talk about FTAs and somehow the many elephants in the room don't count.

The third approach that is used is the phony choice approach, that our only choice is to continue the terrible policies we have now, or to intensify them and make them permanent, that if we have given away the store—say, to Colombia—that the only thing to do is to give it away permanently, and if we can get one penny for giving it away permanently, that is one penny we wouldn't have had otherwise. It is simply absurd to think that we have to take bad trade policy that is temporary and say we have improved it by making it permanent, or to claim that they already have the benefits that have been given to them temporarily, as if those are permanent.

And finally is just kind of fuzzy math. And it is to ignore the base on which we are dealing when we calculate increases. We are told that exports to certain countries increase more than imports. But not by dollars, not by jobs. You can't count the number of jobs, you can't count the number of dollars, which, I have to say, is—if we export to a country $1, and we import 50, and we are able to sign a trade agreement where we export three and we import 100, that that is some major accomplishment for America, having gone from a trade deficit of 49 to one of 97, because, after all, we tripled our exports and only doubled our imports. It is time for the advocates of these agreements to talk in terms of the size of our trade deficit, which is the largest in history.

Now, Ms. Drake, we talked about—I think you mentioned that one thing in these trade agreements is that we should, at least, get for American workers the labor rights that we theoretically try to get from others. It was in this committee, long ago, that the State Department testified that if another country had a "right-to-work law," we would call that a deprivation of human rights. And I realize it is not within the jurisdiction of this committee, but to think that in half of our country the right to organize a union is illusory is a violation—maybe if we put in the TPP that other countries could sue us for having right-to-work states, maybe then you would get some of us to be for it.

Now, could you compare for us the right to organize in Colombia with Vietnam? I think in one country, you can organize a union, but you might be shot, and in the other one you can't organize at all.

Ms. DRAKE. Well, it is a difficult comparison. In Vietnam, there is a national trade union confederation, the VGCL.

Mr. SHERMAN. This is government-controlled?

Ms. DRAKE. Absolutely. It is not independent at all, and——

Mr. SHERMAN. Would we count that as a trade union?

Ms. DRAKE. We would not. It would not count as a trade union here.

Mr. SHERMAN. So in Vietnam, you can have something that lies about being a trade union, and in Colombia you can organize a real trade union, except you might be shot.

Ms. DRAKE. That is correct.

Mr. SHERMAN. And these are the labor rights that we are being told we achieve through these free trade agreements.

I yield back.

Mr. ROYCE. Mr. Manzullo.

Mr. MANZULLO. You know, all politics is local. It is good to talk about—or it is interesting to talk about the big picture. The district I represent has over 2,000 factories. The UAW plant at Chrysler Belvidere, exports about 46 percent of its product. In slow years, 20 million a month goes to Mexico because of NAFTA. About two miles away, also in Belvidere, is a place called ABAR Ipsen. It is owned by a German holding company. It is a UAW shop. They export 97 percent of their product, and they make the world's only portable heat treating machine. It costs about $200,000, pre-programmed into many languages. I asked the operators of the shop "What do you want?" They said "We want a Brazilian free trade agreement."

I could go through my district, shop by shop, union by union, and demonstrate conclusively the benefits that happen as a result of union shops that are involved in manufacturing, because as you know, there is a $38-billion trade surplus with 17 free trade agreements involving U.S. manufactured products. I can only go by what happens to my constituents.

In the area around Rockford, Illinois, with about 250,000 people, there are exports of a whopping $3.5 billion in goods and services each year. It is one of the most highly concentrated areas of exports in the country, and these are good jobs. Jobs involving exports pay on the average, I think, about 17 to 20 percent more than jobs not involving exports.

From the giant Chrysler plant to a fellow that makes starting gates for BMX bicycle races across the countries, an 11 man shop exporting 60, 70, to 80 percent of its product, are all looking forward to the next free trade agreement.

There are a lot of problems that go on with these free trade agreements, and I understand that. But as a Congressman, I look to what impacts the employment of the people that I represent. To me, that is paramount to other talk that goes on.

Working with Japan, we are strong friends with that country. We have been dealing with its inclusion in the TPP, and we are familiar with Japan's closed automotive and beef sectors. However, less well known are the non-tariff barriers presented in Japan's financial service sector, particularly with regards to insurance. The state-owned enterprise, Japan Post, which has over $2 trillion in assets, and 24,700 locations, just passed a law of preference for insurance.

I would like to ask whoever wants to provide an answer, given the collective expertise on TPP and international trade, what is the assessment of Japan's ability to make the necessary changes to key sectors of the economy in order to qualify for the TPP? Anybody?

Ms. MENGHETTI. Let me begin, Mr. Chairman. From our perspective, Japan's potential entry into the TPP is both a huge opportunity—you look at that market, its GDP, the purchases it could have—but for all the reasons you mentioned, we are concerned about each and every one of them in terms of barriers to manufactured goods, barriers to agricultural exports, what we are seeing on Japan Post that affects insurance and other industries as well—is a great challenge.

I think the position here has to be to keep engaging with the Japanese Government and see if they, too, can get to the point—they expressed interest at the APEC leaders meeting in Honolulu to join the TPP. I don't believe they have formally requested joining and they are looking at it in their own economy right now.

I think we need to try to help them understand that moving toward the market openness that we all see as strongly beneficial will help them just as well. I think it is a great challenge, and I am sorry I don't have an easy answer for you.

Mr. ROYCE. If we could go then to Mr. Meeks of New York?

Mr. MEEKS. We will have time, probably, for another round, Mr. Chairman?

Mr. ROYCE. Yes.

Mr. MEEKS. Good. Thank you, Mr. Chairman, and I am going to just ask questions. I am going to resist to go into some of the specifics in regards to numbers, except to say that I know that Dr. Levy—I will start with you. You talked earlier about services, and I chair the Congressional Services Caucus.

And from the numbers that I have seen recently, as of 2011, we had a $193.5-billion surplus in services as far as trading is concerned. Not a deficit, services. I mean, an increase. And experts have told me, especially, in fact, Dr. Brad Jensen of Georgetown university estimates that we could—U.S. services could export about 860 billion more than they are doing now, which would then suggest that that would create an additional 3 million more U.S. jobs in the United States from cross-border trade.

I want to know from you, what do you think the TPP will do to create more opportunities for U.S. services in particular, and investment abroad?

Mr. LEVY. I think you are absolutely right to point this out, that this is a huge potential. It is something that the U.S. does very well. I think that is a large part of what one means when one talks about a high-standards agreement, is that, whereas we have seen globally a fair bit of progress in terms of lowering tariff barriers, less so on services market access. And it offers great potential for the United States.

I think Dr. Jensen's work is very solid on this area, so I think there is tremendous potential. And that is potential both with the existing TPP members, but especially as one looks to expanding it to new entrants who might want to come in.

Mr. MEEKS. Now, Ms. Menghetti, let me ask you—and I know that ECAT has done a lot of work and analysis over the years on the impact of FTAs on the volume of trade between the United States and its partners. And what I have seen indicates to me that we increase our exports to our FTA counterparts, especially—because what I see that causes the imbalance sometimes is if you put oil into it. But if you take oil out of it, the importation of oil trade, can you tell us a bit about what ECAT's findings are about trade balances and FTAs? And can you discuss this dynamic—of course, since we are talking about TPP—and TPP, and how that can help create jobs here in the United States?

Ms. MENGHETTI. Thank you, Mr. Congressman. Absolutely. What we have seen is that, when every single one of our high-standard FTAs has gone into force, in the years—comparing the year the agreement went into force to the year after, we have seen a huge increase in exports to each of those markets.

And I think Chairman Royce, you talked about some of those increases at the beginning: To Chile, 300 percent. Australia, very significant percentages. I think one of the really interesting facts is, when you look at the current U.S. goods exports to the TPP countries, you will see—we did a comparison in my testimony between 2000 and 2011—that 85 percent of the value of the increase—so, how much did U.S. exports increase—because U.S. exports did increase to every single one of the TPP countries during that period. But 85 percent of that increase went to the four countries where we already have FTAs in force.

And so we see FTAs have a huge benefit, for all the reasons Ambassador Schwab and Dr. Levy were talking about. The U.S. market is relatively open. Yes, we have some tariff barriers and other barriers, but it is the other countries who have tariff barriers—they limit access, regulatory barriers, non-tariff barriers—that these agreement really get at, particularly when you are talking about IP, intellectual property-intensive industries, and the rest.

Mr. MEEKS. And let me just conclude on this, because—and maybe this is a question for Ms. Drake. As I looked at Colombia, and I look at Vietnam, for example, some would think that we are not trading with Vietnam now. We are trading with Vietnam now. Trade agreements help put rules and regulations in place that are not, or would not otherwise, be in place. And I know we had a big agreement on labor concerns on May 10th, 2007. We put in labor standards in trade agreements with countries that have not had these standards before, to help them with rules and regulations, especially concerning labor issues.

So my question to you would be, what are your thoughts on including something like the May 10th, 2007 deal into TPP.

Ms. DRAKE. We think the May 10th agreement was a positive step forward. We don't think that it goes far enough. And just seeing—Colombia has been in force since Tuesday, but the Colombian Government never really came into baseline compliance with international labor standards. And we have been seeing violence and death threats and murders of union activists increase just this year, and even since the announcement that the Colombia FTA would go into force. So we think May 10th is a place to start. We think Vietnam in particular, because of its particular labor system, has an awful long way to go.

Mr. ROYCE. Let us go to Mr. Chabot of Ohio.

Mr. CHABOT. Thank you, Mr. Chairman. Ms. Menghetti—am I pronouncing that correctly?

Ms. MENGHETTI. Yes.

Mr. CHABOT. Okay, thank you. I think I will begin with you, if I can.

Mr. ROYCE. And let me also suggest—I mean, we have from CRS, maybe, a difference of opinion on that. You might want to update them, because they might be behind the curve. They said that labor violence was down.

Go ahead.

Mr. CHABOT. I thought you might be talking about the pronunciation of Ms. Menghetti's name. [Laughter.]

Mr. ROYCE. I am not going to attempt it. [Laughter.]

Mr. CHABOT. All right. Thank you. I guess—does my clock start from the beginning, there?

Mr. ROYCE. No, you have lost that time. All right, we will start over.

Mr. CHABOT. Thank you, Mr. Chairman. I read the recent letter that was sent to President Obama signed by the heads of 33 trade associations, underscoring the need for strong IP protections in the TPP. And I know that ECAT was one of the signatories on that letter.

Would you take, maybe, a few minutes, and please discuss some of the disciplines that you and your colleagues are seeking, that were signatories of the letter?

Ms. MENGHETTI. Absolutely, Congressman. And I am glad that you saw that letter, and if anyone has not, we would be happy to share it. As many of you who have seen a report that came out from the U.S. Department of Commerce in April 2012 know, our IP—our intellectual property-intensive industries here in the United States are hugely important to our economic growth and our employment. Just two quick facts: They directly or indirectly produced 40 million U.S. jobs and contributed about $5 trillion to the U.S. economy.

So naturally, from the business perspective, having strong intellectual property protections in the TPP is critical, having them be specific and binding and enforceable, and improving those rules. What was done in the Korea-U.S. FTA really went beyond prior trade agreements in a lot of ways, and we want to see that continue. We also want to continue on with provisions on anti-camcording, having stronger protections, I would say, for the pharmaceutical sector, on data protection issues that are really critical to both the biotechnology companies that are starting right now, as well as others.

We need countries to adopt mechanisms where they can actually better enforce IP protection, and we need that IP protection to be online as well. Many of our goods and services are delivered online—you think about software, the entertainment industry—so to help us grow our jobs here and the productivity that all of these industries, from lifesaving medicines to entertainment and publishing, and everything in between, we really need to see a good outcome. And it is a struggle right now in the TPP.

Mr. CHABOT. Thank you. And could you further discuss the reason or the need for strong international IP protections through trade agreements in terms of how it impacts the overall U.S. economy and jobs?

Ms. MENGHETTI. Absolutely. If you haven't all looked at the Commerce Department report, I think it is really important to do so. Intellectual property is part of almost every company in the United States. You know, sometimes the smaller and medium-size companies, they develop these intellectual property protections, or they use some of the tools that are there. It affects every industry in the United States.

But the Commerce Department said that there were about 75 industries across the medical, scientific, entertainment, artistic world that focus, really, on IP. They account for about 30 percent of U.S. jobs. They were a big part of our economic recovery, providing a 1.6 percent increase in direct employment. And they provide huge merchandise exports, about $775 billion.

We see overseas, though, huge threats, right? So we see piracy, we see counterfeit, we see the violation of trademarks, trade secrets, which is one of the new issues that the U.S. just put down. I think the U.S. approach in the TPP negotiations so far has been a good one—USTR's approach—but we are facing a lot of pushback. Other governments are saying, "Well, we are not so sure we

want binding commitments. We are not so sure we want these same IP protections."

And what we have tried to argue is that, in all these sectors, the innovation that these industries bring helps every single one of us in our daily lives, and really helps countries, whether they are developing or developed, whether they are IP-exporting countries or IP-importing countries, when you think about the computer and information technology-type innovations, medicines, as well as all the wonderful artistic works that we all like to enjoy.

So if we don't get those, we are going to see increasing rates of piracy, and that is going to affect jobs here in the United States.

Mr. CHABOT. Okay. Thank you very much. Mr. Chair, I would note that I have got 9 seconds left, so I think rather than ask another question, I will yield those 9 seconds back to the chair.

Mr. ROYCE. We are going to go to Mr. Kelly from Pennsylvania.

Mr. KELLY. I appreciate that. I was just looking over—there is a letter for inclusion of Canada in the TPP negotiations. I don't know if there has been any conversation about that yet. I know, Chairman, you are one of the signers on that letter. So it is probably Ms. Drake, could you give us some of the ups and down of the Canadian participation?

Ms. DRAKE. I am happy to. Thank you. We already have a trade agreement with Canada. First we have the U.S.-Canada FTA, and now we have NAFTA. It is an economically advanced country, high wages, so it doesn't pose the same kind of export platform threat as some of the other countries.

The key is, again, what rules are put in place, and do those rules apply? So from the AFL–CIO's perspective, there are some things about NAFTA that we don't think that we got right. We think the investor state dispute settlement provisions are particularly bad. If those provisions in the TPP were better, and they overruled the provisions in NAFTA, so that investors would have to use the newer, more modern provisions, that would be a good thing.

If they sat side by side, which we understand might be the case, and investors could pick and choose which sets of rules they wanted, we haven't achieved all that much. In particular, the rules of origin with autos in NAFTA were good in that they were rising over time. So now we have a 62.5 percent rule of origin, regional value content, for autos with NAFTA. If that is decreased in the TPP and auto manufacturers are allowed to choose the lower, that will severely hurt auto jobs in the U.S. So it really depends on the rules.

Mr. KELLY. Okay. So, are you supporting the idea of Canada being involved in this?

Ms. DRAKE. We don't have a yes or no position. We did submit comments, and we talked about the possible upsides as well as the possible downsides.

Mr. KELLY. I think the big part—and I think, Mr. Chairman, that is the idea. Mr. Meeks is also on this letter. The upside, the potential, as we continue to try and go after markets that are—we truly operate in a global economy. I think it is foolish to think that we don't. The fact that we are still the world's largest manufacturer, and we have all these capabilities.

The Canadians are by far our biggest trading partner right now. Is that correct?

Ms. DRAKE. Yes.

Mr. KELLY. Okay. So there is more to be gained than to be lost by this, as long as we set the rules up right going in?

Ms. DRAKE. If we set up the rules right, I think workers in the United States and in Canada could benefit. Absolutely.

Mr. KELLY. Okay. Thank you, sir.

Mr. ROYCE. I think Mr. Manzullo had an additional question, so without objection I will——

Mr. MANZULLO. Thank you. It is really a follow-up. The U.S. and Canada, obviously, have a free trade agreement, and NAFTA trumped that, is that correct? So if the U.S. and Canada enter into the TPP, would the latter trump NAFTA?

Ms. DRAKE. This is for me?

Mr. MANZULLO. Anybody that wants to answer it.

Ms. DRAKE. USTR hasn't been completely clear with us on how they will interact. What they have said is that the existing FTAs won't be repealed, they will stand side by side. And what they have talked about repeatedly is that the higher standard will prevail. Well, on some of the rules, I think there might be a difference of opinion between parties as to which is the higher standard.

Mr. MANZULLO. Ambassador Schwab?

Ms. SCHWAB. The thing to remember about the U.S.-Canada Free Trade Agreement and then—U.S.-Mexico, and ultimately NAFTA—is that by free trade agreement standards, those are ancient free trade agreements. Mid-eighties. So there are things that I think everyone agrees need to be brought up to date in those agreements. If you just look at agriculture in the U.S.-Canada agreement, Canada maintains supply management and U.S. exports of poultry and dairy to the Canadian market face 200- and 300-percent tariffs, for example. And you won't find a single agricultural group in the United States, that doesn't think those should be addressed.

So really, when we launched the TPP, my Canadian and Mexican counterparts, the Trade Ministers, were among the first I spoke with about the potential of building them into this agreement at some point, and updating and upgrading the U.S.-Canada and U.S.-Mexico agreements.

Mr. MANZULLO. This TPP is interesting. What is interesting was the earthquake. We got our delegation out in 2 hours and 29 minutes, and you got caught in it.

Ms. SCHWAB. You did indeed, sir. You did indeed.

Mr. MANZULLO. That was quite an event. The way the TPP works, is an agreement is forged, then the first two countries to join it are bound by that to each other, and then as other countries come in, they agree to all the criteria and become part of that agreement. Is that correct?

Ms. SCHWAB. Well, this is an unusual configuration. In the past, we have negotiated with CAFTA, for example—that was almost a hub and spoke kind of negotiation, and then we expected the CAFTA countries to work out, to have their FTA and build it out.

In the case of TPP, it is unclear whether—we had always imagined building concentric circles around the original—what we thought was a P–8, which is now being negotiated as a P–9. What

is not clear is whether it will be an accession process, much the way a country accedes or joins the WTO, or whether it is a whole new negotiation. Because there are nine core countries involved, it is unclear how that is going to work, and is one of the things that the nine countries will have to decide is, is that negotiation with each of the nine? Will there be changes to the core agreement when a new country comes in? And my guess is, it will depend on how big the new country is, and what kinds of issues they will want to bring in.

Mr. MANZULLO. Isn't that something that should be determined first?

Ms. SCHWAB. It is going to have to be determined as part as the original deal.

Mr. MANZULLO. Dr. Levy?

Mr. LEVY. Mr. Chairman, I think you have hit on an absolutely critical issue. And I address this a little bit further in my written testimony, that I think this question of whether there is going to be a new, single set of market access agreements and rules which then supersedes, or whether there is going to be a collection where past agreements, such as NAFTA, remain largely intact and you strike new marginal agreements, is absolutely key to whether or not this realizes its potential.

It is, of course, very difficult to rewrite all these things, but doing so offers two things that I think are really essential. One is the benefits of harmonization. It means that U.S. businesses don't have to play by different rules depending on which country they are dealing with. And two, what I think many of us have talked about is the benefit of precedent. It is much stronger if there is a single set of rules, as opposed to if any newcomer says, "You have already got a hodgepodge of approaches, here is the one I want to toss into the pile."

Mr. MANZULLO. Thank you.

Mr. ROYCE. Mr. Meeks, did you have a question?

Mr. MEEKS. Thank you, Mr. Chairman. I just want to touch on and ask another matter. I guess I will ask Ambassador Schwab this question and Dr. Levy a second one.

Another matter of great concern is the prospect of including investor state dispute mechanisms in the agreements. So I wonder, what are your thoughts on the need to lay out rules to ensure that state enterprises compete fairly with private companies, and that U.S. investors have the protection of the rule of law and due process? So that is to Ambassador Schwab.

And then Dr. Levy, in my opening statement, I talked about how trade agreements are generally not just economics. It also deals with security and foreign policy implications. And so I was wondering if you could expound, just a little bit, what security or foreign policy implications are connected to TPP. And do you agree, first of all, with my statement that they do? And what do you see as U.S. strategic issues linked to TPP?

Ms. SCHWAB. I would address your question in two parts. One, in terms of the Investor State provisions of the most recent negotiations, most recent agreements, those are solid provisions. It is incredibly important, particularly if you look at some of the expropriations and some of the anti-investment actions being taken by

governments around the world, it is particularly important that our trade agreements have very strong Investor State provisions, like the one in the Korea Free Trade Agreement. And I would hope that the TPP would have an investor state provision at least as strong as that.

In terms of the level playing field issue, which is obviously in some cases related, in some cases can be separate from investor state, the state-owned enterprises, and state-supported enterprises; the competitive neutrality issue—we clearly need to get a handle on, how do you make sure there is a level playing field when a private sector enterprise is competing with a state-owned or state-supported enterprise? And it is one of the "21st century issues" that is being tackled in the TPP, and that is going to set a very important precedent.

Mr. LEVY. Congressman, I agree strongly with you that the significance of these agreements goes well beyond just the economic matters. There are strategic and foreign policy concerns that are intimately tied into this. I think if you look in this case, one could argue that that is, to a great extent, how interest in the TPP was renewed. When President Obama went to gatherings of Asian leaders—I think they have been quite clear that these were sort of political gatherings, groupings, APEC and the like—and these are the issues that APEC leaders care about.

If you want to demonstrate allegiance and friendship and a continued U.S. leadership role in the region, then you must be active on this front. If you say, "Well, all we have are security concerns. We just want to talk about terrorism, we don't really want to deal with you commercially," the United States would not be taken seriously in the region. And because we do have significant concerns throughout that region, those are conversations in which we want to be concluded. So I could not agree with you more strongly.

Mr. ROYCE. All right. Well, I thank very much our panelists today. I thank the members. And we stand adjourned.

[Whereupon, at 4:07 p.m., the subcommittee was adjourned.]

# APPENDIX

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## Material Submitted for the Hearing Record

**JOINT SUBCOMMITTEE HEARING NOTICE**
**COMMITTEE ON FOREIGN AFFAIRS**
*U.S. HOUSE OF REPRESENTATIVES*
*WASHINGTON, D.C.*

**Subcommittee on Terrorism, Nonproliferation, and Trade**
**Edward R. Royce (R-CA), Chairman**

**Subcommittee on Asia and the Pacific**
**Donald A. Manzullo (R-IL), Chairman**

May 17, 2012

You are respectfully requested to attend an OPEN hearing to be held jointly by the Subcommittee on Terrorism, Nonproliferation, and Trade and the Subcommittee on Asia and the Pacific, to be held in room **2360 of the Rayburn House Office Building (and available live via the Committee website at http://www.hcfa.house.gov):**

**DATE:** Thursday, May 17, 2012

**TIME:** 2:00 p.m.

**SUBJECT:** The Trans-Pacific Partnership Agreement: Challenges and Potential

**WITNESSES:**

Philip I. Levy, Ph.D.
Adjunct Associate Professor
School of International and Public Affairs
Columbia University

Ms. Linda Menghetti
Vice President
Emergency Committee for American Trade

Ms. Celeste Drake
Trade & Globalization Policy Specialist
AFL-CIO

Ambassador Susan C. Schwab
Professor, University of Maryland
School of Public Policy
*(Former United States Trade Representative)*

**By Direction of the Chairman**

*The Committee on Foreign Affairs seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call 202/225-5021 at least four business days in advance of the event, whenever practicable. Questions with regard to special accommodations in general (including availability of Committee materials in alternative formats and assistive listening devices) may be directed to the Committee.*

## COMMITTEE ON FOREIGN AFFAIRS

MINUTES OF SUBCOMMITTEE ON *Terrorism, Nonproliferation, and Trade and Asia and the Pacific* HEARING

**Day** *Thursday* **Date** *May 17, 2012* **Room** *2360*

**Starting Time** *2:02* **Ending Time** *4:07*

**Recesses** [1] (*2:18* to *3:02*) (____ to ____) (____ to ____) (____ to ____) (____ to ____) (____ to ____)

**Presiding Member(s)**

*Rep.Royce and Rep. Manzullo*

*Check all of the following that apply:*

**Open Session** [✓]
**Executive (closed) Session** [ ]
**Televised** [✓]
**Electronically Recorded (taped)** [✓]
**Stenographic Record** [✓]

**TITLE OF HEARING:**

***The Trans-Pacific Partnership Agreement: Challenges and Potential***

**SUBCOMMITTEE MEMBERS PRESENT:**

***Reps. Royce, Manzullo, Sherman, Meeks, Chabot, Kelly***

**NON-SUBCOMMITTEE MEMBERS PRESENT:** *(Mark with an * if they are not members of full committee.)*

**HEARING WITNESSES: Same as meeting notice attached? Yes** [✓] **No** [ ]
*(If "no", please list below and include title, agency, department, or organization.)*

**STATEMENTS FOR THE RECORD:** *(List any statements submitted for the record.)*

**TIME SCHEDULED TO RECONVENE** _____
**or**
**TIME ADJOURNED** _____

**Subcommittee Staff Director**

THE WALL STREET JOURNAL.

TUESDAY, MAY 8, 2012 - VOL. CCLIX NO. 107

# Time for an Asia Trade Breakthrough

By Myron Brilliant

With 13 million unemployed, no priority facing our nation is more important than putting Americans back to work. While divisions in Washington run deep, Democrats and Republicans agree that boosting exports is a vital part of any jobs strategy.

With 95% of the world's consumers outside the U.S., the opportunities are immense, and it's critical that the U.S. government do everything in its power to help American business and workers seize them.

Nowhere is this potential more striking than in Asia, the world's fastest-growing region. Two billion Asians joined the middle class in the last 20 years. The International Monetary Fund estimates that the world economy will grow by $22 trillion over the next five years, and nearly half of that growth will be in Asia.

However, the U.S. may be falling behind in the world's most dynamic region. Over the past decade, the growth in U.S. exports to Asia has lagged behind our overall export growth, and the share of U.S. exports sent to Asia fell in 2011.

What's going on? One factor is that the U.S. has fallen behind in the race to clinch new market-opening free-trade agreements (FTAs) with Asian countries. Our agreements with Korea, Australia and Singapore are incredibly important, but they are not enough.

> The U.S. has fallen behind in the race to clinch new market-opening agreements.

Contrast that with the Americas, where U.S. FTAs with a dozen nations cover 87% of U.S. trade with our hemispheric neighbors. The result is that nations in the Americas last year purchased nearly as much U.S. exports as Asia and Europe combined.

Meanwhile, the number of intra-Asia free-trade agreements has exploded, rising to 70 from six over the past 15 years. An additional 80 are under negotiation.

Free trade agreements have a proven record of boosting trade. In our analysis, U.S. exports to new FTA partner countries have grown on average four times as rapidly in the three to five year period following the FTA's entry into force as U.S. exports globally.

So how do we get more trade deals in Asia? The answer is the Trans-Pacific Partnership (TPP) agreement, a nine-nation FTA negotiation among the U.S., Australia, Brunei, Chile, Malaysia, New Zealand, Peru, Singapore and Vietnam.

Not only is the TPP on track to conclude this year, but its open architecture allows for more countries to join, making it a model for 21st century trade deals.

The TPP can act as an anchor for policies that promote free enterprise and free markets in Asia, giving U.S. companies not just increased market opportunities, but also insurance against protectionist sentiments.

To achieve this ambition, we need a high-standard agreement. The TPP must strengthen intellectual property and investment protections; ensure that procurement policies are transparent and fair; simplify tariff schedules, rules and standards; and address the role of state-owned enterprises in the economy.

We can take a big step toward that goal this week in Dallas, site of the 12th round of TPP negotiations. The Chamber is urging TPP countries, including the U.S., to get this deal done in 2012.

That won't happen unless all countries, the U.S. included, are prepared to put everything on the table and work toward achieving an ambitious and commercially meaningful outcome.

The longer we take, the more the U.S. risks falling behind. With a clear pathway toward ensuring fair and market-based competition among TPP partners—and with jobs at stake—now is the time to be bold.

*Mr. Brilliant is senior vice president for international affairs at the U.S. Chamber of Commerce*

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May 17, 2012

The Honorable Ed Royce
Chairman
Subcommittee on Terrorism,
Nonproliferation and Trade
Committee on Foreign Affairs
Washington, DC 20515

The Honorable Brad Sherman
Ranking Member
Subcommittee on Terrorism,
Nonproliferation and Trade
Committee on Foreign Affairs
Washington, DC 20515

The Honorable Donald Manzullo
Chairman
Subcommittee on Asia and the Pacific
Committee on Foreign Affairs
Washington, DC 20515

The Honorable Eni F.H. Faleomavaega
Ranking Member
Subcommittee on Asia and the Pacific
Committee on Foreign Affairs
Washington, DC 20515

Dear Chairman Royce, Ranking Member Sherman, Chairman Manzullo, and Ranking Member Faleomavaega:

The Retail Industry Leaders Association (RILA) appreciates the opportunity to submit written testimony to your subcommittees regarding the Trans-Pacific Partnership (TPP) agreement. RILA strongly supports the U.S. objective to establish a high-standard, 21st century agreement that will create a potential platform for economic integration across the Asia-Pacific region and foster new trade and investment. Such an agreement should facilitate growth in trade and investment in the TPP region in all sectors by eliminating trade barriers, reducing business costs, harmonizing rules among TPP partners, and including robust protections for intellectual property rights and investors. In order for U.S. negotiators to achieve this long and important list of priorities in the TPP, RILA also believes that the United States needs to take a fresh look at our trade policy regarding the highest-duty items--apparel and footwear.

RILA is the trade association of the world's largest and most innovative retail companies. RILA members include more than 200 retailers, product manufacturers, and service suppliers, which together account for more than $1.5 trillion in annual sales, millions of American jobs and more than 100,000 stores, manufacturing facilities and distribution centers domestically and abroad.

RILA is encouraged by the political mandate given by TPP leaders at last year's APEC summit to conclude ambitious TPP agreement this year. We join many others in the U.S. business

community in supporting the leaders' goal to conclude a TPP agreement in 2012. We are also mindful that business as usual will not produce a 21st century agreement that maximizes the benefits of today's global economy for the United States and our TPP trading partners.

**Retailers Employ Several Million U.S. Workers Who Deserve A Modern TPP**

In today's uncertain economic climate, it is especially important that U.S. trade negotiators advocate policies that maximize American innovation and job growth. American retailers employ more than 12 million U.S. workers in all 50 states and in every Congressional district. Global supply chains are the life blood of retailers, and open trade – both imports and exports – sustain these millions of retail jobs.

Retailers provide a diverse range of excellent job opportunities, from professional merchandisers, lawyers, accountants, designers, real estate executives, information technology professionals, and transportation and logistics providers with college and post-graduate degrees, to cashiers, store clerks, truck drivers, loss prevention specialists, and distribution center workers. Retail is known for its innovation and cutting edge business practices in areas such as supply chain management, marketing, commercial real estate, and other professional disciplines.

RILA member companies not only import products into the United States, but they also market and retail products throughout the TPP partner countries. If done correctly, the TPP agreement offers a platform for economic integration and commercial opportunities for our members that will create and support high-quality jobs here in the U.S.

**Content and Structure of the TPP**

To ensure a TPP with the highest standards and most comprehensive benefits for the United States, RILA seeks these elements in a successful TPP agreement:

*Flexible Rules of Origin*: As consumers demand better goods and services, retailers seek out the best quality products at prices that are affordable for consumers. The TPP rules of origin should be flexible to facilitate efficiencies in global sourcing. In particular, RILA supports broad cumulation for all products, particularly apparel, produced in TPP countries and other U.S. FTA and preference partners. The rules of origin should also be predictable, transparent, and easily administered. More discussion on rules of origin follows in these comments.

*Across the Board Tariff Eliminations*: The TPP should provide duty-free access for all products. This agreement should truly represent universal product coverage, with no specific products or sectors excluded from benefits.

*Protect Against Non-Tariff Barriers*: History has shown that when tariffs are reduced, non-tariff barriers (NTBs) often arise to prevent trade. Negotiators should include robust provisions to eliminate and prevent NTBs such as diverse standards and labeling requirements, and encourage transparency in government regulations.

*Standardize Existing Agreements*: The United States has existing bilateral FTAs with Australia, Singapore, Chile, and Peru, and these separate agreements contain varying standards and policies. Entering into a multilateral agreement with these nations provides a unique opportunity to improve, unify and harmonize the agreements to create a single market with a common set of rules (as opposed to the hub and spoke model that currently exists). This approach will help to foster the free flow of goods between and among all the TPP partners.

*Liberalization of Services Trade, Including Goods Distribution:* RILA believes that the negotiation of the TPP on services trade should prioritize market access improvements in distribution services (broadly defined as retailing and wholesaling as well as ancillary services such as express delivery, telecommunications and financial services). More specifically, RILA supports the elimination of local equity requirements that cap foreign retail investment, the elimination of competitive needs or investment screening tests, and the removal of unwarranted restrictions on store size and operating hours.

*Strong Intellectual Property Rights Protection*: Because RILA's members are globally competitive, protection of retail brand names has become a growing concern. RILA seeks disciplines that would make it easier for retailers to protect their brand names in other countries. The TPP should include the highest standard for the protection of brands and trademarks.

*Strong Investor Protections:* RILA believes that TPP negotiators should secure high-standard rules for investor protections for all sectors. Such protections should open foreign markets to U.S. investment, protect U.S. investors, and provide for neutral and effective international arbitration to resolve disputes between investors and a host country. In particular, the TPP investment chapter should ensure high-level protections related to national treatment, minimum standard of treatment, pre-establishment, expropriation, indirect expropriation, fair and equitable treatment, full protection and security, and the free transfer of capital. RILA also believes the investment chapter should be negotiated on a negative-list basis and should include full coverage for investment agreements.

*Regulatory Harmonization:* RILA supports proposals to facilitate the movement of goods and services throughout the TPP countries by ensuring that TPP member countries maintain transparent, effective, enforceable and mutually coherent regulatory systems that are risk and science based, adhere to international best practices, and assure high levels of collaboration among TPP governments and their stakeholders.

*Expansion to Include New Partner Nations:* One of the biggest benefits of the TPP is the potential and architecture to attract new participating countries over time. Indeed, RILA welcomes the interest to join the TPP expressed by Japan, Canada and Mexico. At the same time, RILA believes that new entrants should not slow down or stall the negotiations, or lower the ambition to create a high-standard agreement that facilitates trade and investment in all sectors. The TPP should be crafted in a way that allows new entrants to join when they are able to accept the TPP's high standards.

**American Innovation: A Modern Approach for Apparel Trade in the TPP**

U.S. tariffs on clothing and home linens are some of the highest in our Harmonized Tariff System (HTS), and account for approximately 68 percent of all duties collected from the TPP countries. U.S. companies pay billions of dollars in apparel duties every year—these duties inhibit job growth in our sector, rather than foster it.

Previous U.S. FTAs have included very restrictive rules that are more effective in protecting discrete apparel supply chains than in growing trade and investment in apparel. RILA believes the TPP presents an opportunity to change this model, and that the yarn forward rule of origin (ROO) found in past trade agreements should be abandoned in favor of rules that promote the development of a robust, efficient, and competitive apparel industry within the TPP region.

America's future economic success rests not in policies that preserve factory jobs at any cost but instead maximize opportunities to employ Americans in research, design, innovation, marketing and logistics jobs that create significant value here in the U.S., drive global supply chains, and depend on international trade. This truth couldn't be more evident than in the apparel and retail industry, where there is 98 percent of clothing sold in the U.S. is assembled in factories overseas, yet 65-75% of the value of the garment is created in the United States through research, design, marketing, logistics and other activities performed by American workers. Despite the high value-add in America and millions of American jobs in our sector that rely on global trade, U.S. trade policy continues to saddle American companies with billions of dollars in apparel import duties.

**Yarn Forward Rules of Origin are Outdated and Stifle Trade in Today's Global Economy**

In the past 15 years, changes in the yarn and fabric industry have rendered a yarn forward ROO outdated and out of sync with the realities of the industry. The current U.S. proposal on ROO for apparel takes a shotgun approach in advocating a yarn-forward position for nearly all apparel products that requires originating yarns, fabrics, sewing thread and other inputs even if there is insufficient availability of quality inputs and a reliable supply chain within the TPP countries.

Currently and in the foreseeable future, there is insufficient yarn and textile production capability in the TPP region to provide the range and volume of innovative yarns and fabrics necessary to meet the demands of a market driven by aesthetics, style, trends and seasonal demand. A yarn forward ROO would stifle growth and integration in the apparel sector by inhibiting design flexibility and creativity, lengthening lead times, and decreasing speed to market.

In addition, a yarn forward ROO places a tremendous burden on supply chains due to the cumbersome and costly tracking and monitoring requirements that often negate any potential cost benefit from a preferential duty. A yarn forward rule is also difficult to enforce, as it requires officials to rely heavily on documentation instead of verification of manufacturing processing in a TPP country.

Moreover, in the U.S., importers are required, for audit purposes, to produce upon request all production records, payroll records, import and export records, and transport records associated with any preference claim (not just for apparel). Due to the dynamic nature of retailers' supply chains, however, an importer may no longer be doing business with a vendor when an audit occurs, and would therefore be challenged to produce all such records. For this reason, many retailers will not claim preferential treatment at all to avoid the risk of not passing an audit. RILA recognizes the importance of effective provisions to ensure proper preferential claims, but policy makers should also be mindful of the equally important goals of facilitating trade and providing business certainty.

**U.S. Negotiators Should Work With Industry to Develop an Alternative Approach**

RILA believes that Congress and the Administration should work with industry to create a new template for apparel trade that accounts for current production capabilities in the United States, and stimulates investment, growth, and integration within the TPP region. This new template should recognize and facilitate the significant value created by American retailers, apparel brands, manufacturers, and importers as well as domestic textile producers. Such an approach should include a flexible general rule of origin for apparel that maximizes the incentive to grow trade and investment, value and jobs in the TPP. For specific products for which there is significant U.S. production, RILA stands ready to work with other stakeholders to develop criteria to determine when it would be appropriate to include more restrictive rules.

**U.S. Negotiators Should Adopt a New Approach on Footwear**

In addition to apparel, Congress should also rethink U.S. policy for footwear trade in the TPP. Currently, footwear tariffs are among the highest in the U.S. tariff schedule despite the fact that less than one percent of footwear sold in the United States is domestically produced. The TPP

provides an opportunity to eliminate duties on all footwear, allowing companies reinvest the savings in innovation and maintaining competitiveness.

Currently, eight percent of U.S. footwear imports originate in Vietnam. Similar to apparel supply chains, for those U.S. footwear companies sourcing in Vietnam, the vast majority of the innovation, design, marketing, and logistics for footwear--and therefore the bulk of the value--takes place in the United States and supports thousands of American jobs.

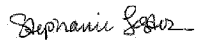
RILA believes that all footwear within Chapter 64 of the Harmonized Tariff Schedule should be subject to a simple rule of origin and be eligible for reciprocal duty-free treatment upon enactment of the TPP. There is no reason to exclude products from duty elimination or to delay the elimination of the high duties on any category of footwear.

**Conclusion**

RILA believes that the TPP presents a unique opportunity to develop a new approach to trade policy in a variety of areas, and particularly for high-duty products such as apparel and footwear. Congress should work with U.S. negotiators to develop rules for all sectors that maximize economic growth for America's job creators and accommodate the commercial realities of today's global supply chains.

Thank you for the opportunity to offer these comments.

Sincerely,



Stephanie Lester
Vice President, International Trade

ECAT Emergency Committee for American Trade

**RESPONSE TO WRITTEN QUESTIONS FROM LINDA MENGHETTI**
**VICE PRESIDENT OF THE**
**EMERGENCY COMMITTEE FOR AMERICAN TRADE (ECAT)**

**ON**
**THE TRANS-PACIFIC PARTNERSHIP AGREEMENT: CHALLENGES AND POTENTIAL**

**BEFORE THE SUBCOMMITTEE ON TERRORISM, NONPROLIFERATION, AND TRADE AND THE SUBCOMMITTEE ON ASIA PACIFIC OF THE COMMITTEE ON FOREIGN AFFAIRS OF THE U.S. HOUSE OF REPRESENTATIVES**

**QUESTIONS FROM CONGRESSMAN POE**

***Question:*** *Online commerce is increasingly prevalent in global trade and I understand that industry is seeking new cross-cutting disciplines on digital trade. Could you elaborate on what sort of disciplines you are seeking?*

As your question indicates, e-commerce and related issues in digital trade are of particular interest to U.S. businesses that have overseas affiliates, operations and sales. With the rapid growth in the development and use of information and communications technology (ICT), U.S. businesses in all sectors are increasingly using e-commerce platforms to reach and sell to new customers in the TPP countries and around the world. As well, agriculture, manufacturing and service enterprises with overseas operations increasingly rely on ICT products and services to manage their own businesses, from keeping track of sales and customers, sourcing options, imports and exports, and commodity prices to managing human relations and customers. To operate successfully and competitively, these enterprises need to be assured that they can move and maintain such information and data across borders in a secure manner.

The growth of ICT goods and services and the digital economy have been a major driver of economic growth, dynamism, productivity and competitiveness for industries across all sectors of the U.S. economy. It is, therefore, critical that the TPP negotiations ensure that trade and investment rules promote, rather than inhibit, the growth of the digital economy and the ICT product and service sector. Strong principles promoting e-commerce, cross-border data and information flows, services and investment and the protection and enforcement of intellectual property rights will enhance the competitiveness of U.S. companies producing and consuming these goods and services for the benefit of the broader U.S. economy.

In our view, therefore, the TPP negotiations should produce legally binding commitments to:

- Allow cross-border information flows, while ensuring that privacy and intellectual property rights are protected.
- Allow the business enterprises from the TPP parties to transact business through e-commerce platforms, without establishing a commercial presence in each country.
- Prohibit requirements to use local computing infrastructure, such as servers, as a condition for doing business or investment in a TPP country or engaging in e-commerce or cross-border trade.

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In addition, disciplines already found in many U.S. trade agreements that advance e-commerce and the digital economy should also be included in the TPP, including:

- The elimination of tariffs for all ICT products not already covered by the Information Technology Agreement.
- Liberalization of key service sectors, including computer and related services, telecommunications services, ICT-enabled services, and "green" digital services.
- A permanent moratorium on customs duties on electronic transmissions and digital products and guarantees of national treatment and non-discrimination for such products.
- Improvements in regulatory transparency and the participation of all parties in standard setting.
- Elimination of technical barriers to trade.

***Question:*** *I saw the recent industry letter signed by the heads of 33 trade associations underscoring the need for strong IP protections in the TPP. ECAT was on that letter. Could you discuss some of the disciplines you and your colleagues are seeking?*

I am pleased you saw that letter. The chief executives of that broad group of associations that signed onto that letter underscore the critical importance of intellectual property (IP) rights for all sectors of the U.S. economy and for U.S. competitiveness internationally. High-standard intellectual-property protections are a key driver of economic growth in the United States and overseas. As recently highlighted in the March 2012 U.S. government report – *Intellectual Property and the U.S. Economy: Industries in Focus* – U.S. IP-intensive industries support more than one in every four jobs, over one-third of GDP, and approximately 60 percent of exports. Such protections are linked to the creation and retention of jobs in industries focused on everything from consumer and industrial products, educational products and entertainment to scientific products, medical products, including newly developed biotechnology products, and information and communications technology. For consumers, strong rules are also vital to protect against counterfeit products in numerous areas from pharmaceuticals to automotive parts. As well, there are important domestic and national-security interests in ensuring strong enforcement mechanisms against illicit trade, which has been linked increasingly to international crime networks. These benefits not only accrue to the United States, but would also provide important benefits and growth opportunities for our TPP negotiating partners.

In terms of the disciplines that the TPP should include, we believe that it should build upon the world-class provisions of the Korea-U.S. Free Trade Agreement (KORUS) that level the playing field internationally for U.S. industries that require IP protection. It should advance protection, not create lower standards than those standards to which the United States has already agreed. Disciplines must be clear, specific and enforceable. It is also important that the TPP IP chapter ensure that IP protection and enforcement standards keep pace with rapid changes in technology. Among the key protections that are vital to U.S. industry, U.S. competitiveness and the continued growth of innovation are:

- High-standard protections for patents, copyright, trademarks and trade secrets;
- Robust protections for IP rights online;
- The protection of encrypted signals;
- Anti-camcording disciplines;
- Robust deterrent enforcement, including criminal remedies;
- Terms of protection consistent with U.S. law; and
- High-standard and effective protection of innovators' data, including patent-term extension, patent linkage and data protection.

***Question:*** *Japan's protected agriculture sector is a central focus for U.S. farmers. Currently, a quarter of all U.S. rice exports go to Japan. U.S. rice producers believe they could increase sales if Japan were forced to eliminate its 778 percent tariff on imported rice. Is the liberalization of Japan's rice market obtainable?*

As you point out, Japan continues to maintain significant restrictions on its rice market, both through high tariffs and non-tariff barriers. These are in addition to other barriers to agricultural and manufactured products and services. As discussed in the *2012 National Trade Estimate Report on Foreign Trade Barriers* prepared by the Office of the United States Trade Representative, "Japan's highly regulated and nontransparent importation and distribution system for imported rice limits meaningful access to Japanese consumers." While U.S. exports were valued at $293 million, most of this produce went to government stocks and very little U.S. rice reaches the Japanese consumer.

Japan's interest in joining the TPP provides an important opportunity to gain meaningful new access for U.S. rice farmers, as well as for other agricultural producers. U.S. engagement with Japan on rice-market access, as well as other important issues where Japan has long protected its market, will be very important. Also critical to achieving this important goal is for the United States itself to be willing to open its own market, even in areas long protected such as sugar and apparel. If the United States or other countries are permitted to exclude wholly or effectively entire products or core rules from the TPP, then the ultimate agreement will simply not achieve its promise. This is not a bilateral agreement, like several that that the United States has done where products were left off wholly or largely. These negotiations are too big and will only get bigger. And their successful conclusion will require all existing and potential negotiating parties to agree to a fully comprehensive agreement.



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