

REPORTERS' MEMO

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Contact: Arthur Stamoulis, (202) 494-8826

Controversial Trans-Pacific Free Trade Agreement Negotiations Coming to Chicago in September

With High U.S. Unemployment, Pressure Builds for a Fair Deal or No Deal

Trade negotiators from throughout the Pacific Rim will be meeting in downtown Chicago from September 6 – 15, 2011 to negotiate a new Trans-Pacific Free Trade Agreement (FTA). Labor, environmental, public health, consumer and community advocates from Chicago and beyond will also be present to demand a “Fair Deal or No Deal” on the FTA.

The Trans-Pacific FTA is currently under negotiation between the United States, Vietnam, Brunei Darussalam, Singapore, Malaysia, New Zealand, Australia, Peru and Chile, but is also intended as a “docking agreement” that other Pacific Rim countries would join over time, such as the Philippines, Japan, Indonesia, Russia and possibly even China. The ongoing, multi-year FTA negotiations were supposed to conclude by November 2011. Even if that date slips, as is now expected, the window of opportunity to shape the Trans-Pacific FTA’s major provisions is rapidly closing.

Civil society organizations will be holding a rally on Labor Day in Chicago’s Grant Park to demonstrate public opposition to business-as-usual trade policy and to make basic demands of negotiators regarding labor rights, the environment, access to medicine, financial regulations and other social and economic justice issues. This memo provides some background on the Trans-Pacific FTA and civil society’s concerns.

Lack of Transparency in the Negotiating Process

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

PO Box 77077 Washington, DC 20013 phone: 202-494-8826 www.citizenstrade.org

Citizens Trade Campaign is a coalition of labor, environmental, religious, family farm and consumer organizations united in the pursuit of social and environmental justice in trade policy

Earlier this year, unions and civil society organizations in most of the countries involved in the talks launched a coordinated international “release the text” campaign, formally requesting that their governments release the working texts of the Trans-Pacific FTA. Those requests have not been met. As the host of this round of talks, the United States has an opportunity — and is being pressured — to lift the veil of secrecy.

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

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

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

The Trans-Pacific FTA’s Labor and Human Rights Problem

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

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

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

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

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

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

The Obama administration has promised that the Trans-Pacific FTA will be a “high-standard, 21st century trade agreement.” With the FTA’s negotiating text largely still hidden, it remains to be seen exactly what that means. In addition to labor and human rights standards, a few key provisions that civil society organizations from various countries are attempting to influence include:

- ***Foreign Investment.*** Most U.S. FTAs, like NAFTA, include “investor-state” dispute resolution processes that empower individual corporations to challenge laws, regulations and even court decisions as “regulatory takings” through international tribunals that circumvent countries’ domestic judicial systems. These provisions have been used in the past to attack environmental, consumer safety and other public interest policies in the U.S. and throughout the world. Civil society groups have pushed for these provisions to be abandoned in the Trans-Pacific FTA, something that trade negotiators from Australia and New Zealand have also supported. U.S. negotiators have thus far led the charge for investor-state provisions to be included in the Trans-Pacific FTA.
- ***Intellectual Property.*** In May 2011, at the demand of the pharmaceutical industry, the United States signaled that it will pursue stronger intellectual property requirements pertaining to medications under the Trans-Pacific FTA than required by the World Trade Organization. U.S. negotiators are now pushing for requirements that would effectively protect brand-name drugs from generic competitors for an additional seven years. (In addition to concerns around access to medicine, the U.S. has also forwarded an intellectual property proposal that would introduce “secondary liability” holding Internet Service Providers accountable for online copyright violations.)

- **Financial Services.** The Trans-Pacific FTA is viewed by Wall Street as a mechanism for expanding financial service agreements throughout the Pacific Rim. Doing so would not only provide U.S.-based financial corporations with greater market access abroad, but, if past trade deals are any guide, would further enshrine measures that handcuff governments' abilities to regulate banks and insurance companies. Past financial service trade provisions explicitly ban regulations that limit the size of financial institutions, that erect firewalls between them or that prevent the sale of toxic derivatives; they also impose severe limitations on the use of capital controls.
- **Public Procurement.** Past U.S. FTAs have curtailed nations' ability to implement purchasing programs, like "Buy America" or "Buy Local," that are designed to keep taxpayer funds circulating within national, state or local economies. Depending upon how they're written, procurement provisions may also limit the use of "green" and human rights-oriented purchasing requirements and preferences.

Limited Prospects for Increased Exports Under the Trans-Pacific FTA

Another key question related to the Trans-Pacific FTA is how it is expected to help advance the Obama administration's goal of doubling U.S. exports. ***The United States already has free trade agreements that eliminate tariffs and maximize access for U.S. exports with the four countries (Australia, Singapore, Chile and Peru) that comprise 79% of the combined \$2.3 trillion GDP of countries involved in the Trans-Pacific FTA talks. As such, some in Congress have asked why these talks are the best use of trade negotiators' limited resources.***

The four remaining countries in the Trans-Pacific FTA negotiations do not present particularly significant market access potential for U.S.-made goods and services. On the U.S. exports side, Vietnam's GDP is just \$104 billion and it has a per capita income of only \$1,174 a year. On the import side, Vietnam is now promoted as the low-cost labor alternative to China. Even if labor rights issues were adequately addressed, an FTA with Vietnam hardly seems likely to improve the overall U.S. balance of trade or create jobs domestically.

The population of Brunei is just 417,000 — about half that of Indianapolis — and it has a GDP of only \$13 billion. The population of New Zealand is also relatively low (4,369,000) and it has a GDP of \$140 billion, which equates to less than half that of the State of Maryland. Malaysia has a slightly larger GDP of \$238 billion, but a per capita income of just \$8,432 a year.

Given the bleak prospects of increasing exports significantly among the current Trans-Pacific FTA members, U.S. negotiators have pushed for a "docking" mechanism that facilitates other nations joining the FTA over time. Adding new countries to the Trans-Pacific FTA could expand U.S. market access

opportunities, but also exposes the U.S. to demands for new concessions of its own.

The Economic Legacy of NAFTA-Style Trade Pacts in Illinois

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

In Illinois, the adverse effects of NAFTA-style trade agreements have been severe. The U.S. Department of Labor has certified 90,915 Illinois workers as having lost jobs due to either direct offshoring or displacement by imports since NAFTA took effect in 1994. For a variety of reasons, including that the Labor Department did not include service sector jobs within this data set until midway through 2009, the true number of Illinois jobs lost to offshoring is likely much higher.

The Economic Policy Institute estimates that a *net* 34,700 Illinois jobs were lost due to NAFTA alone, and an additional 105,500 due to China’s entry into the World Trade Organization. Together, this represents over 2.3% of the state’s total employment offshored in less than a generation — clearly a huge source of its current unemployment problem.

Illinois employers who have each had over 1,000 employees directly offshored or displaced by imports include Motorola, National Steel, Chrysler, Maytag, Zenith, Northwestern Steel, Caterpillar and Manufacturers Services. Of course, the offshoring of manufacturing jobs impacts far more than just those whose jobs are shipped overseas. It also reduces the base for state and municipal revenue, and puts a downward pressure on the wages and benefits of jobs that are left.

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

Potential Political Ramifications of the Trans-Pacific FTA

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

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

The Trans-Pacific FTA negotiations are further complicated by the fact that Congress still has not passed the pending George W. Bush-negotiated Korea, Panama and Colombia Free Trade Agreements. The Obama administration has countered fierce opposition to those proposals from union, small business, family farm, faith, environmental and consumer groups with promises that when it has the chance to negotiate its own trade deals, they will be different.

The President made a number of very specific promises related to trade policy when running for the White House, and the Trans-Pacific FTA represents his chance to live up to them.

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

Shortly after the passage of NAFTA in 1993, the Clinton administration launched initiatives to establish NAFTA-style “free trade” blocs that would encompass the Western Hemisphere and the Asian-Pacific region. Negotiations for an Asian-Pacific regional FTA were proposed at the Asian Pacific Economic Cooperation (APEC) summit in Bogor, Indonesia, in 1994. However, the plans for both the APEC FTA and the Free Trade Area of the Americas (FTAA) unraveled, as major countries in each region came to loggerheads over the agreements' scopes and the model on which the pacts should be premised. With respect to APEC, this included Japan, Malaysia, Indonesia and others.

In late 2000, three of the APEC countries (Singapore, New Zealand and Chile) that were interested in pursuing the APEC concept of a regional Asian-Pacific FTA launched talks to establish what was formally called the Trans-Pacific Strategic Economic Partnership Agreement, or the Pacific-3 (P-3). Brunei later joined the P-3 talks. In 2006, an FTA, sometimes called the P-4 but formally named the Trans-Pacific Strategic Economic Partnership Agreement took effect. Its text was similar to NAFTA except it did not include chapters on financial services and investment (and also failed to include even modest labor and environmental side agreements).

The U.S. Joins, and P-4 becomes Trans-Pacific Partnership under Bush in 2008: Built into the P-4 text was an agreement to restart talks on financial services and investment issues, which had been put aside during the initial negotiations. The Bush administration entered these talks and participated in three rounds of negotiations. In September 2008, the Bush administration notified Congress that it would expand its participation beyond the two sectoral issues

and start negotiations to become a full member of the agreement, which was identified as the “Trans-Pacific Partnership.” The Bush USTR sent a second Trans-Pacific FTA notice to Congress in December 2008, expanding the list of partners to include Australia, Vietnam, and Peru.

Obama administration and Trans-Pacific FTA: On Jan. 26, 2009, shortly after Obama’s inauguration, the USTR published in the Federal Register a “notice of intent to initiate negotiations on a Trans-Pacific Partnership (TPP) free trade agreement with Singapore, Chile, New Zealand, Brunei Darussalam, Australia, Peru and Vietnam, request for comments, and notice of public hearing.” Shortly thereafter, on Feb. 24, the Obama administration asked the Trans-Pacific FTA negotiating parties to delay indefinitely the negotiations that were scheduled for March 30, so that the new administration could appoint officials to the USTR and then review its trade policy. On Nov. 14, Obama announced during a speech in Japan: “The United States will also be engaging with the Trans-Pacific Partnership countries with the goal of shaping a regional agreement that will have broad-based membership and the high standards worthy of a 21st century trade agreement.” On Dec. 14, 2009, Kirk sent letters to House Speaker Nancy Pelosi and Senate President Pro Tempore Robert Byrd notifying them of plans to initiate negotiations to form a Trans-Pacific FTA.