

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES

WASHINGTON, DC 20515

TPA Markup Committee Report – Dissenting Views

In our view, the Ways and Means Committee and the Congress must focus its attention on the Trans-Pacific Partnership (TPP) negotiations. Those negotiations – the most important trade negotiations in at least 20 years – are at a critical juncture. TPP has the potential to raise standards and open new markets for U.S. businesses, workers, and farmers – or to lock in weak standards, uncompetitive practices, and a system that does not spread the benefits of trade.

The issue is not globalization, which is here to stay, but rather whether and how to shape its course. Our goal – for the American people and U.S. businesses – is a TPP trade agreement that contributes to economic growth, sets high standards, and is sensitive to the needs of the developing and developed countries involved in the negotiations. A key test is whether TPP will result in a net job gain and whether it will address or exacerbate income inequality in the United States. That depends, in part, on whether and how the issues described below are addressed.

Unfortunately, the negotiations are not on the right track. In some areas we don't know where USTR is headed and in others we don't like where they are. Before we turn over our Congressional leverage, we need to ensure the negotiations are headed in the right direction. You can't get a good deal if you are not seeking the right things. TPP is not currently on track to gain broad, bipartisan support in Congress. H.R. 1890 fast tracks TPP, but fails to get TPP on the right track.

Specifically, H.R. 1890: (1) includes general and vague negotiating objectives – nearly identical to those in the Baucus-Camp-Hatch bill last year – that fail to provide guidance on how to resolve the major outstanding issues in TPP in a way that will garner broad, bipartisan support; (2) leaves it to the President to determine whether the agreement he negotiated “makes progress” in achieving those objectives; (3) leaves it to the President to develop guidelines on how to properly consult with Congress, four months after Congress passes legislation (despite the fact that the TPP negotiators say they are already in the “end game”); and (4) fails to include any workable provision to maintain congressional leverage by enabling Congress to remove fast track. In short, H.R. 1890 puts Congress in the back seat and greases the skids for an up-or-down vote after the fact.

Success should not be measured relative to the status quo. The question rather is: Are the agreement's rules sufficiently forward-looking and strong enough to bring about meaningful lasting improvements to people's lives by enhancing the positive aspects and addressing the negative impacts of globalization? Our leverage is based largely on other countries' interest in gaining greater access to the U.S. market. Once the U.S. eliminates tariffs on virtually all products, as contemplated in TPP, we will no longer have that leverage.

We offered as an amendment in the nature of a substitute The Right Track for TPP Act. That Act puts the TPP negotiations on the right track, providing a path forward to an agreement that will garner broad, bipartisan support in Congress. Specifically, the Right Track for TPP Act:

- (1) Includes specific negotiating *instructions* on all of the major outstanding issues in the TPP negotiations;
- (2) Does not provide for expedited consideration unless and until Congress, through bipartisan groups of House and Senate trade advisors, determine that the instructions were followed;
- (3) Sets the procedures the President is to follow to inform and consult with Congress and stakeholders; and
- (4) Includes two useable mechanisms to enable Congress to remove expedited consideration where necessary.

TPP Negotiating Instructions

1. *Currency Manipulation*

Issue: Majorities in the House and the Senate have urged the Administration to include strong and enforceable currency obligations in the TPP, which includes a number of countries that have manipulated their currencies in the recent past, such as Japan. Other alleged manipulators, such as Korea and Taiwan, have also expressed an interest in joining TPP.

Status: The Administration has not made a currency proposal in the TPP negotiations.

H.R. 1890: Leaves it up to the Administration to decide how to address currency manipulation, laying out options the President already has to address the issue – including things like “monitoring” that are already being done.

Right Track: Provides that the TPP must include strong and enforceable currency manipulation provisions, consistent with existing IMF guidelines – and spells out what an “enforceable” provision looks like. Congress cannot leave it to an Executive branch to decide how to interpret “enforceable” given that, over the past two administrations, the Executive branch has been unwilling to do what needs to be done on this issue.

2. *Labor Rights*

Issue: Will all TPP parties meet international worker rights standards?

Status: TPP does not yet have a mechanism to ensure compliance by TPP parties that have labor laws and practices that fall far short of international standards contained in the “May 10 Agreement of 2007” even though TPP is expected to include the May 10 obligation with enforceability through the basic dispute settlement structure in TPP.

Vietnam presents the greatest challenge the United States has ever had in ensuring compliance. Workers there are prohibited from joining any union independent of the communist party. While the Administration is discussing these issues with Vietnam, Members of Congress and stakeholder advisors have not yet seen any proposal to address these critical issues. The Administration also has not committed to ensuring that all changes to laws and regulations are made before Congress votes – or even before the TPP agreement enters into force.

Mexico also presents considerable challenges. Employer-dominated ‘protection unions’ are prevalent, and the arbitration boards responsible for resolving labor disputes are inherently and structurally biased. It is not clear whether, how, or when the Administration will resolve these and other issues with Mexico.

Without their resolution, it will not be possible to say that the problems with NAFTA are being fixed. U.S. workers and U.S.-based businesses should not be required to compete against workers who are denied their basic labor rights.

H.R. 1890: Does not address what needs to be done to bring countries like Vietnam and Mexico (as well as Malaysia and Brunei) into compliance with international labor standards. It contains only general language in line with the May 10 Agreement.

Right Track: Describes what needs to be done to bring Vietnam, Mexico, and other countries into compliance with international labor standards (as reflected in the May 10 Agreement) and to help ensure compliance after the TPP agreement enters into force. It also requires that the changes needed to bring our trading partners into compliance occur before Congress votes. It is important that there be a change in the status quo in the countries that are clearly out of compliance with basic international standards.

3. *Environment*

Issue: Will the TPP environmental chapter ensure a level of environmental protection at least as high as the May 10 standard which directly incorporated seven multilateral environmental agreements into the text of past trade agreements?

Status: The TPP environment chapter will look very different from the May 10 Agreement. The environment chapter covers a broad range of subjects, ranging from shark finning, to fish subsidies, to trade in illegally harvested plants and animals. But the obligations themselves – the ‘verbs’ used – are often weak.

H.R. 1890: Simply lists the seven multilateral environmental agreements from the May 10 Agreement, which is not consistent with the approach taken in TPP.

Right Track: Instructs the President to ensure a level of environmental protection at least as high as the level provided under the May 10 Agreement. It also recognizes the need to replace weak commitments with strong ones, such as “prohibiting” imports of illegally harvested wildlife products.

4. *Investment and Investor-State Dispute Settlement (ISDS)*

Issue: Will the TPP include an investor-state dispute settlement (ISDS) mechanism that provides foreign companies a right of action against other governments for infringing on the companies' investment rights? Will the TPP include an ISDS mechanism without incorporating any new, additional safeguards to prevent it from being abused?

There are now more cases of private investors challenging environmental, health, and other regulations in nations – even nations with strong and independent judicial systems and rule of law. Just last month, a NAFTA tribunal, in *Bilcon v. Government of Canada*, granted an award that appears to be inconsistent with the U.S. interpretation of the investment obligations that will be included in the TPP Agreement. Other investment disputes involve 'plain packaging' of tobacco products in Australia and pharmaceutical patent requirements in Canada. This issue is receiving heightened scrutiny among negotiators and from a broad-range of interested parties. Some of our TPP partners do not support ISDS or are seeking safeguards to ensure that nations preserve their right to regulate. The Economist magazine, the Cato Institute, and the Government of Germany (the birthplace of ISDS) have also recently expressed concerns with ISDS.

Status: The TPP text is basically the same as the model adopted 10 years ago, even though conditions have changed dramatically in the past 10 years. Proposals to include new safeguards in the ISDS mechanism have been rejected.

H.R. 1890: Is exactly the same negotiating objective it was over 12 years ago.

Right Track: Instructs the President to: (1) establish a new mechanism to enable TPP parties to agree to dismiss an ISDS case; (2) clarify the vague 'minimum standard of treatment' obligation; (3) allow parties to adopt capital controls to prevent or mitigate financial crises; and (4) clarify that the Agreement is not intended to provide foreign investors with greater substantive rights than U.S. investors under U.S. law, consistent with the May 10 Agreement.

5. *Access to Medicines*

Issue: Will the TPP ensure a balance between strong intellectual property rights and access to affordable, life-saving medicines, as provided under the May 10 Agreement?

Status: Absent some change in course, the final text is likely to provide less access to affordable medicines than provided under the May 10 Agreement. For example, developing countries will likely be required to 'graduate' to more restrictive intellectual property rights standards before they become developed – a clear inconsistency with May 10. There are also a number of concerns that the TPP

agreement will restrict access to medicines in the United States and other developed countries (e.g., by encouraging second patents on similar products, by having long periods of data exclusivity for biologic medicines, by allowing drug companies to challenge government pricing and reimbursement decisions).

H.R. 1890: Includes additional language on access to medicines that was not part of the 2002 bill, apparently as a nod to the May 10 Agreement. But it is unclear what this language means. TPA also seeks to achieve “the elimination of government measures such as price controls and reference pricing” – going far beyond the transparency and due process commitments relating to pharmaceutical reimbursement schemes that were negotiated in past trade agreements.

Right Track: Instructs our negotiators to adhere to the access to medicines provisions of the May 10 Agreement.

6. *Automotive Market Access*

Issue: Will the TPP finally open Japan’s market to U.S. automobiles and auto parts? For most of the past 15 years, our trade deficit with Japan has been second only to our deficit with China, and over two-thirds of the current deficit is in automotive products. Japan has long had the most closed automotive market of any industrialized country, despite repeated efforts by U.S. negotiators over decades to open it. At a minimum, the United States should not open its market further to Japanese imports, through the phase-out of tariffs, until we have time to see whether Japan has truly opened its market.

Status: The Administration has not stated a specific period of time for when the phase-out in U.S. tariffs for autos, trucks, and auto parts would begin or when they would end. The parties are also still working to address certain non-tariff barriers that Japan utilizes to close their market.

H.R. 1890: Broadly states that the United States should “expand competitive market opportunities for exports of goods.” Such a broad negotiating objective provides no guidance regarding how to truly open the Japanese automotive market.

Right Track: Provides that U.S. auto tariffs should not be reduced or eliminated unless and until Japan opens its notoriously closed auto market; alternatively, those tariffs may be eliminated 30 years after the agreement enters into force.

7. *Rules of Origin*

Issue: Will the TPP incorporate rules that ensure that the benefits of the tariff cuts flow primarily to the parties to the agreement and not to free-rider third parties that have not signed up for the commitments in the TPP?

“Rules of origin” define the extent to which inputs from outside the TPP region (e.g., China) can be incorporated into an end product for that product to still be entitled to preferential/duty-free treatment under the Agreement. The rule should be restrictive enough to ensure that the benefits of the agreement accrue to the parties to the agreement. Some have argued that the automotive rule of origin in TPP should be at least as stringent as the rule in NAFTA, given that TPP involves all three of the NAFTA countries plus nine others.

Status: There are a number of rules of origin being negotiated in the TPP for different products, including in the sensitive textile and apparel, agricultural, and automotive sectors. Some of the rules are largely settled while others – including the rules for automotive products – remain open and controversial.

H.R. 1890: The Hatch-Wyden-Ryan TPA bill provides no guidance whatsoever on any rule of origin on any product in the TPP negotiations.

Right Track: Instructs the President to negotiate a rule of origin for automotive products that is at least as stringent as the rule in the North American Free Trade Agreement.

8. *Tobacco Controls*

Issue: Will the TPP safeguard countries’ ability to regulate tobacco as a matter of public health?

TPP needs to explicitly preserve the ability to regulate tobacco. A number of recent international disputes have challenged tobacco measures, including multiple disputes (both WTO and ISDS) challenging Australia’s plain packaging scheme for cigarettes. A number of public health groups are concerned about the potential of FTAs to roll back legitimate tobacco control measures.

Status: In 2013, the Administration decided not to pursue a safe harbor for tobacco in TPP that it had originally supported. Instead, the Administration tabled a proposal that merely confirms that tobacco measures may be subject to the normal public health exception in our trade agreements – drawing intense criticism from former New York Mayor Michael Bloomberg, the New York Times editorial board, and non-governmental organizations.

H.R. 1890: Provides no guidance on tobacco control measures, given the Administration the flexibility to include whatever it wants, or nothing at all.

Right Track: Provides that non-discriminatory tobacco control measures should not be subject to challenges as being inconsistent with the obligations in the TPP.

9. *State-Owned Enterprises*

Issue: Will the TPP impose rules on companies effectively run and funded by their governments, so that truly private enterprises can compete with them on a level playing field?

In today's global economy, competition is fiercer than ever. Certain countries that rely heavily on state-controlled and state-funded enterprises (also known as state-owned enterprises or SOEs) are able to give those champions an enormous – and unfair – advantage over private companies that compete against them in the marketplace. And, in turn, those SOEs don't always operate based on commercial considerations, but instead may pursue state objectives such as favoring local suppliers over U.S. suppliers.

Status: The TPP will include disciplines on SOEs that are expected to go beyond anything ever included in past trade agreements. But the extent to which an SOE provision will help to level the playing field will be determined by the degree to which parties seek very broad country-specific carve-outs for particular SOEs. As concerning, the definition of SOEs is too narrow, allowing enterprises that are effectively controlled by foreign governments (but where the government owns less than 50% of the shares) to circumvent the obligations.

H.R. 1890: Provides no guidance on what an acceptable definition of an SOE is, or on what kinds of carve-outs are acceptable.

Right Track: Provides that the SOE disciplines should apply broadly to all enterprises controlled by governments, including where the government owns a controlling interest but less than a majority of the shares, and that exclusions from coverage must be narrowly tailored.

10. *Agricultural Market Access*

Issue: Will the TPP eliminate tariffs on virtually all U.S. agricultural exports in markets that have been traditionally sheltered from competition from trade like Japan's and Canada's?

Status: It appears that the United States and Japan will agree that Japan will reduce tariffs – but never eliminate them – on hundreds of agricultural products, far more carve-outs than under any U.S. trade agreement in the past. Canada, on the other hand, has not put any offer on the table for dairy products, which is causing some concern in the dairy industry. This concern is even stronger given that the dairy industry is not entirely pleased with the status of the Japan negotiations, plus the fact that the industry is concerned about an increase in dairy imports from New Zealand. Finally, the dairy industry is also closely watching the negotiations over 'geographical indications' as it relates to cheeses and other dairy products.

H.R. 1890: Has as its objective "reducing or eliminating" tariffs on agricultural products (emphasis added). Thus, even Japan's opening offer – to reduce but never

eliminate tariffs on nearly 600 products – satisfied this objective, demonstrating this objective is meaningless. And while former Chairman Camp said that Japanese “exclusions from tariff elimination translate to Congressional opposition” to TPP, the bill does not mention comprehensive tariff elimination even as a negotiating *objective*, much less as a requirement.

Right Track: Instructs the President to “eliminate” tariffs on virtually all products. In the exceptional circumstances where a product is not subject to full tariff elimination, the President is to obtain significant new market access opportunities, substantially equivalent to the opportunities afforded TPP party exporters in the U.S. market.

11. *Food Safety Measures*

Issue: Will the TPP safeguard the ability of regulators to block unsafe imported food while also ensuring that U.S. agricultural exporters are not subjected to bogus food safety measures?

Status: TPP will be the first U.S. trade agreement that will include restrictions on the kind of measures TPP parties can take to block food imports based on alleged safety concerns, reflecting growing, legitimate concerns of U.S. farmers and ranchers. We have asked the Administration to confirm that existing U.S. laws, regulations and practices will not be impacted by these obligations. There is also a concern that we do not have adequate resources to monitor the safety of food imports.

H.R. 1890: Requires the President to report on any changes to U.S. labor laws or practices necessary to comply with the labor obligations in a trade agreement. It has no similar provision regarding changes to U.S. food safety laws or practices, nor does it ensure adequate resources to monitor the safety of food imports.

Right Track: Calls for additional and ongoing funding for food safety inspections, while also supporting robust rules to ensure that other countries do not adopt illegitimate food safety measures designed to keep out U.S. exports.

12. *Human Rights*

Issue: A number of TPP parties have disturbing records on human rights.

Status: It is unclear how these concerns will be resolved with TPP partner countries.

H.R. 1890: Provides no guidance. The objective is “ensuring implementation of trade commitments and obligations by strengthening good governance, transparency, the effective operation of legal regimes and the rule of law of trading partners of the United States through capacity building and other appropriate means, which are important parts of the broader effort to create more open democratic societies and to promote respect for internationally recognized human rights.”

Right Track: Provides that each TPP Party is expected to take steps to respect internationally recognized human rights. Also provides that House and Senate TPP Advisory Groups (described below) may recommend provisions to be included in the implementing bill, which could address human rights concerns.

TPP Congressional Consultations, Oversight, & Transparency

The Right Track for TPP Act includes the following procedures and requirements:

- *Transparency.* Members and their staff with appropriate security clearances, and the stakeholder advisory committees, shall have access to all negotiating proposals and consolidated negotiating texts, with an indication of which party supports each provision. Member staff shall have access regardless of whether they are accompanied by their Member.
- *House and Senate Advisory Groups Approve New TPP Entrants.* Bipartisan House and Senate TPP Advisory Groups will be established, made up of Members from the committees of jurisdiction and other Members selected by leadership. No country can join the TPP negotiations, if the TPP is to be considered under expedited procedures, until the House and Senate Advisory Groups approve.
- *Committee Disapproval Resolution:* After the President notifies Congress of his intent to conclude TPP, either committee of jurisdiction can vote to remove TPP from receiving fast track consideration.
- *Sizeable Minority Resolution:* If one-third of the Members in both Chambers co-sponsors a resolution to remove TPP from receiving fast track consideration, that resolution must receive a vote in each Chamber. If the resolution passes both Chambers, TPP would not receive fast track consideration.
- *Report on Impact of TPP.* The President shall submit a report 120 days after TPP is concluded that, among other things, describes: (1) the likely economic impact of the agreement (including specific market opportunities U.S. exporters will gain and what imports are expected to increase; impact on employment, the median wage, income disparities; impact on trade imbalance); (2) impact on U.S. regulations; (3) the economic, legal, and institutional framework of each TPP party, including on transparency, and its ability to fully implement the commitments; and (4) an assessment of the environmental impact of the trade agreement.
- *House and Senate Advisory Groups Vote on Compliance with Negotiating Instructions:* For TPP to receive consideration under fast track procedures, the TPP Advisory Groups must certify that the President has (1) followed the negotiating instructions described above and (2) adequately consulted with Congress. While Congress obviously cannot write instructions that dictate the terms of the agreement, and the give-and-take of

negotiations may result in some outcomes that do not mirror the instructions, Congress, not the President, should determine whether the instructions have been followed.

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The substitute applies only to the TPP negotiations. After TPP is put on the right track, Congress must consider trade negotiating authority and procedures for other critically important negotiations, such as the Trans-Atlantic Trade and Investment Partnership Agreement (TTIP). By contrast, HR 1890 would apply for three years with a three-year extension. It therefore would cover such critically important negotiations as TTIP, which involves a broad range of issues, in some cases beyond TPP. Mr. McDermott offered an amendment to shorten the period of application in H.R. 1890 to the end of 2016. That amendment was rejected by the majority, as were all other amendments offered by the minority.

While we appreciate the Chairman's willingness to thoroughly debate these issues during the markup, we oppose the Chairman's decision to not allow a vote on the amendment in the nature of a substitute, pursuant to Rule X of the House of Representatives. We recognize and respect the jurisdiction of the Committee on Rules, and understand that providing expedited House procedures for trade agreements falls within its jurisdiction. What is troubling, however, is that the majority of our Committee was able to markup a trade promotion authority bill, but the minority was prohibited from doing the very same thing through a substitute amendment. Making matters worse, we understand the Chairman of the Rules Committee plans to waive his Committee's jurisdiction over H.R. 1890, preventing any change to the many procedural rules throughout H.R. 1890, which are inextricably tied to the trade provisions of the bill, before the bill is debated by the full U.S. House of Representatives. It is a classic Catch-22. And, rather than being about the jurisdiction of Ways and Means versus the Rules Committee, the issue is the ability of the majority to deny the minority a vote on a bill with the very same scope as the one the majority voted for in Committee. The parliamentarians described this decision as a close-call, and the Chairman's decision bucks prior practice – former Chairman Bill Thomas allowed a vote on the minority's substitute TPA amendment in 2001.

We also note that, in conjunction with passing legislation that will guide the passage of trade agreements, Congress must also do more to ensure that the United States is prepared to compete in an increasingly globalized economy and to enforce our trade agreements and trade laws. A package of such measures (including, for example, a currency bill that passed the House of Representatives in 2010 with broad bipartisan support) was proposed as an amendment to H.R. 1890 but unfortunately was ruled not to be germane to H.R. 1890. We will continue to work to pass these measures into law, including during any upcoming conferences between the House and the Senate on trade.

Finally, we wish to note two issues regarding the negotiating objectives in H.R. 1890. First, regarding the boycott divestment sanctions negotiating objective, we note that the H.R. 1907, introduced by the Majority, included an anti-boycott provision as part of the negotiating objectives for Trade Promotion Authority. That provision applied to all parties with which the United States is (and will be) negotiating trade agreements. Chairman Ryan introduced an amendment to his own Trade Promotion Authority bill that would limit the application of this

provision to the Transatlantic Trade and Investment Partnership Agreement (TTIP). The amendment operates to exclude Trans-Pacific Partnership countries from the scope of the provision. In light of some of the policies of countries that are part of the TPP, the narrowing of the scope of the provision seems to be designed to ensure that those policies are not challenged as to TPP, while they are as to TTIP. In our view, any such provision should be applicable to all parties with which the United States is negotiating a trade agreement subject to TPA.

Lastly, the Majority rejected Ms. Sanchez's amendment that would have provided for the removal of fast-track procedures with respect trade agreements that include trading partners who criminalize lesbian, gay, bisexual and transgender (LGBT) conduct. The Majority indicated that LGBT rights are included among internationally recognized human rights. The provisions regarding internationally recognized human rights in H.R. 1890 are inadequate and far weaker than the provisions addressing those issues in the Right Track for TPP Act.

The text of the Right Track for the Trans-Pacific Partnership Act of 2015 follows:

Amendment in the Nature of a Substitute to H.R. 1890

Offered by Mr. Levin of Michigan

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Right Track for the Trans-Pacific Partnership Act of 2015”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. TPP negotiating instructions.
- Sec. 3. TPP advisory groups.
- Sec. 4. Application of trade authorities procedures to TPP.
- Sec. 5. Congressional consultation during TPP negotiations.
- Sec. 6. Congressional consideration and implementation of TPP.
- Sec. 7. Additional TPP implementation and enforcement requirements.
- Sec. 8. Definitions.

SEC. 2. TPP NEGOTIATING INSTRUCTIONS.

(a) **TPP NEGOTIATING INSTRUCTIONS ON MAJOR OUTSTANDING ISSUES.**—The negotiating instructions of the Congress to the President on negotiations with respect to the major outstanding issues of the Trans-Pacific Partnership (in this Act referred to as the “TPP” or “TPP agreement”) negotiations are the following:

- (1) **CURRENCY MANIPULATION.**—Congress' instructions to the President regarding currency practices are to establish strong and enforceable rules,

consistent with or building upon Article IV of the Articles of Agreement of the International Monetary Fund and related guidelines, requiring each TPP party to avoid manipulating exchange rates to gain an unfair competitive advantage in international trade over other TPP parties. The rules shall be enforceable through the same dispute settlement and remedies as other obligations under the TPP agreement, provided that a panel finding that a TPP party is engaging in currency manipulation shall have no effect if, not later than 60 days after the panel makes its finding, the Executive Board of the International Monetary Fund disagrees with a panel finding and affirmatively finds that the TPP party is not engaging in currency manipulation.

(2) LABOR RIGHTS.—Congress' instructions to the President with respect to labor provisions are—

(A) to ensure that each TPP party—

(i) adopts, maintains, and does not waive or otherwise derogate from, measures implementing core labor standards (as defined in section 8),

(ii) does not fail to effectively enforce its labor laws, through a sustained or recurring course of action or inaction,

in a manner affecting trade or investment between the parties;

(B) to strengthen the capacity of the TPP parties to promote respect for core labor standards;

(C) to ensure that the labor obligations are subject to the same dispute settlement and remedies as other obligations under the TPP agreement; and

(D) to ensure the implementation of the labor obligations in the TPP agreement by—

(i) providing that a union shall not be required to affiliate with any confederation and shall be free to form and affiliate with any vertical or horizontal workers organization, including any confederation, sector-wide, or industry-wide union of its own choosing and that workers in a TPP party shall have the right to freely form and join an autonomous and independent union of their choosing;

(ii) providing that a union engaged in collective bargaining with an employer must demonstrate majority support of that employer's workers, on behalf of whom it is negotiating, prior to registration of any collective bargaining agreement;

(iii) providing that for purposes of labor obligations in the agreement relating to procedural guarantees for labor law enforcement, any administrative, quasi-judicial, judicial or labor tribunals or boards composed of members with direct or indirect interest in matters before them shall not be considered impartial and independent;

(iv) requiring each TPP party to adopt all measures necessary to bring its laws and regulations into compliance with the TPP agreement, and to have adopted any new procedures and institutional changes needed to independently and objectively implement such legal reforms, before the implementing bill is submitted to Congress; and

(v) with respect to any TPP party that must substantially transform its labor regime to comply with the labor obligations in the TPP agreement, establishing from the date of entry into force of the TPP agreement an independent panel of experts to regularly examine and publicly report on the implementation of the transformational reforms, provide recommendation, and identify concerns relating to the TPP party's compliance with its labor obligations in the agreement based on input from the TPP parties and interested stakeholders and on any other relevant information and reporting. If the independent panel determines that the TPP party is not in compliance with its obligations, the determination shall be treated as an initial report of an arbitral panel under the agreement, and the matter shall be addressed in accordance with the normal procedures laid out for such cases, including through an agreement to eliminate the nonconformity in the first instance or, as a last resort, to suspend benefits under the TPP agreement.

(3) ENVIRONMENT.—Congress' instructions to the President regarding the environment are to obtain commitments from each TPP party to ensure a level of environmental protection in trade and investment at least as great as the level established under the "May 10 Agreement of 2007" (as defined in section 8), such as by—

(A) requiring that each TPP party—

(i) adopts and maintains measures implementing its obligations under the core multilateral environmental agreements (as defined in section 8);

(ii) does not waive or otherwise derogate from, or offer to waive or otherwise derogate, from its statutes or regulations implementing its environmental laws in a manner that weakens or reduces the protections afforded in those laws and in a manner affecting trade or investment between the United States and that TPP party, except as provided in its law and provided not inconsistent with its obligations under core

multilateral environmental agreements or other provisions of the trade agreement specifically agreed upon; and

(iii) does not fail to effectively enforce its environmental or labor laws, through a sustained or recurring course of action or inaction, in a manner affecting trade or investment between the United States and that TPP party after entry into force of a trade agreement between those countries;

(B) prohibiting trade in illegally harvested goods, including in sub-Federal entities that are known to permit such trade, and shark finning;

(C) prohibiting subsidies that promote fishing with respect to overfished species;

(D) requiring joint action to address climate change, including through adaptation and mitigation;

(E) strengthening the capacity of United States trading partners to protect the environment through the promotion of sustainable development;

(F) reducing or eliminating government practices or policies that unduly threaten sustainable development;

(G) ensuring that environment obligations are subject to the same dispute settlement and remedies as other obligations under the TPP agreement;

(H) requiring each TPP party to operate regional fisheries management organization systems that—

(i) regulate marine wild capture fishing; and

(ii) are designed to—

(I) prevent overfishing and overcapacity;

(II) reduce bycatch of nontarget species and juveniles; and

(III) promote the recovery of overfished stocks; and

(I) ensuring long-term conservation of marine mammals, marine turtles, and seabirds.

(4) INVESTMENT AND INVESTOR-STATE DISPUTE SETTLEMENT.—Recognizing that United States law provides a high level of protection for investment, consistent with or greater than the level required by international law,

Congress' instructions to the President regarding investment and investor-state dispute settlement are to reduce or eliminate artificial or trade distorting barriers to foreign investment, while ensuring that foreign investors in the United States are not accorded greater substantive rights with respect to investment protections than United States investors in the United States by—

(A) freeing the transfer of funds relating to investments, except where a restriction on the transfer of funds is necessary to prevent or mitigate a financial crisis;

(B) further clarifying the “minimum standard of treatment” provision, consistent with the award in *Glamis Gold* (as defined in section 8), by—

(i) explicitly stating that the investor bears the burden of establishing that a state has violated a principle of customary international law regarding the minimum standard of treatment of aliens;

(ii) explicitly stating that customary international law requires an investor to prove a general and consistent practice of states, and that evidence for such practice cannot be based on a past tribunal's interpretation of the minimum standard of treatment, and that is followed based on a sense of legal obligation (*opinio juris*); and

(iii) explicitly stating that, unless an investor is able to prove otherwise based on the customary international law standard, “arbitrary” conduct by a state or state actions that upset an investor's expectations do not violate the minimum standard of treatment;

(C) establishing a mechanism whereby the TPP party being sued by an investor and the investor's home country may agree that a claim submitted to arbitration is not a claim for which an award in favor of the claimant may be granted by the tribunal; and

(D) stating, in the preamble of the TPP agreement, that the TPP agreement does not accord greater substantive rights than domestic investors have under domestic laws where, as in the United States, protection of investor rights under domestic law equal or exceed those set forth in the TPP agreement.

(5) ACCESS TO MEDICINES.—Congress' instructions to the President regarding trade-related intellectual property and access to medicines are to ensure that the provisions of the TPP agreement respect the Declaration on the TRIPS Agreement and Public Health, adopted by the World Trade Organization at the Fourth Ministerial Conference at Doha, Qatar, on November 14, 2001, and the May 10 Agreement of 2007 (as defined in section 8), which fosters innovation and promotes access to medicines for all.

(6) AUTOMOTIVE MARKET ACCESS.—Congress' instructions to the President regarding the automotive market in Japan (including cars, trucks, and auto parts), and to any other product market that has historically been essentially closed to United States exports, are to maintain United States tariffs on imports of comparable products from that TPP party for a period of time sufficient to ensure that the TPP party has opened its market to United States exports of the relevant product. In the case of the Japanese automotive market, Congress' instructions to the President are to obtain an agreement that—

(A) with respect to tariffs, either—

(i) phases out United States tariffs as soon as, but not before, Japan has established a consistent record of openness to imports, in line with the import penetration level of other industrialized nations; or

(ii) reduces United States tariffs not before 25 years, and eliminates United States tariffs not before 30 years, after the TPP agreement enters into force.

(B) eliminates unjustifiable nontariff barriers that have impeded the ability of United States automakers to establish presences, operate, import, or otherwise compete effectively in Japan; and

(C) establishes a dispute settlement mechanism that—

(i) is applicable specifically to United States-Japan automotive trade; and

(ii) permits the United States, where Japan has been found to have acted inconsistently with its obligations under the TPP agreement, to suspend benefits accruing to Japan by delaying the reduction of United States tariffs, if United States tariffs have not yet been reduced, and by re-imposing tariffs to pre-reduction levels, if United States tariffs have started being or have already been reduced.

(7) RULES OF ORIGIN.—Congress' instructions to the President regarding rules of origin are to ensure that, to the maximum extent feasible, the benefits of the TPP agreement accrue to the TPP parties, particularly with respect to goods produced in the United States and goods that incorporate materials produced in the United States. In the case of automotive products, the President is instructed to obtain a rule of origin at least as stringent as the rule in the North American Free Trade Agreement.

(8) TOBACCO CONTROLS.—Congress' instructions to the President regarding public health measures relating to tobacco is to clarify and ensure that nondiscriminatory public health measures relating to tobacco should not be

challenged within the mechanisms of the TPP agreement as being inconsistent with the obligations in the TPP agreement.

(9) STATE-OWNED AND STATE-CONTROLLED ENTERPRISES.—Congress' instructions to the President regarding competition by state-owned and state-controlled enterprises are to seek commitments that—

(A) eliminate or prevent trade distortions and unfair competition favoring state-owned and state-controlled enterprises to the extent of their engagement in commercial activity,

(B) ensure that such engagement is based solely on commercial considerations,

(C) apply broadly to all enterprises that are controlled by governments, including where the government owns a controlling interest but less than a majority of the shares in the enterprise, and

(D) apply to virtually all state-owned or controlled enterprises with exclusions narrowly tailored to address specific public policy objectives,

in particular through disciplines that eliminate or prevent discrimination and market-distorting subsidies and that promote transparency.

(10) AGRICULTURE MARKET ACCESS.—Congress' instructions to the President regarding agriculture are to—

(A) eliminate, by a date certain, tariffs and other charges on United States exports of virtually all bulk, specialty crop, and value-added commodities, by tariff line; and

(B) in the exceptional circumstances where an agricultural product is not subject to full tariff elimination, obtain significant new market access opportunities for United States exporters, through tariff-rate quotas and other mechanisms, substantially equivalent to the competitive opportunities afforded TPP party exporters in United States markets.

(11) FOOD SAFETY MEASURES AND OTHER MEASURES AFFECTING AGRICULTURAL PRODUCTS.—Congress' instructions to the President regarding disciplines on food safety measures and other measures affecting agricultural products are to obtain competitive opportunities for United States exports of agricultural commodities in the markets of TPP parties substantially equivalent to the competitive opportunities afforded foreign exporters in United States markets and to achieve fairer and more open conditions of trade in bulk, specialty crop, and value added commodities by securing more open and equitable market access through robust rules on sanitary and phytosanitary measures that—

(A) encourage the adoption of international standards and require a science-based justification be provided for a sanitary or phytosanitary measure if the measure is more restrictive than the applicable international standard,

(B) improve regulatory coherence, promote the use of systems-based approaches, and appropriately recognize the equivalence of health and safety protection systems of exporting countries,

(C) require that measures are transparently developed and implemented, are based on risk assessments that take into account relevant international guidelines and scientific data, and are not more restrictive on trade than necessary to meet the intended purpose,

(D) improve import check processes, including testing methodologies and procedures, and certification requirements, and

(E) eliminate and prevent the undermining of market access for United States products through improper use of a country's system for protecting or recognizing geographical indications,

while preserving the right of governments to put in place legitimate measures to protect human, animal, or plant life or health, and reaffirming the rights and obligations under the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (referred to in section 101(d)(3) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(3))).

(12) HUMAN RIGHTS.—Congress' instruction to the President regarding human rights is, in determining whether to conclude the TPP negotiations with each party, to consider whether the government of that TPP party consistently demonstrates respect for "internationally recognized human rights" (as defined in section 8) and is taking steps to address areas of concern.

(b) INSTRUCTIONS WITH RESPECT TO OTHER ISSUES.—Recognizing the current status of the TPP negotiations, Congress' instruction to the President with respect to the negotiations on subjects other than those described above is to continue to pursue the objectives United States negotiators have had in these negotiations, based on views expressed by stakeholders and Members of Congress.

SEC. 3. TPP ADVISORY GROUPS.

(a) SELECTION.—

(1) IN GENERAL.—Not later than 14 days after the date of the enactment of this Act, the Speaker of the House of Representatives and the President pro tempore of the Senate shall each establish a TPP Advisory Group in accordance with the requirements of this section. The TPP Advisory Groups shall provide advice on the development of trade policy and priorities for the implementation thereof.

(2) HOUSE MEMBERSHIP.—The House TPP Advisory Group shall be comprised of the following Members of the House of Representatives:

(A) The chairman and ranking minority member of the Committee on Ways and Means and 10 additional Members (not more than 5 of whom are members of the same political party), selected by the chairman and ranking minority member of such Committee.

(B) Ten other members of the House of Representatives (not more than 5 of whom are members of the same political party), selected by the Speaker and minority leader of the House of Representatives.

(3) SENATE MEMBERSHIP.—The Senate TPP Advisory Group shall be comprised of the following Members of the Senate:

(A) The chairman and ranking minority member of the Committee on Finance, and 4 additional Members of the Senate (not more than 2 of whom are members of the same political party), selected by the chairman and ranking minority member of such Committee.

(B) Four other Members of the Senate (not more than 2 of whom are members of the same political party), selected by the President pro tempore and the minority leader of the Senate.

(4) ACCREDITATION.—Each member of the House and Senate TPP Advisory Groups shall be accredited by the United States Trade Representative on behalf of the President as an official adviser to the United States delegation in negotiations for any trade agreement to which this title applies.

(b) BRIEFING.—The United States Trade Representative shall keep each member of the House and Senate TPP Advisory Groups currently informed with respect to progress on negotiating instructions under section 2, the status of TPP negotiations, and the nature of any changes in domestic law or the administration thereof which may be recommended to Congress to carry out TPP agreement or any requirement of, amendment to, or recommendation under, the TPP agreement.

SEC. 4. APPLICATION OF TRADE AUTHORITIES PROCEDURES TO TPP.

(a) IN GENERAL.—The provisions of section 151 of the Trade Act of 1974 (in this Act referred to as “trade authorities procedures”) shall apply to a bill of either House of Congress which contains provisions described in subsection (b) to the same extent as such section 151 applies to implementing bills under that section. A bill to which this section applies shall hereafter in this Act be referred to as an “implementing bill”.

(b) PROVISIONS DESCRIBED.—The provisions described in subsection (a) are—

(1) a provision approving a trade agreement with Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam (in this Act referred to as the “Trans-Pacific Partnership” or “TPP agreement”) and implementing the TPP agreement (in this Act referred to as an “implementing bill”); and

(2) if changes in existing laws or new statutory authority are required to implement the TPP agreement, provisions necessary or appropriate to implement the TPP agreement, either repealing or amending existing laws or providing new statutory authority.

(c) SATISFACTION OF OTHER REQUIREMENTS IN THIS ACT.—Trade authorities procedures shall only apply to an implementing bill if—

(1) the President has satisfied each consultation provision contained in this Act;

(2) disapproval resolutions, as described in section 5(b)(1), are not agreed to as provided in section 5(b)(1);

(3) neither the Committee on Finance of the Senate nor the Committee on Ways and Means of the House of Representatives agrees to a disapproval resolution, as provided in section 5(b)(2); and

(4) each TPP Advisory Group concurs, as described in section 6(d), with the President’s assertion that the TPP agreement achieves the negotiating instructions under section 2 and that the President has adequately consulted with Congress.

(d) ACCESSION TO TPP.—Trade authorities procedures shall not apply to a bill of either House of Congress which provides for a foreign country or instrumentality to accede to the TPP agreement, unless—

(1) the President provides Congress with 90 days notice of the intent to negotiate with the foreign country or instrumentality to accede to the TPP agreement;

(2) a majority of the members of each TPP Advisory Group approves of negotiating with that foreign country or instrumentality within that 90 day consultation period; and

(3) the President separately satisfies every requirement in this Act with respect to the consultations of that foreign country or instrumentality during negotiations regarding accession to the TPP agreement.

SEC. 5. CONGRESSIONAL CONSULTATION DURING TPP NEGOTIATIONS.

(a) CONSULTATION WITH CONGRESS BEFORE ENTERED INTO A TPP AGREEMENT.—

(1) CONSULTATION.—Before entering into a TPP agreement, the President shall consult, on a systemic and regular basis, with—

(A) the House and Senate TPP Advisory Groups;

(B) the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate;

(C) each other committee of the House of Representatives and the Senate, and each joint committee of the Congress, which has jurisdiction over legislation involving subject matters which would be affected by the TPP agreement; and

(D) any other Member of Congress that requests consultations.

(2) SCOPE.—The consultation described in paragraph (1) shall include consultation with respect to—

(A) the nature of the TPP agreement;

(B) how and to what extent the TPP agreement will achieve the applicable purposes, policies, priorities, and negotiating instructions under this Act, as well as any other issue dealt with in the TPP agreement;

(C) the implementation of the TPP agreement under section 6, including the general effect of the TPP agreement on existing laws.

(3) ACCESS TO TEXT OF NEGOTIATING PROPOSALS.—

(A) IN GENERAL.—Consistent with effective negotiations, the United States Trade Representative shall encourage maximum accessibility to trade texts, the proposals made by the United States and other trading partners. The policy is to make negotiations as open as possible and to identify major issues that are the subject of negotiations.

(B) Access to Specific Texts.—The President shall, upon request, make available to each Member of Congress the following:

(i) A copy of the text of the negotiating proposals of the United States with respect to the TPP agreement.

(ii) A copy of the text of the negotiating proposals of each foreign country with respect to the TPP agreement.

(iii) A copy of consolidated negotiating texts, which shall indicate which country is advocating for each provision.

(C) CONGRESSIONAL STAFF.—Each Member of Congress may designate one staff member to review the texts described in clauses (i), (ii), and (iii) of subparagraph (A) if such staff member has an appropriate security clearance, and the President shall, upon request of a Member, promptly make available to such staff the texts described in clauses (i), (ii), and (iii) of subparagraph (A). The Member of Congress does not need to be present for his or her designated staff member to review these texts. In no case shall access to information described in clauses (i), (ii), and (iii) of subparagraph (A) by staff require a security clearance above the level under which the information is classified.

(D) TRADE ADVISORY COMMITTEE MEMBERS.—The President shall promptly make available to each member of a trade advisory committee, with an appropriate security clearance, as established under section 135 of the Trade Act of 1974, as amended (19 U.S.C. 2155), the text of the negotiation proposals under clauses (i), (ii), and (iii) of subparagraph (A).

(E) Timing of Access to Texts.—Texts described in clauses (i), (ii), and (iii) of subparagraph (A) shall be made available to Members of Congress and their staff no later than the date on which such information is made available to the government of a foreign country that is a party to the TPP negotiations.

(4) PUBLIC SUMMARIES OF TPP NEGOTIATION.—Not later than 30 calendar days after the date of the enactment of this Act, the United States Trade Representative shall publish, on a publicly available Internet website, detailed summaries for each chapter being negotiated under the TPP. Where appropriate, the summaries shall explain how the negotiations will achieve the negotiating instructions under section 2. The United States Trade Representative shall update these detailed summaries regularly, particularly before and after negotiating rounds.

(5) TECHNICAL ASSISTANCE.—The United States International Trade Commission shall, upon request, provide technical assistance to each Member of Congress with respect to analyzing the potential impacts of the TPP agreement.

(6) ACCREDITATION.—The United States Trade Representative, acting on behalf of the President, shall accredit a Member of Congress, upon request, as an official adviser to the TPP negotiations.

(b) DISAPPROVAL RESOLUTIONS WITH RESPECT TO ONGOING TPP NEGOTIATIONS.—

(1) BIENNIAL DISAPPROVAL RESOLUTION; DISCHARGE BY SIZEABLE MINORITY.—

(A) IN GENERAL.—The trade authorities procedures shall not apply to any implementing bill submitted with respect to the TPP agreement if, during the 120-day period beginning on the date that one House of Congress agrees to a disapproval resolution described in subparagraph (B) disapproving the TPP negotiations, the other House separately agrees to a disapproval resolution described in paragraph (B) disapproving of those negotiations.

(B) DISAPPROVAL RESOLUTION.—For purposes of this paragraph, the term “disapproval resolution” means a resolution, the sole matter after the resolving clause of which is as follows: “That the _____ disapproves the TPP negotiations and, therefore, the trade authorities procedures not apply to any implementing bill submitted with respect to the TPP.”, with the blank space being filled with the name of the resolving House of Congress.

(C) PROCEDURES FOR CONSIDERING RESOLUTIONS.—

(i) Any disapproval resolution to which paragraph (1) applies—

(I) in the House of Representatives shall be referred to the Committee on Ways and Means and, in addition, to the Committee on Rules, and may not be amended by either Committee; and

(II) in the Senate shall be referred to the Committee on Finance.

(ii) The provisions of section 152(c), (d), and (e) of the Trade Act of 1974 (19 U.S.C. 2192 (c), (d), and (e)) (relating to the consideration of certain resolutions in the House and Senate) apply to any disapproval resolution to which paragraph (1) or (2) applies if—

(I) there are at least 145 cosponsors of the resolution, in the case of a resolution of the House of Representatives, and at least 34 co-sponsors of the resolution, in the case of a resolution of the Senate; and

(II) no resolution that meets the requirements of clause (I) has previously been considered under such provisions of section 152 of the Trade Act of 1974 in that House of Congress during that Congress.

(iii) It is not in order for—

(I) the Senate to consider any joint resolution unless it has been reported by the Committee on Finance or the committee has been discharged pursuant to subparagraph (C)(ii); or

(II) the House of Representatives to consider any joint resolution unless it has been reported by the Committee on Ways and Means or the committee has been discharged pursuant to subparagraph (C)(ii).

(D) COMPUTATION OF CERTAIN TIME PERIODS.—Each period of time referred to in subparagraph (A) shall be computed without regard to—

(i) the days on which either House of Congress is not in session because of an adjournment of more than 3 days to a day certain or an adjournment of the Congress sine die; and

(ii) any Saturday and Sunday, not excluded under clause (i), when either House of Congress is not in session.

(2) COMMITTEE DISAPPROVAL RESOLUTION.—The trade authorities procedures shall not apply to an implementing bill submitted with respect to the TPP agreement if the Committee on Finance of the Senate or the Committee on Ways and Means of the House of Representatives passes a disapproval resolution regarding the TPP negotiations before the close of the 60-day period which begins on the date notice is provided under section 6(a)(1)(A)(iii).

SEC. 6. CONGRESSIONAL CONSIDERATION AND IMPLEMENTATION OF TPP.

(a) IN GENERAL.—

(1) NOTIFICATION AND SUBMISSION.—The TPP agreement shall enter into force with respect to the United States if (and only if)—

(A) the President—

(i) at least 90 calendar days before the day on which the President enters into a TPP agreement, notifies the House of Representatives and the Senate of the President's intention to enter into the TPP agreement, and promptly thereafter publishes notice of such intention in the Federal Register;

(ii) at least 60 days before the day on which the President enters into the TPP agreement, the TPP agreement is published on a publicly available Internet website of the Office of the United States Trade Representative; and

(iii) at least 60 days before the date notice is provided under clause (i), provides written notice of such negotiations to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives;

(B) the advisory committee report required under section 135(e)(1) of the Trade Act of 1974 is provided to the President, the Congress, and the United States Trade Representative not later than 30 days after the date on which the President notifies the Congress under subparagraph (A)(i) of the President's intention to enter into the TPP agreement;

(C) not later than 60 days after entering into the TPP agreement, the President submits to the Congress a description of those changes to existing laws that the President considers would be required in order to bring the United States into compliance with the TPP agreement;

(D) after entering into the TPP agreement, the President submits to the Congress, on a day on which both Houses of Congress are in session, a copy of the final legal text of the TPP agreement, together with—

(i) a draft of an implementing bill described in section 4(b);

(ii) a statement of any administrative action proposed to implement the TPP agreement; and

(iii) the supporting information described in paragraph (2); and

(E) the implementing bill is enacted into law.

(2) SUPPORTING INFORMATION.—The supporting information required under paragraph (1)(D)(iii) consists of—

(A) an explanation as to how the implementing bill and proposed administrative action will change or affect existing law, including any changes to United States statutes, regulations, or practices concerning food safety; and

(B) a statement—

(i) asserting that the TPP agreement achieves the applicable purposes, policies, priorities, and negotiating instructions under this Act; and

(ii) setting forth the reasons of the President regarding—

(I) how and to what extent the TPP agreement achieves the applicable purposes, policies, and negotiating instructions referred to in clause (i);

(II) whether and how the TPP agreement changes provisions of an agreement previously negotiated;

(III) how, and to what extent, the TPP agreement promotes production and employment in the United States, reduces income inequality, and results in broadly shared prosperity; and

(IV) how the TPP agreement serves the interests of United States commerce.

(3) RECIPROCAL BENEFITS.—In order to ensure that a foreign country that is not a party to the TPP agreement does not receive benefits under the TPP agreement unless the country is also subject to the obligations under the TPP agreement, the implementing bill submitted with respect to the TPP agreement shall provide that the benefits and obligations under the TPP agreement apply only to the parties to the TPP agreement, if such application is consistent with the terms of the TPP agreement. The implementing bill may also provide that the benefits and obligations under the TPP agreement do not apply uniformly to all parties to the TPP agreement, if such application is consistent with the terms of the TPP agreement.

(4) DISCLOSURE OF COMMITMENTS.—Any agreement or other understanding with a foreign government or governments (whether oral or in writing) that relates to the TPP agreement with respect to which the Congress enacts an implementing bill under trade authorities procedures shall be disclosed to the Congress. Any such agreement or understanding that is not disclosed to the Congress before an implementing bill with respect to the TPP agreement is introduced in either House of Congress shall not be considered to be part of the TPP agreement approved by the Congress and shall have no force and effect under United States law or in any dispute settlement body.

(b) POST-NEGOTIATION REPORT.—

(1) IN GENERAL.—The President, at least 90 calendar days before the day on which the President enters into the TPP agreement, shall provide the United States International Trade Commission (referred to in this subsection as “the Commission”) with the details of the TPP agreement as it exists at that time and request the Commission to prepare and submit an assessment of the TPP agreement as described in paragraph (2). Between the time the President makes the request under this paragraph and the time the Commission submits the assessment, the President shall keep the Commission current with respect to the details of the TPP agreement.

(2) REPORT.—Not later than 150 calendar days after the day on which the President enters into the TPP agreement, the President, working with the Commission, shall submit to the Congress a report regarding—

(A) the likely economic impacts of the TPP agreement, with respect to both tariff and nontariff barriers, including—

(i) specific market opportunities with regard to United States exports to each party to the TPP agreement and what imports from such country are expected to increase as a result of the TPP agreement;

(ii) the impact on employment, the median wage, and income disparities in the United States, based on an assumption that the United States is operating at less than full employment;

(iii) the impact on the bilateral United States trade imbalance with TPP parties and the overall United States trade imbalance; and

(iv) the impact on United States energy security and United States energy prices;

(B) the likely impact on United States Federal, State, and local regulation of labor, environmental and natural resources protection, food and drug safety, regulation of financial markets, government procurement, and consumer protections;

(C) the economic, legal, and institutional framework of each TPP party, including the transparency of each TPP party's legal regime;

(D) an assessment of each TPP party's ability to fully implement the commitments of the TPP agreement with the United States. In providing such information, the President shall submit specific information on the compliance of each TPP party to existing trade agreements to which it is a party and what enforcement actions, if any, have been taken by the United States or other countries to achieve compliance;

(E) an assessment of the likely environmental impact of the TPP agreement, consistent with Executive Order 13141 of November 16, 1999, and its relevant guidelines; and

(F) an explanation, based on empirical evidence, of the rule of origin for automotive products, textile and apparel products, and other products where the rule of origin plays an important role in ensuring that the benefits of the TPP agreement flow to the TPP Parties.

(3) REVIEW OF EMPIRICAL LITERATURE.—In preparing the assessment, the Commission shall review available economic assessments regarding the TPP agreement, including literature regarding any substantially equivalent proposed agreement, and shall provide in its assessment a description of the analyses used and conclusions drawn in such literature, and a discussion of areas of consensus and divergence between the various analyses and conclusions, including those of the Commission regarding the TPP agreement.

(c) COMMITTEE VIEWS; REPORT AND RECOMMENDATION.—

(1) IN GENERAL.—Not later than 30 calendar days after receipt of a report under subsection (b), each committee of the House of Representatives and the Senate, and each joint committee of Congress, which has jurisdiction over legislation involving subject matters which would be affected by the TPP agreement shall—

(A) prepare a report evaluating the TPP agreement with respect to the issues in that committee's jurisdiction, including whether the relevant negotiating instructions under section 2 have been achieved;

(B) for a committee in the Senate, submit the report to the Committee on Finance; and

(C) for a committee in the House of Representatives, submit the report to the Committee on Ways and Means.

(2) REPORT AND RECOMMENDATION.—Not later than 30 calendar days after receipt of the views of all such congressional committees—

(A) the Committee on Finance of the Senate shall submit to the Senate TPP Advisory Group a report containing—

(i) the views of the committees of the Senate; and

(ii) a recommendation to approve or disapprove of applying trade authorities procedures to the TPP agreement; and

(B) the Committee on Ways and Means of the House of Representatives shall submit to the House TPP Advisory Group a report containing—

(i) the views of the committees of the House of Representatives; and

(ii) a recommendation to approve or disapprove of applying trade authorities procedures to the TPP agreement.

(d) TPP ADVISORY GROUPS APPROVAL RESOLUTIONS TO APPLY TRADE AUTHORITIES PROCEDURES TO TPP.—

(1) IN GENERAL.—Not later than 30 calendar days after receipt of the reports in subsection (c), each TPP Advisory Group shall vote as to whether it concurs—

(A) with the President's statement in subsection (a)(2)(B)(i) that the TPP agreement achieves the purposes, priorities, and negotiating instructions under section 2; and

(B) that the President has adequately consulted with Congress.

(2) The trade authorities procedures shall apply to a TPP agreement implementing bill only if a majority of the House TPP Advisory Group and a majority of the Senate TPP Advisory Group concurs.

(3) Each TPP Advisory Group may recommend provisions to be included in the implementing bill that are "necessary or appropriate" and may issue a report explaining its decision, including dissenting views. These provisions may include, for example:

(A) legislation to impose a WTO-consistent import fee or other measure to permanently fund food safety inspections of imports; and

(B) legislation addressing issues that directly relate to TPP parties, such as human rights.

(e) RULES OF HOUSE OF REPRESENTATIVES AND SENATE.—Subsection (d) of this section, section 4, and section 5(b) are enacted by the Congress—

(1) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such are deemed a part of the rules of each House, respectively, and such procedures supersede other rules only to the extent that they are inconsistent with such other rules; and

(2) with the full recognition of the constitutional right of either House to change the rules (so far as relating to the procedures of that House) at any time, in the same manner, and to the same extent as any other rule of that House.

SEC. 7. ADDITIONAL TPP IMPLEMENTATION AND ENFORCEMENT REQUIREMENTS.

(a) IN GENERAL.—At the time the President submits to the Congress the final text of the TPP agreement pursuant to section 6(a)(1)(D), the President shall also submit a plan for implementing and enforcing the TPP agreement. The implementation and enforcement plan shall include the following—

(1) BORDER PERSONNEL REQUIREMENTS.—A description of additional personnel required at border entry points, including a list of additional customs and agricultural inspectors.

(2) AGENCY STAFFING REQUIREMENTS.—A description of additional personnel required by Federal agencies responsible for monitoring and

implementing the TPP agreement, including personnel required by the Office of the United States Trade Representative, the Department of Commerce, the Department of Agriculture (including additional personnel required to implement sanitary and phytosanitary measures in order to obtain market access for United States exports), the Department of the Treasury, the Department of Labor, and such other agencies as may be necessary.

(3) CUSTOMS INFRASTRUCTURE REQUIREMENTS.—A description of the additional equipment and facilities needed by U.S. Customs and Border Protection.

(4) IMPACT ON STATE AND LOCAL GOVERNMENTS.—A description of the impact the TPP agreement will have on State and local governments as a result of increases in trade.

(5) COST ANALYSIS.—An analysis of the costs associated with each of the items listed in paragraphs (1) through (4).

(b) BUDGET SUBMISSION.—The President shall include a request for the resources necessary to support the plan described in subsection (a) in the first budget that the President submits to the Congress after the submission of the plan.

SEC. 8. DEFINITIONS.

(1) CORE LABOR STANDARDS.—The term “core labor standards” means—

(A) freedom of association;

(B) the effective recognition of the right to collective bargaining;

(C) the elimination of all forms of forced or compulsory labor;

(D) the effective abolition of child labor and a prohibition on the worst forms of child labor; and

(E) the elimination of discrimination in respect of employment and occupation.

(2) CORE MULTILATERAL ENVIRONMENTAL AGREEMENTS.—The term “core multilateral environmental agreements” means the following:

(A) The Convention on International Trade in Endangered Species of Wild Fauna and Flora, done at Washington, March 3, 1973, as amended.

(B) The Montreal Protocol on Substances that Deplete the Ozone Layer, done at Montreal, September 16, 1987, as adjusted and amended.

(C) The Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973, done at London, February 17, 1978, as amended.

(D) The Convention on Wetlands of International Importance Especially as Waterfowl Habitat, done at Ramsar, February 2, 1971, as amended.

(E) The Convention on the Conservation of Antarctic Marine Living Resources, done at Canberra, May 20, 1980.

(F) The International Convention for the Regulation of Whaling, done at Washington, December 2, 1946.

(G) The Convention for the Establishment of an Inter-American Tropical Tuna Commission, done at Washington, May 31, 1949.

(3) MAY 10 AGREEMENT OF 2007.—The term “May 10 Agreement of 2007” means the Congressional-Executive accord, described in the Report of the Committee on Ways and Means on the United States-Peru Free Trade Promotion Agreement Implementation Act, Report 110-421 (November 5, 2007), which led to several changes to U.S. trade policy as reflected in modifications made to free trade agreements with Peru, Colombia, Panama, and South Korea, concerning provisions relating to labor, environment, access to medicines, investment, government procurement and essential security.

(4) GLAMIS GOLD.—The term “Glamis Gold” refers to the investor-state dispute settlement case under the North American Free Trade Agreement referred to as *Glamis Gold, Ltd. v. United States* (award dispatched to parties on June 8, 2009).

(5) Internationally Recognized Human Rights.—The term “internationally recognized human rights” means those rights reflected in the United Nations Universal Declaration of Human Rights, done at Paris, December 10, 1948.



Sander M. Levin
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Committee on Ways and Means