



**Committee on Ways & Means
Ranking Member Sander M. Levin**

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**The Trans-Pacific Partnership:
A Path Forward to an Effective Agreement**

The ongoing TPP trade negotiations are the most significant in a generation. The 12 parties account for 40 percent of world GDP and include economies ranging from some of the world's largest, most developed, and market-oriented economies to some of the smallest, least-developed, and command economies. They include Japan, a country with which we have never been able to establish a level competitive playing field in key areas like agriculture and automotive products, and other countries where there exist serious concerns about working conditions, human rights and the rule of law.

The negotiations cover a range of subjects far beyond those negotiated in any previous multilateral negotiation, concerning everything from intellectual property and access to medicines, to financial regulations, food safety measures, basic labor and environmental standards, cross-border data flows, and state-owned enterprises.

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, affecting the paychecks of American families.

After more than four years of negotiations, TPP is at an important juncture with many important issues still outstanding. The resolution of these issues will decide the merits of TPP and whether it is an agreement that builds on progress in recent FTAs.

Below is a description of what I believe to be the most effective resolution of the major outstanding issues. Achieving these outcomes could lead to a landmark TPP agreement worthy of major bipartisan support, and my support.

Congress must maintain its leverage until it is confident USTR is on a path toward achieving these outcomes.

I. TPP Outstanding Issues

1. Agricultural Market Access

The Problem: U.S. agricultural exports exceed \$140 billion annually. That figure would be even greater if we could eliminate the substantial market access barriers in foreign markets, having an impact on the households of American families. Japan has been seeking to carve out nearly 600 agricultural products from tariff elimination, far more carve-outs than the United States has ever negotiated in a free trade agreement. Other countries, such as Canada, are also not engaging fully in agricultural market access negotiations at this time. Last year, 140 Members of the House wrote to the President expressing deep concern over the status of the agricultural market access negotiations, for good reason.

A Proposal for Resolution: The TPP Agreement should eliminate tariffs and other charges by a date certain on virtually all products exported by the United States that decrease market opportunities for United States exports. As for the limited exceptional products not subject to full tariff elimination, the Agreement should establish significant new market access for U.S. exporters, in tariff-rate quotas and otherwise. Congress and stakeholders should be involved in determining the exact timeframes and limited exceptions worked out by the Administration.

TPP also should: (1) include enforceable obligations to prevent illegitimate sanitary and phytosanitary measures from creating unjustified obstacles to trade, while preserving the right of governments to put in place legitimate measures to protect human, animal, or plant life or health; and (2) eliminate and prevent the undermining of market access for U.S. products through improper use of a country's system for protecting or recognizing geographical indications.

2. Access to Japan's Automotive Market

The Problem: Our trade deficit with Japan is second only to our trade deficit with China – and nearly three-quarters of that deficit (74%) is in the automotive sector. This has affected American manufacturers and workers. Japan's auto market is notoriously closed, with imports making up a smaller share of the market than in any other industrialized country, whereas the United States has been open to automotive imports for decades. Japan imports one American car for every 100 Japanese cars imported into the United States each year. The United States has negotiated several agreements in the past to open the Japanese market, but those agreements have failed. New approaches are needed to effectively address the issue.

To date, the Administration has taken the position that any reduction to the U.S. auto tariff will be tied to the longest period negotiated on any other product line between any two TPP parties, possibly leaving the outcome of this issue in the hands of other parties, and possibly pitting one U.S. industry against another. The Administration has not stated a specific period of time for when the phase-out would begin or when it would end.

A Proposal for Resolution: With respect to 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, the United States should maintain tariffs on imports of comparable products from that TPP country for a period of time sufficient to

ensure that the TPP country has opened its market to United States exports of the relevant product. In the case of the Japanese automotive market, the United States should take one of two approaches: (1) tariffs should be phased out as soon as Japan has established a consistent record of openness to imports, similar to the openness of most other industrialized nations; or (2) tariffs should not be reduced before at least 25 years, and should not be eliminated before less than 30 years, after the agreement enters into force.

3. Currency Manipulation

The Problem: 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 former currency manipulators, such as Japan. The Administration has not yet broached the subject in the TPP negotiations.

The IMF already prohibits currency manipulation and has developed guidelines to define when it occurs. The problem is that the IMF lacks an enforcement mechanism. The TPP parties should agree to take the existing IMF disciplines, build upon them, and make them actionable in TPP. Many advocates of expanded trade, including Fred Bergsten, have urged action. In fact, the recent report of the Commission of Inclusive Prosperity stated: “New trade agreements should explicitly include enforceable disciplines against currency manipulation that appropriately tie mutual trade preferences to mutual recognition that exchange rates should not be allowed to subsidize one party’s exports at the expense of others.”

A Proposal for Resolution: The TPP Agreement should include enforceable rules requiring each TPP Party to avoid manipulating exchange rates to gain an unfair competitive advantage in international trade, consistent with each TPP Party’s longstanding IMF obligations (which clearly distinguish between currency manipulation – government interventions in foreign exchange markets – and monetary policy).

4. State-Owned Enterprises

The Problem: Trade today is increasingly characterized by the growth of “state capitalism,” particularly in the Asia-Pacific region, including in the form of government support for SOEs and SOE actions that are not based on commercial considerations. Such practices distort trade at the expense of U.S. workers and businesses.

While it appears that the TPP Parties are beginning to coalesce around the text of the general obligations, there is a real risk that those obligations will be weakened through a narrow definition of an SOE and through country-specific exclusions.

A Proposal for Resolution: The TPP Agreement should eliminate and prevent trade distortions and unfair competition favoring state-owned and state-controlled enterprises to the extent of their engagement in commercial activity, and to ensure that such engagement is based solely on commercial considerations, in particular through disciplines that eliminate or prevent discrimination and market-distorting subsidies and that promote transparency. Importantly, SOE disciplines should 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 of the enterprise), and that the

TPP parties should minimize exclusions and ensure that all exclusions are narrowly tailored.

5. Rules of Origin

The Problem: “Rules of origin” define the extent to which inputs from outside the TPP region can be incorporated into an end product for that product to still be entitled to duty-free treatment under the Agreement. Some have argued for loose rules of origin that would enable products to be imported into the United States duty free even though a great deal of the content of those products may come from non-TPP countries, such as China. But loose rules of origin will not encourage production and employment in the United States and other TPP countries. And other countries should not get the benefits of the TPP agreement unless they also are willing to take on the obligations of the Agreement.

A Proposal for Resolution: The rule of origin should ensure that, to the maximum extent feasible, the benefits of the TPP Agreement accrue to the parties to the agreement, particularly with respect to goods produced in the United States and goods that incorporate materials produced in the United States. Before the rules of origin are finalized, the Administration should prepare a report to Congress based on empirical evidence that explains the rule of origin for automotive products, textile and apparel products, and other products where the rule of origin is key.

6. Worker Rights

The Problem: The “May 10” agreement negotiated in 2007 incorporated, for the first time in history, strong and fully enforceable labor obligations in trade agreements as well as other key provisions including those relating to the environment and access to affordable medicines. The May 10 Agreement is – and must remain – a bedrock principle fully reflected in TPP.

TPP must include the May 10 labor provisions, subject to the same dispute settlement mechanism as the other provisions of the agreement. These obligations must also be fully implemented – an area that the parties are only beginning to tackle in the negotiations. That task will be challenging with several TPP countries – particularly Vietnam, a communist country with one union, tied to the government, recognized as the sole representative of workers, not allowing independent labor unions. Brunei, Malaysia, and Mexico also will present serious implementation challenges.

A Proposal for Resolution: TPP should include obligations to: (1) adopt and maintain measures to implement internationally recognized labor rights; and (2) enforce its labor laws. Those obligations should be subject to the same dispute settlement mechanism that applies to the other obligation in the TPP Agreement. The TPP Parties should agree to implement the obligations and to ensure the meaningful enforcement of those obligations, by:

- (i) providing that workers shall have the right to freely form and join an autonomous and independent union of their choosing and that a union shall not be required to affiliate with any particular confederation and shall be free to form and affiliate with any confederation of its own choosing.

(ii) 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 implement such legal reforms, before the implementing bill is submitted to Congress; and

(iii) 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 Party's compliance with its labor obligations in the TPP Agreement, with a focus on the transformational reforms, based on input from the Parties and interested stakeholders and on any other relevant information and reporting. If the panel determines that the Party is not in compliance with its obligations, that determination shall be treated as a final report of an arbitral panel under the dispute settlement chapter, and the matter shall be addressed in accordance with the subsequent procedures laid out in the Agreement, such as through an agreement to eliminate the non-conformity in the first instance or, as a last resort, to suspend benefits under the Agreement.

7. Environmental Protections.

The Problem: The TPP parties are considering a different structure to protect the environment than the one adopted in the May 10 Agreement, which directly incorporated seven multilateral environmental agreements into the text of past trade agreements. While the form is less important than the substance, the TPP must provide an overall level of environmental protection that upholds and builds upon the May 10 standard, including fully enforceable obligations. But many of our trading partners are actively seeking to weaken the text to the point of falling short of that standard, including on key issues like conservation.

A Proposal for Resolution: TPP should include obligations 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, such as by —

(A) requiring that each TPP Party adopt and maintain measures implementing core multilateral environmental agreements and enforce its environmental laws;

(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 species in an overfished condition;

(D) promoting cooperative efforts to address climate change; and

(E) ensuring that environment obligations are subject to the same dispute settlement and remedies as other obligations under the agreement.

8. Access to Medicines.

The Problem: TPP also must incorporate the May 10 provisions on access to medicines, which seek to better ensure access to affordable medicines, while still strengthening intellectual property rights over what is required under WTO rules. Some are trying to upset the careful balance struck in the May 10 Agreement in a way that would limit access to medicines in the TPP Agreement. For example, there is a push to apply the May 10 standard for developing countries only for a limited “transition period.”

A Proposal for Resolution: The TPP Agreement should respect both the Declaration on the TRIPS Agreement and Public Health, adopted by the World Trade Organization at Doha, Qatar, and the May 10 Agreement which fosters innovation and promotes access to medicines for all.

9. Human Rights.

The Problem: Free trade agreements like TPP establish a very close economic relationship between the partner countries. Most Members of Congress, and the American public, don’t want to establish such relationships with countries that deny their own people basic human rights.

A Proposal for Resolution: In determining whether to conclude the Agreement with each Party, the President should take into account whether the government of that Party consistently demonstrates respect for internationally recognized human rights and is taking steps to address areas of concern.

10. National Sovereignty: Preserving Our Right to Regulate.

The Problem: Insisting that trade is reciprocal and raises standards does not mean the United States or other TPP Parties are required to give up our right to regulate as sovereign nations. The rules need to be carefully crafted to preserve the right of the United States – and each TPP country – to appropriately regulate.

A Proposal for Resolution: The TPP Agreement must preserve the ability of governments to take measures to protect legitimate public welfare objectives, such as consumer interests, public health, safety, the environment, privacy, the integrity and stability of the financial system, and national security.

A. Food Safety Measures.

The Problem: Past U.S. FTAs have not included disciplines on each party’s food safety measures. However, U.S. agricultural exporters are often frustrated by the sometimes indefensible barriers abroad that prevent them from getting their goods into foreign markets. As a result, they have pushed for greater SPS disciplines in TPP. At the same time, we know that ours is the most lucrative market in the world, and exporters in other countries want access to that market. We have to be sure that any new disciplines do not put our own regulatory sovereignty at risk. That means that the TPP rules have to protect our agencies’ discretion and that we, as a government, provide our agencies – USDA, FDA, and CBP – with the tools and resources they need to protect us from unsafe imports.

A Proposal for Resolution: The TPP Agreement should not weaken legitimate food safety measures. The President should identify any changes to U.S. statutes, regulations, or practices that would be required to comply with the TPP Agreement well in advance of Congressional consideration of the Agreement. Legislation should also establish fees to ensure that imported food products are as safe as food produced in the United States.

B. Investment and Investor-State Dispute Settlement (ISDS).

The Problem: 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. These disputes have proliferated in recent years, involve increasingly novel and costly challenges to public welfare and environmental regulations, and may have a chilling effect on government actions.

A Proposal for Resolution: TPP should include several new provisions to protect the rights of sovereign nations, including: (1) a recognition of the right of governments to restrict the cross-border transfer of funds where necessary to prevent or mitigate a financial crisis; (2) a clarification of the so-called “minimum standard of treatment” (consistent with the rulings in the *Glamis Gold* case); (3) the inclusion of a mechanism for the TPP countries to agree on an interpretation of an investment obligation, including a decision 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 (4) the incorporation of the language from the May 10 Agreement, explicitly stating that the TPP Agreement does not accord greater substantive rights than domestic investors have under domestic law where, as in the United States, protections of investor rights under domestic law equal or exceed those set forth in the TPP Agreement.

C. Tobacco Controls.

The Problem: A number of recent international disputes have challenged tobacco measures (including one against the U.S. clove cigarette ban). In 2013, the Administration decided not to pursue in TPP negotiations a safe harbor for tobacco that it had originally supported and instead tabled a proposal that merely clarifies that tobacco measures may be subject to the normal public health exception in our trade agreements. A more robust approach is needed in TPP and awaits action from the Administration.

A Proposal for Resolution: The TPP Agreement should make clear that non-discriminatory public health measures relating to tobacco should not be challenged within the mechanisms of the Agreement as being inconsistent with the obligations in the Agreement.

II. Transparency for Members of Congress and Stakeholders

All Members of Congress need full and ready access to the negotiating text, including information concerning the positions of all parties in the negotiations. Each Member of Congress also should be able to designate one staff member, with an appropriate security clearance, to have full and ready access to TPP negotiating proposals.

The Administration should provide members of the advisory committees with access to the text of U.S. *and* foreign country negotiating proposals. This ensures that the advisory committees are able to provide substantive and timely feedback to the Administration.