

# **Ranking Member Sander Levin Floor Speech on Trade**

**May 21, 2015**

(Remarks as prepared)

## **I. Congressional role in trade policy**

It has been over 12 years since the last debate over Trade Promotion Authority, the last time we considered the role of Congress in trade negotiations. Much has changed since then. The world has changed, trade negotiations have changed, and the role of Congress in trade negotiations has changed.

### **a) The world economy – and economic thinking – has changed**

We all recognize that trade can be beneficial. The issue is not whether Congress could pass an Econ 101 class, as President George W. Bush's Chair of the Council of Economic Advisers, Gregory Mankiw, recently put it.

The issue is whether we are going to face up to the fact that our trading system today is much more complex than the simplistic trade model presented in an Econ 101 class. A growing number of prominent economists today recognize those complexities, from Nobel laureate economists like Joseph Stiglitz and Paul Krugman, to Columbia professor Jeffrey Sachs, former IMF chief economist Simon Johnson, and former White House advisor Jared Bernstein. But, too many want to pretend the question of a trade agreement is a "no brainer," as Professor Mankiw suggests.

Or that the benefits of trade "flows from the classic theory of trade gains first expounded by David Ricardo in 1817" because as Charles Krauthammer recently wrote, the "law of comparative advantage has held up nicely for 198 years."

What do David Ricardo and Adam Smith have to say about the inclusion of investor-state dispute settlement in our trade agreements? Nothing, to my knowledge. What do they have to say about providing a 12 year monopoly for the sale of biologic medicines? About the need to ensure that our trading partners meet basic labor and environmental standards? How about the issue of currency manipulation? What does the theory of comparative advantage have to say about those issues? Absolutely nothing – and yet those are the issues at the crux of the TPP negotiations today.

So, how do the old ideas on trade fall short? Let me mention a few examples.

First, as Joseph Stiglitz pointed out recently, 19th century economics and the theory of comparative advantage assumed a fixed level of technology (no technological changes) and full employment. Those assumptions don't fit very well in today's world.

Second, one of the most critical economic issues facing our country today is growing economic inequality and a stagnant middle class. Many trade economists believe that trade contributes to that inequality. But some try to downplay that fact by pointing out that other factors may contribute more to the problem, as if that means we should not worry about the impact trade is having. Consider this from Dani Rodrik, a Harvard University economist:

[T]he gains from trade look rather paltry compared to the redistribution of income. ... [I]n an economy like the United States, where average tariffs are below 5 percent, a move to complete free trade would reshuffle more than \$50 of income among different groups for each dollar of efficiency or 'net' gain created! ... [W]e are talking about \$50 of redistribution for every \$1 of aggregate gain. It's as if we give \$51 to Adam, only to leave David \$50 poorer.<sup>1</sup>

David Rosnick of the Center for Economic and Policy Research expects TPP will have a very small but positive impact on U.S. economic growth (0.13% of GDP by 2025).<sup>2</sup> However, he notes that economists today generally agree that trade contributes to growing economic inequality in the United States, with estimates ranging from 10% to 50% of the total inequality growth. When he combines these two concepts (GDP growth but rising inequality from trade), he concludes that, "under any reasonable assumptions about the effect of trade on inequality, the median wage-earner, and therefore the majority of workers, suffers a net loss as the result of these trade agreements." In other words, the economic pie may grow slightly as a result of our trade agreements, but the average American worker gets a smaller slice of that pie.

Similarly, in September, the Brookings Institution published an economic research paper by three economists (two affiliated with the Federal Reserve System) that found that trade and globalization accounts for the vast majority of labor's declining share of income in the United States over the past 25 years.<sup>3</sup> Specifically, they found that "increases in import exposure of U.S. businesses can explain about 3.3 percentage points of the 3.9 percentage point decline in the U.S. payroll share over the past quarter century."

This underscores that the substance of the trade agreements – the international rules – matter. Our trade agreements must be designed to shape trade, to spread its benefits more broadly.

Third, we need to stop pretending that trade only has benefits and few costs. We need to stop talking exclusively about exports and downplaying the negative impact that some imports have, as the Council of Economic Advisers did in a recent paper. Of course, imports can help to lower prices for manufacturers and consumers. But lower prices don't do you much good if you have lost your job or seen your wage decline or stagnate. Again, as [Jeff Sachs has said](#), "It's true that the benefits often outweigh the costs, leading to the argument that winners can compensate losers. But in America, winners rarely compensate losers; more often than not, the winners attempt to trounce the losers."

## **b) Trade negotiations have changed**

The old economics models are based in part on trade between countries with similar economic structures. This is no longer the case.

The 12 parties involved in the TPP negotiations – accounting for 40% of the world GDP – include economies ranging from some of the world's largest, market-oriented economies to some of the smallest, least developed command economies.

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<sup>1</sup> Dani Rodrik, *The Globalization Paradox: Democracy and the Future of the World Economy*, 2011, p. 57.

<sup>2</sup> David Rosnick, "Gains from Trade? The Net Effect of the Trans-Pacific Partnership Agreement on U.S. Wages" Center for Economic and Policy Research, September 2013.

<sup>3</sup> "The Decline of the U.S. Labor Share," Michael W.L. Elsby, University of Edinburgh; Bart Hobign, Federal Reserve Bank of San Francisco; Aysegul Sahin, Federal Reserve Bank of New York, Paper to be presented at the Fall 2013 Brookings Panel on Economic Activity, September 19-20, 2013.

We have never been able to establish a level playing field with Japan after decades of trying and multiple “agreements” to solve various problems. The Japanese market stands virtually closed today in key areas like agriculture and autos.

And we have never negotiated a free trade agreement with a communist country like Vietnam where state owned enterprises are a major concern and the communist party and the one so-called labor union are one in the same.

The issues involved in trade negotiations have also changed dramatically. We are no longer simply negotiating tariff levels. As Professor Jeff Sachs of Colombia University said recently, “Both TPP and TTIP would be better described as Multinational Business Agreements, involving three distinct areas: international trade, cross-border investment, and international business regulation.”

The TPP 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.

So, the economics of trade has changed, and the trade negotiations themselves have changed. So, too, has the Congressional role.

### **c) The congressional role has changed**

In recent years, we have had to take it upon ourselves to re-write the rules of trade negotiations.

In 2006, when Democrats took the Majority in the U.S. House, we made it clear to the Bush Administration that we were not going to consider the Peru, Panama, Colombia and Korea Free Trade Agreements as negotiated. Each of them would need to be fixed.

Charlie Rangel and I worked with our House Democratic colleagues to co-author what became known as the “May 10<sup>th</sup> Agreement” on labor and environmental standards in trade agreements. For the first time, fully enforceable labor and environmental standards would be placed into our trade agreements on equal footing with every other commercial provision. The May 10th Agreement also included important provisions on medicines, investment, and government procurement.

After decades of leading the fight to include worker rights provisions in trade agreements, I considered at the time, and still do today, the May 10<sup>th</sup> Agreement to be a major breakthrough. In the case of our trade agreements with Peru, Panama and Colombia, their labor laws were changed to come into compliance with ILO standards before the Congress voted.

And then, in 2010, with the Korea FTA, working on a bi-partisan basis with then Chairman Dave Camp – and with Ford Motor Company and the UAW – we urged the Obama Administration go back and re-negotiate the specific automotive market opening measures with Korea. And they did so, helping to garner broad, bipartisan support in Congress.

We established the foundation for progressive trade policy. We saw the value of intense congressional involvement to improve trade agreements. We want to make sure it is built on, not eroded.

## **II. TPP negotiations not on the right track**

Now we are facing the largest multi-lateral trade negotiations since the WTO Uruguay Round. The 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. Once the U.S. lowers its own tariffs as broadly as contemplated in TPP, we will no longer have the leverage to bring about lasting change in other countries.

[In January, I described what I believed to be an effective way to resolve the outstanding issues in the TPP negotiations.](#) I believed that achieving these outcomes could lead to a landmark TPP agreement worthy of major bipartisan support and my support.

Unfortunately, in four months, none of these suggestions have been taken on by our negotiators.

## **III. TPA doesn't impact TPP's shortcomings**

And, unfortunately, the Hatch-Wyden-Ryan Trade Promotion Authority bill fails to put TPP on the right track or to help Congress do so. Chairman Ryan and Senator Cruz wrote an op-ed entitled, "[Putting Congress in Charge on Trade.](#)" Senator Hatch declared TPA to include "strict negotiating objectives" that gives the American people a voice on trade priorities. Saying it is so does not make it so.

On all of the major issues in the negotiations, the negotiating objectives are obsolete or woefully inadequate. They are basically a wish list. And even worse, at the end of the negotiation, TPA allows the President to certify whether his own negotiators achieved the wish list.

And the provisions relating to congressional withdrawal of TPA are meaningless. They will never be used, because they are unusable.

The Hatch-Wyden-Ryan TPA gives up congressional leverage at the exact wrong time. Instead of pressing USTR to get a better agreement, or signaling to our negotiating partners that Congress will only accept an agreement that ensures reciprocity and helps to spread the benefits of trade, the Hatch-Wyden-Ryan TPA puts Congress in the back seat and greases the skids for an up-or-down vote after the fact. Real congressional power is not at the end of the process, it is right now, when the critical outstanding issues are being negotiated.

### Currency

We must meaningfully address currency manipulation — the protracted, large-scale, official, one-way intervention in the currency markets to weaken a currency for the purpose of boosting exports and limiting imports. Currency manipulation has cost the United States millions of jobs over the past decade and a half. Many people had trouble finding new jobs, or had to accept new jobs at lower wages.

China manipulated its currency most dramatically in this time period — accumulating the largest stock of foreign exchange reserves the world has ever known. In earlier episodes, Japan, South Korea and others manipulated their currencies on a protracted, grand scale.

Japan's currency manipulation and other trade-distorting practices kept its auto and other markets closed, while Japan had access to a very open U.S. market. This one-way trade decimated the U.S. tool-and-die industry and seriously injured other segments of the automotive industry, including U.S. automakers themselves.

The International Monetary Fund has up-to-date guidelines that define currency manipulation and are intended to prevent it. There is nothing wrong with the spirit or even the letter of those guidelines. Unfortunately, the IMF cannot enforce those guidelines because currency manipulators are able to essentially stall action in that forum.

Arguments that prohibiting currency manipulation in TPP is impossible, for political or technical reasons, remind us of previous claims about trade agreements not being able to help defend forests or discourage child labor.

For example, some prominent people have asserted that U.S. monetary policy would be put at risk if currency disciplines are included in TPP. I responded to that argument in a [highly detailed blog post](#) months ago. I have seen no serious rebuttal of the points I made in that post – or to similar and related points made by Simon Johnson, Fred Bergsten, and many other notable economists, ranging from Art Laffer to Paul Krugman. Nevertheless, those who oppose currency disciplines continue to raise this false argument.

TPP should address instances in which countries buy large amounts of foreign assets over long periods of time to prevent an appreciation of their exchange rate despite running a large current account surplus. The Federal Reserve does not engage in such practices. That is why the U.S. already agreed to and even insisted upon what is in the current IMF guidelines.

And now there is the claim that including currency disciplines in TPP would be a “poison pill” and that our trading partners would walk away from the table. There is no way to accurately judge this issue until it is properly brought to the negotiating table. To the contrary, the fact that the Administration says this only creates the risk of a self-fulfilling prophecy. It is irresponsible to make this claim. Indeed, our trading partners in TPP would greatly benefit from these disciplines. Many of them are the victims of manipulation every bit as much as we are.

A progressive trade agreement for workers and the middle class must address currency manipulation, which has caused millions of job losses and contributed to wage stagnation over the past decade. President Obama is right that we should write the rules and not accept the status quo. But if we fail to address currency manipulation in TPP, we are essentially letting China write the rules and are accepting an unacceptable status quo.

### Access to Medicines

It is vital that our trade agreements balance strong intellectual property rights and access to affordable, life-saving medicines.

Absent a change in course, the final text is likely to provide less access to affordable medicines than provided under the May 10th Agreement. My staff has just reviewed a new version of the text that raises some serious new questions. But even the last version of the text raised serious concerns.

For example, developing countries would likely be required to ‘graduate’ to more restrictive intellectual property rights standards before they become developed – a clear inconsistency with the May 10th Agreement. 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).

Oxfam, a coalition of 17 international development organizations, recently said, “TPP would do more to undermine access to affordable medicines than any previous U.S. trade agreement, and the intellectual property provisions in TPP reverse the positive step taken under the May 10<sup>th</sup> Agreement in 2007...and thus are a step backward for public health.” And amfAR, the Foundation for Aids Research said, “Our gains in reducing global HIV infections would never have been realized if the proposed provisions under the TPP were the intellectual property standard in 2001.”

### Automotive Market Access

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.

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.

The Hatch-Wyden-Ryan TPA bill 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.

On the related issue of Rules of Origin, 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.

“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. 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.

The Hatch-Wyden-Ryan TPA bill provides no guidance whatsoever on any Rule of Origin on any product in the TPP negotiations.

## Agricultural Market Access

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.

The Hatch-Wyden-Ryan TPA bill has as its objective “reducing or eliminating” tariffs on agricultural products. 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,” the bill does not mention comprehensive tariff elimination even as a negotiating *objective*, much less as a requirement.

## Environment

The TPP negotiations are taking a different approach on environment than we did in the May 10<sup>th</sup> Agreement and in our FTAs with Peru, Panama, Colombia and Korea, where we stated simply that each country was obligated to implement seven multilateral environmental agreements. TPP negotiators are trying to build the same obligations from scratch, and we still do not know if they have succeeded. Words like “endeavor” and “take steps to” are not going to lead to the revolutionary changes we have been told to expect. The President said at Nike recently that the TPP environmental chapter would “help us do things that haven’t been done before.” Actually, we *have* done these things before. In addition to the May 10th Agreement, Peru included a special annex on deforestation. It needs more vigorous enforcement.

The Hatch-Wyden-Ryan TPA bill is obsolete in providing objectives since the TPP is already taking a different approach. The TPA bill also does not address whether or how climate change issues should be handled in TPP, an issue raised by other countries in the TPP negotiations.

## Investment and Investor-State Dispute Settlement

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 rules of law. Just last month, an investor won a NAFTA ISDS case in which the government of Nova Scotia denied a permit to develop a quarry in an environmentally sensitive area.

Other investment disputes involve ‘plain packaging’ of tobacco products in Australia aimed at protecting public health 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.

As far back as 2007, when the May 10th Agreement was reached, we recognized growing concerns over investment and ISDS. We insisted that our trade agreements with Peru, Panama, Colombia, and Korea include new preambular language clarifying that the investment obligations in those agreements were not intended to provide foreign investors with greater substantive rights than U.S. investors have under U.S. law.

Over the past few years, our concerns over the investment text and ISDS have become even greater. Nevertheless, our negotiators have refused to include the May 10th Agreement preambular language in TPP, and the text of the investment chapter in TPP is basically the same as the model adopted 10 years ago, even though conditions have changed dramatically in the past 10 years, and calls for changes to or elimination of the chapter have intensified. Despite proposals to include new safeguards in the ISDS mechanism, the Administration has not made any attempts to incorporate them.

The Hatch-Wyden-Ryan TPA investment negotiating objective is the same as it was 12 years ago, and again is obsolete.

### Worker Rights

TPP does not yet ensure compliance by TPP parties that have labor laws and practices that fall far short of international standards contained in the May 10th Agreement even though TPP is expected to include the May 10th Agreement language.

Vietnam presents the greatest challenge we have 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.

On a recent trip to Vietnam, I met a woman who had been thrown in jail for four years for trying to organize workers in an independent union. We cannot simply have the right written obligation in the agreement and expect that some future dispute settlement panel is going to ensure meaningful change on the ground for workers. The Administration has not committed to ensuring that all changes to laws and regulations are made before Congress votes – as was the case with Peru, Panama and Colombia.

The Administration also does not make available to Members of Congress any “consistency plan” they are discussing with Vietnam so that we can evaluate the changes to Vietnamese laws and practices they are seeking. But, from what I understand, any plan will fall far short of bringing Vietnam into compliance with basic ILO standards, as required under the May 10th Agreement. For example, I am concerned Vietnam may refuse to agree to allow industry-wide unions to form – a clear inconsistency with ILO standards.

Our negotiators also have refused to accept our suggestion that an independent panel be established from the beginning to ensure compliance with the labor obligations and expedite a dispute. Without such a structure, future cases will need to be built from scratch by outside groups and submitted to the U.S. government, a process which has taken several years for the Department of Labor to act on in Honduras and Guatemala.

The President said recently that Vietnam “would even have to protect workers’ freedom to form unions – for the first time.” But the TPP that USTR is negotiating seems far from ensuring that those words are real.

Mexico also has a long way to go. And Americans know that Mexico competes in manufacturing. According to Professor Harley Shaiken at UC Berkley:



Under NAFTA, the auto industry in Mexico has grown rapidly, and it is in the midst of an unprecedented expansion. Mexico assembled over three million vehicles in 2013 – more than Canada – and exported over 80 percent of them, most to the United States. Global automakers plan to invest \$6.8 billion in Mexico between 2013 and 2015. As a result, Mexico is on track to become the leading source of imported vehicles for the U.S. market by 2015, surpassing both Canada and Japan. Moreover, Mexico exported \$44.8 billion in auto parts to the United States last year, more than Japan, Germany, and Korea combined.

The wage rate in Mexico is about 20% of a comparable rate in the United States.

The Administration likes to say that TPP will re-negotiate NAFTA. I'm all for that. But, again, words in the Agreement are not enough. Mexico has to change their laws and practices. For example, they have to get rid of the "protection contracts" that serve to block real representation in the workplace, and they need to fundamentally reform or replace the Conciliation and Arbitration Boards that are responsible for resolving disputes over workplace representation and other labor issues. This is vitally important because U.S. workers compete directly with Mexican workers in critical manufacturing and other sectors. While I understand the Administration has started conversations with Mexico, I am not informed of any "consistency plan" that would detail the changes Mexico needs to make to their laws.

### State-Owned Enterprises

TPP negotiators are also working on disciplines for state-owned enterprises, or SOEs. Countries that rely heavily on state-controlled and state-funded enterprises are able to give those champions an enormous – and unfair – advantage over private companies that compete against them in the marketplace.

The TPP will include disciplines on SOEs that are expected in language 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.

The TPA bill says absolutely nothing about the definition of SOEs or the carve-outs. Again, it is irrelevant to what is currently going on in the TPP negotiations.

### Other Substantive Issues

There are several other important TPP issues that need to be addressed. Food safety is one of them. There is a very broad consensus that not enough resources are being devoted to ensuring the safety of our imports. What are we going to do about this issue?

It is a real issue in the TPP and TPA debate, but the Administration has not proposed any resolution. And it is unclear how tobacco control measures will be treated in the TPP agreement – and, again, TPA is silent on the issue.

### Transparency

Unfortunately, specific portions of the negotiations and the shortcomings in TPP are often difficult to discuss because the documents have been classified. I have not argued that the entire negotiations should be open to the public.

I understand that in a wide range of contexts, from peace negotiations to labor negotiations, it is widely assumed that negotiations at times need to be held behind closed doors. And, at this point, I am not convinced that trade negotiations are any different.

But negotiators need to communicate frequently and effectively with stakeholders to ensure that they are seeking the right provisions in negotiations. In a number of respects, our negotiators were not doing that when the TPP negotiations were in their early – or even not so early – stages.

Thanks to constant pressure from Members of Congress over the past several years, we have made some progress in this regard. For example, just a couple of years ago, USTR refused to share the “bracketed” text (laying out the positions of the various parties) with any Member of Congress. We got them to change that. Much more recently, they refused to let staff from personal offices assist their Members with the text – even where the staff member had top secret security clearance. We got them to change that.

Still, there remain unreasonable and burdensome restrictions on access to the text. For example, Congress created a system of stakeholder advisors many years ago to provide advice to our negotiators and to Congress on the negotiations. But those advisors still can only see U.S. negotiating proposals. They cannot see the proposals of our trading partners. It is awfully hard, if not impossible, for them to provide negotiating advice if they can’t know what the other side is seeking.

Moreover, personal office staff with top secret security clearance still cannot view the negotiating text unless their Member is present in the room. I know Administration staff with those clearances are trusted. Why not congressional staff? This is an unreasonable burden when Members of Congress are in Washington. When Members are away in their districts, it effectively shuts off all access to text between Member offices and the Administration. We have urged the Administration to change this policy, and they have flatly refused.

And I am not at all confident that our negotiators are sharing with Members of Congress, or the stakeholder advisors, all of the texts that are exchanged with the other TPP countries. For example, we now know our negotiators have been discussing a labor “consistency plan” with Vietnam for many months, at least. But there still is no text for Members of Congress to review.

This is one of the major outstanding issues in TPP, and yet there is no text to review, despite the fact that USTR has told us for at least a year now that the negotiations are nearly complete? At a recent meeting to discuss Vietnam, it was classified so that the status of the negotiations on this issue cannot be discussed publicly. Many of us left less confident that there has been any progress in the negotiations.

Or take currency manipulation. For literally years, we have pressed what the Administration’s position is on the issue, given that majorities in both the House and Senate have urged that strong and enforceable currency disciplines be included in TPP. For years, the Administration said it was still deliberating on the issue and had no answer. Now, when pushed through the TPA debate in Congress, the Administration claims that they could never possibly include enforceable disciplines in TPP because they would be a “poison pill.”

Finally, I don’t understand why the Administration is selectively able to reveal to the public certain aspects of the agreement that it thinks the public will like – but those of us who have concerns cannot reveal those concerns. We have examples of officials revealing to the press very specific things from the negotiating text like when tariffs will be eliminated on a particular product. Take the Environment Chapter. In my view, the problem with that chapter is that many of the “verbs” used in those obligations (the essence of the commitments) are very weak – but I presumably cannot tell you what those verbs are.

So, one has a hard time understanding the rationale for this process. The way it has been handled by the Administration does not make Members and other key parties real participants with a meaningful role, understanding and impacting decisions undertaken in this important negotiation.

### Six-Year Term and TTIP

In addition to falling short in getting TPP on the right track, the TPA bill also presents dangers with other agreements. This TPA bill essentially will be in place for six years. It gives the President a great deal of latitude in deciding which agreements to negotiate, with whatever trading partners the President wants, and covering whatever subject the President wants.

Recently, Senator Elizabeth Warren drew heavy criticism for expressing the concern that Trade Promotion Authority could be used by a Republican President to undermine Dodd-Frank. The concern was dismissed as “speculative” and “desperate.” But, as explained further below, the concern is genuine and legitimate.

In ongoing trade agreement negotiations to establish a “Trans-Atlantic Trade and Investment Partnership Agreement” (TTIP), European officials, U.S. and European banks, and some Congressional Republicans have expressed an interest in harmonizing U.S. and EU financial services in a way that would water down U.S. laws and regulations. Similarly, some Republican presidential candidates have expressed an interest in weakening or repealing Dodd-Frank, although not through the TTIP negotiations.

According to [a Politico article](#), “White House and pro-trade officials on the Hill say [that] the fast-track bill currently before Congress includes language that expressly forbids changing U.S. law without congressional action.” But this language is nothing new. Legislation to implement trade agreements typically includes similar language. The purpose of the language is simply to make clear that, under U.S. law, our trade agreements do not have “direct effect” and are not “self-executing,” meaning that domestic laws and regulations need to be amended to give effect to any obligation in an international agreement.

Implementing bills typically make changes to U.S. tariff laws to comply with the tariff obligations of trade agreements. But some implementing bills have included much more substantial “behind-the-border” changes to U.S. laws to comply with the obligations in our trade agreements. Consider the following examples:

Changes to U.S. Patent Laws. The legislation to implement the Agreement establishing the World Trade Organization in 1994 amended U.S. patent law to provide for 20 years of protection. That implementing bill was subject to “fast-track.”

Changes to the Immigration and Nationality Act. The legislation to implement the U.S.-Singapore Free Trade Agreement amended the Immigration and Nationality Act to provide for the temporary entry of business persons. The Singapore Trade Agreement was subject to “fast-track.”

A former senior Treasury official involved in drafting Dodd-Frank, Michael Barr, recently expressed that he shares Senator Warren’s concerns.

### Substitute Amendment

With all of these concerns in mind – and, above all, my determination to do everything I can to get TPP in shape to garner broad, bipartisan support in Congress – the Ways and Means Democrats offered a substitute amendment during the markup of the TPA bill.

That amendment – [the Right Track for TPP Act](#) – includes negotiating instructions – not merely “negotiating objectives” like the TPA bill – on each of the 12 major outstanding issues, some of which I have described earlier. It provides that the President will not get an up-or-down vote unless and until Congress determines that the instructions have been followed. It also includes real mechanisms to ensure that a poorly negotiated TPP agreement will not be placed on a “fast track.”

Regrettably, our substitute amendment was blocked in Committee based on a highly questionable procedural determination from the Chair. In essence, while the Republican majority was free to mark up a bill that was in both the jurisdiction of our Committee and the Rules Committee, we were denied the right to do the very same thing. Our Chair was concerned about stepping on the jurisdiction of the Rules Committee – and yet the Rules Committee has waived jurisdiction over the TPA bill. We were placed in a catch-22.

#### **IV. What the debate is and isn’t about**

As is often the case with trade debates, they become about something they are not.

**The debate is not about being for TPP, or against TPP.** I am for the right TPP and that is why I want Congress to be in a position to press U.S. negotiators to secure a better outcome.

**This debate is not about “letting China write the rules.”** I wrote the amendments to the bill granting China Permanent Normal Trade Relations to try and ensure that China didn’t write the rules when they entered the WTO. I want to make sure the rules are written effectively to impact the economic behavior of China. That’s why I am so determined to get the TPP provision on state-owned enterprises and worker rights and the environment done effectively. And, that’s why we are determined to address currency manipulation.

**This debate is not about isolationism.** Neither I, nor any colleague of mine is arguing that we should “pull up the drawbridge and isolate ourselves.” Indeed, most of us who currently oppose TPA right now have demonstrated on a broad range of issues that we are internationalists, perhaps more so than many of those who support TPA.

**This debate is not mainly about national security or the pivot to Asia.** Let me make three points here.

First, trade agreements need to stand on their own merits. Congress created USTR over 50 years ago because it didn’t like how the State Department was allowing foreign policy to influence our trade negotiations:

According to one State Department trade specialist from the 1950s, “We did make some big tariff cuts and didn’t get any reciprocity. It was quite deliberate.” The generosity of the State Department in these trade negotiations upset Congress enough that, under the leadership of Ways and Means Chairman Wilbur Mills, Congress removed trade negotiations from the responsibilities of the State Department and created the Office of the Special Trade Representative in 1962. “I was sick about how the State Department had been trading away our economic advantages for political advantages,” Mills later said.<sup>4</sup>

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<sup>4</sup> Steve Dryden, *The Trade Warriors: USTR and the American Crusade for Free Trade*.

Second, in the world today, I don't see how a trade agreement can be in our national security interest if it isn't in our economic interest. Fifty years ago, when the United States was an economic superpower unlike any other nation in the world, maybe we could grant our trading partners disproportionate and non-reciprocal concessions, in exchange for the "political advantages" Wilbur Mills mentioned. That is not the case today. Our economic security today is critical to our national security.

Finally, the kind of TPP I envision very much is in our national security and foreign policy interests – much more than the agreement we are pursuing today.

#### **V. How the defeat of this "fast-track" will bring about a better TPP**

Proponents of TPA are trying to sell TPA by selling TPP itself. Unfortunately, that is the problem. TPP is not yet on the right track. It has not earned the "most progressive trade agreement in history" moniker that the President has given it. The best course for Congress is to withhold "fast-track" until we know that TPP is on a better course. To press the Administration to work with us and really respond to our concerns by changing the course of negotiations. To send a signal to our negotiating partners that the Congress has set a high bar for the negotiations. That we are demanding the best deal. And, in a number of areas (ISDS, medicines) they will welcome the improvements that I have suggested.

At the end of the day, the goal is to achieve a Trans-Pacific Partnership worthy of support. A TPP that spreads the benefits of trade to the broadest swath of the American public, and addresses trade's negative impacts.