

May 29, 2015

This attached document is a revision of a 16-page document that was intended to serve as an “Interim Report” on the Trans-Pacific Partnership (TPP) negotiations from the members of the Labor Advisory Committee for Trade Negotiations and Trade Policy (LAC). I and my colleagues who are also members of the LAC wrote and approved the document. We delivered the document by hand to the United States Trade Representative (USTR) on April 16, 2015. We sent a follow-up electronic version on April 17, 2015.

We received no formal acknowledgement of receipt of the document. Members of Congress were informed by USTR in late April that nobody at the agency was aware of the existence of the document. On May 1, 2015, we sent the document **again** to a larger group of recipients both at the USTR and at the Department of Labor (DOL).

It was not until we sent a follow-up message to Ambassador Froman and Secretary Perez on May 7, 2015 -- a full three weeks after the initial submission of the document -- that we finally received a response. At that time, the Department of Labor informed us that the “Interim Report” could not be accepted as a LAC document because it had not been drafted and submitted in a manner compliant with the Federal Advisory Committee Act (FACA). Why it took three weeks to notify us of this problem has not been explained. Given that the document was submitted in a non-compliant manner, the USTR and DOL indicated that they were legally prevented from sharing it with the Members of Congress who had requested it.

Our interest in writing the report was two-fold. First, we wanted to make yet another attempt to persuade USTR to adopt some of our recommendations into the TPP before concluding negotiations. Second, we wanted to provide a reading guide to senators and members of Congress to highlight the numerous places in which the TPP fails to adopt recommended working-family friendly provisions despite our clear guidance on how to make such changes. As such, getting this document into the hands of those charged with voting on fast track and the TPP is both time-sensitive and compelling.

Over the course of subsequent discussions with both the DOL and USTR (on May 7, 8, 11, and 22), we tried in several ways to expedite getting this critical information into the hands of Congress. In light of USTR and DOL’s determination that the document is not FACA-compliant because it has not been discussed at a LAC meeting, we asked at the May 11 discussion whether it would be possible to release to Congress as an official LAC document an 11-page portion of the 16-page document. This consists of a letter and annex dated September 3, 2014, from LAC Chairperson Tom Buffenbarger, on behalf of the entire LAC, to Ambassador Michael Froman and Secretary Thomas Perez. As this letter and annex were discussed at the September 4, 2014, LAC meeting, we understand that they are FACA-compliant.

At that point, there were two questions on the table. First, which portions of the full, 16-page document we could release publicly. And second, could the 11-page portion of the document be released in full to Congress to help in its Fast Track deliberations.

As of the May 22 discussion, we have learned the following:

- 1) We can publish the first five pages of the original “Interim Report” only in edited and redacted form. We have been instructed to edit it in the following ways:
 - a. We cannot identify it as an “Interim Report.”
 - b. We cannot identify it as a LAC product.
 - c. We cannot purport to speak for the LAC as a body.
 - d. We can, however, speak of the experience of the report’s authors as members of the LAC.
 - e. We were also asked to omit a particular portion of the document.

In the pages that follow, information that has been edited per these instructions appears in brackets. Information that we have been asked to omit appears in black.

- 2) USTR and DOL failed to review the remaining 11 pages of the original report, consisting of the letter and annex discussed at the September 4, 2014, LAC meeting. Therefore, it failed to authorize any release of the information therein. The content of those pages, apart from the date, addressees, and signatory has accordingly been blacked out.
- 3) USTR and DOL failed to provide an answer regarding whether the portion of the report consisting of the letter and annex discussed at the September 4, 2014, LAC meeting, will be released to Congress. USTR and DOL’s undue delay—it received the original report more than six weeks ago—has already prevent U.S. Senators from being able to take this information into account before they had to vote on Fast Track. We will do everything we are able to ensure that U.S. Representatives are not placed in the same position.

Richard L. Trumka
President, AFL-CIO
Member, LAC

**[Analysis: USTR's Failure to Meaningfully Engage with Labor Unions
Originally Drafted April 13, 2015]**

[This document, drafted by the signatories below, describes our individual experiences in trying to provide trade policy advice to the United States Trade Representative, including our experiences as participants on the Labor Advisory Committee for Trade Negotiations and Trade Policy (LAC). This document is neither an official government document nor an official LAC product. However, we have used our experience as members of the LAC, and the experiences of our cleared staff liaisons, to inform the descriptions and conclusions made in this document.]

Summary:

- The quality of consultations with [labor representatives] and the level of transparency regarding specific negotiating texts are fundamentally inadequate. The Charter for the LAC tasks it with performing its functions in “connection with the preparatory phase of trade negotiations *and with respect to developments arising during the course of negotiations*” (emphasis added). While there have been some oral updates, to date, no full textual update of any chapter has been provided by USTR. [Therefore, in our individual experience, we do not feel USTR has provided sufficient information for us to perform our official roles.]
- Though, [as individual LAC members, we] have access to U.S. proposals, in some cases, these proposals are several years old. The Administration has shared, on an extremely limited basis, excerpts from working texts. In some cases, the Administration has read excerpts from the text to [us or to our cleared staff], without allowing us to see it. In most cases, we receive oral descriptions of the working text that vary greatly in their level of detail. Sometimes we are told no more than that certain chapters are “making progress.”
- The Administration has failed to provide supporting data and economic information that should be made available to all statutory advisors and Members of Congress. In certain areas, we have been informed the information is classified. In other areas, they have indicated that they simply do not have the data – which, of course, raises other concerns.
- The TPP fails to address a number of serious issues, including currency. In many areas, the TPP will undermine the interests of working people in the United States, and even be a step backward from the status quo.
- We understand that the TPP text includes, in several instances, terms such as “should,” “endeavor,” “seek” and similar words and phrases, which result in empty, unenforceable clauses.
- We have repeatedly objected to countries, like Vietnam, accessing trade benefits before they have fully implemented fundamental workers’ rights obligations reflected in the Peru template of the TPP and show a sustained record of compliance. Providing benefits before compliance has weakened previous trade agreements (such as the U.S.-Colombia trade agreement) and undermined the interests of working people both in the U.S. and abroad.

- As a template for a broader trade agreement open to future accession by non-signatory parties, the potential negative impact of the existing text is even greater. Discussions are already underway with other potential parties to the TPP.
- The ongoing grossly inadequate attention to implementation, monitoring and enforcement of current trade agreements will continue to negatively impact domestic producers and workers. We have had extensive discussions with the Administration about the need to dramatically improve the enforcement infrastructure. While this is not an issue within the context of the negotiations, it is vital in ensuring that any agreement is actually enforced. The almost complete lack of Administration responsiveness sends a very clear signal that no significant improvements will be made. The dramatic expansion of trade partners and market access in the TPP will open domestic parties up to significant new trade flows of unfairly traded products, as well as inadequate foreign market access.

Since the beginning of TPP negotiations, [labor union presidents] and staff liaisons have met repeatedly with representatives of the U.S. government to provide detailed comments and submissions on the scope and specifics of the agreement consistent with our duties identified by the statute and charter. In the lead-up to negotiations, [we] provided specific information on the impact of existing trade agreements and implementation of trade policy, including changes necessary to address the serious flaws in existing trade agreements and policies. During the ongoing negotiations, [we have] responded to those proposals that the USTR has chosen to share, but [we] have been deeply frustrated by the lack of transparency and unwillingness of the Administration to provide updated text in many areas, as well as detailed information on the negotiating posture of other parties to the negotiations.

[We take our] responsibilities very seriously. Flawed trade policy has had an enormous impact on working men and women across this country -- with the overall result contributing to stagnating or declining wages, rising income insecurity, increasing income inequality and the loss of good jobs. This Administration has heralded the fact that its activities are open and transparent. Unfortunately, [our experience] is contrary to those claims.

The Administration has indicated that it shares proposals with [us]. The definition of a proposal, however, appears to be the original negotiating text laid down by the U.S. negotiators. In reviewing the cleared advisor web site, for example, the last entry by the Administration was on December 3, 2014, despite the fact that numerous meetings of negotiators have occurred since that time [*note: this date was accurate at the time this document was originally drafted*]. In a broad array of areas, updated posted text – meaning that which is available to all cleared advisors for review and comment -- has not been made available for significant periods of time. While [we view] the entirety of the TPP as having an impact on the lives and livelihoods of working people and [have] made comments on many chapters, the labor chapter is of particular interest. The last posting of a comprehensive proposal available to all cleared advisors in this critical area occurred on December 15, 2011.¹

¹ Examples of other chapters where considerable work has taken place but complete text has not been shared broadly with cleared advisors include: US-Japan Parallel Negotiations on Motor Vehicle Trade Special Motor

Oral briefings have occurred, and selective text has been made available, but, in our view, those approaches are inadequate. Nevertheless, we believe that [this document] based on what the Administration has been willing to share is appropriate.

The Administration's approach to transparency and consultation would be troubling under any circumstances, as [we seek] to improve the outcome of negotiations [in our roles as official advisors]. But, concurrent with the negotiations, the Administration is seeking a broad and unrestricted grant of fast track trade negotiating authority that will deny Congress the ability to appropriately review the TPP and prohibit it from requiring specific improvements. Only now, as the grant of fast track authority has come into question has the Administration expanded its briefings. These continue to be under controlled and unacceptable conditions.

ECONOMIC IMPLICATIONS

As negotiations were being launched, [we], along with others concerned about the impact of existing trade policies, asked for information on the basis for the Administration's decision. [We] asked for any economic studies or other materials that were utilized by the Administration to identify the goals and objectives for the agreement. [We] also asked for information on what specific sectors the Administration believed would be "winners" under their approach. We are still waiting for this information.

As has been noted by the Administration and TPP proponents, the agreement is expected to cover roughly 40% of world trade. While a substantial portion of that trade is already covered by existing FTAs, the inclusion of Japan, Vietnam, Brunei, Malaysia and New Zealand raises many new issues. As well, additional countries are lining up (discussions are already underway with South Korea) to become TPP participants. In addition, at the most recent APEC meeting, the U.S. agreed to China's request for a study to pave the way for a Free Trade Area of the Asia Pacific (FTAAP) that would include China and many other nations.

The TPP, therefore, will have considerable impact on U.S. production and employment. Negotiators have made clear that the TPP will co-exist with existing FTAs and that, in most areas, countries will be able to elect which provisions provide them the greatest benefit. This can create many troubling outcomes. [REDACTED]

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[REDACTED]
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[REDACTED] to date, after

Vehicles Safeguard (December 18, 2013); SOEs (other than extensive listing of exempt entities) (July 8, 2013); Proposed revisions to environmental text (May 8, 2013).

numerous meetings with interested [labor union staff], no data has been provided that would support this contention.

As well, public pronouncements by the USTR on the expected impact of the TPP, in addition to claims about past agreements, have been met with considerable skepticism and, in certain areas, have simply been identified as outlandish. For example, the widely respected “fact checker” published by the *Washington Post* ridiculed Administration claims about the number of jobs that would be created by the TPP with a “Four Pinocchio” rating.

Consistently, the Economic Policy Institute (EPI) has provided the most accurate information on the impact of globalization and specific trade policies. Its work points to serious negative consequences from the potential passage and implementation of the TPP, as presently constructed. For example:

- *Currency Manipulation and the 896,000 U.S. Jobs Lost Due to the U.S.-Japan Trade Deficit.* A substantial portion of the jobs lost are attributable to Japan’s currency manipulation, an issue that the Administration has repeatedly indicated will not be part of the final agreement.
- *Globalization Lowers the Wages of U.S. Workers.* This study identifies the impact of rising trade deficits attributable to certain trade agreements, which have shifted employment from “better-paid tradable sectors” into “lower-paying non-tradable industries.” The study also makes clear that “even if trade deficits do not rise, increased trade changes the composition of jobs, and the new patterns of employment lead to reduced demand for labor and downward pressure on wages.”
- *What’s Wrong with the TPP? This deal will lead to more job loss and downward pressures on the wages of most working Americans.* This blog post refutes an op-ed in the *Washington Post* and shows how the TPP will increase wage inequality.

Specific Concerns:

As noted, since the ramp-up of negotiations, and since the tabling of proposals, [we have] provided substantial written and oral input to the USTR. In September of 2014, the LAC provided formal comments to the USTR and Department of Labor identifying outstanding issues that had either not been addressed, or that were inadequately addressed.

We have requested copies of USTR’s analysis, as well as all supporting documentation and text, but, at this point, they have not been fully provided. In addition, where text *has* been provided, it has primarily been in the form of limited references to specific provisions. Requests for follow-on language or other clarifications have not yet been provided.

As we have previously made clear, quantity of access does not equal quality of access. Based on the totality of information currently available to us on the rules and provisions that will be enshrined in the TPP, it will, on balance, have a negative impact on jobs, wages, and other issues important to America’s working people.

A copy of the submission [by the LAC on September 3, 2014, discussed at the September 4, 2014 LAC meeting, appears below in redacted form].

[Respectfully submitted,

Richard L. Trumka
President, AFL-CIO
Member, LAC]

September 3, 2014

The Honorable Thomas Perez
Secretary of Labor
U.S. Department of Labor
200 Constitution Ave., NW
Washington, DC 20210

The Honorable Michael Froman
United States Trade Representative
Office of the United States Trade Representative
600 17th Street, NW
Washington, DC 20508

[Redacted]

Sincerely,

R. Thomas Buffenbarger

R. Thomas Buffenbarger

Chair, Labor Advisory Committee for Trade Negotiations and Trade Policy (LAC)

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