

16 February 2011

For immediate release

INTERNATIONAL CIVIL SOCIETY DEMANDS END TO SECRECY IN TPPA TALKS

Negotiators in Santiago, Chile for the fifth round of Trans-Pacific Partnership (TPP) talks were delivered a forceful message today by prominent civil society groups, demanding an end to the secrecy that shields their negotiations from the scrutiny of national lawmakers and the general public.

Open letters addressed to government leaders in Australia, Chile, Malaysia, New Zealand and the United States of America, signed by trade unions, environmentalists, faith and social justice organisations that speak for hundreds of thousands of concerned citizens, were handed to each delegation.

The letters object that the proposed agreement is deeply undemocratic in its process and its effect.

Its rules are expected to restrict domestic policies and laws on areas as diverse as healthcare, energy, culture and financial stability for decades ahead, and would give major corporations enormous leverage over democratic processes, including the power to sue governments in international courts.

Despite these far-reaching implications, the negotiations take place behind closed doors. The secrecy far exceeds that of the World Trade Organisation and perhaps even the negotiations on the Anti-Counterfeiting Trade Agreement, where governments agreed to release the texts after repeated leaks.

The call became more poignant as groups monitoring the talks announced they had obtained leaked copies of further negotiating texts on intellectual property tabled by several countries.

The open letters to governments call for negotiators to agree at Santiago to:

- 1) Create and maintain a public website on which governments and civil society can post information and participate as equals in a dialogue and debate;
- 2) Post the draft text of each chapter at the end of each round of negotiations to enable expert and public scrutiny. Given the global financial crisis, the perfect starting point is the texts on investment and financial services, completed in the December 2010 Auckland round;
- 3) Post countries' position papers on specific subjects that are tabled during negotiations;
- 4) Guarantee that all civil society has equal access to information and engagement with the process, regardless of whether they are private sector or public interest groups, supportive or critical of the proposed agreement.

To focus the challenge to the negotiators, independent experts have constructed mock texts of their own dealing with investment and financial services, based on existing free trade agreements among the parties. Analyses based on these mock texts were presented during "stakeholder" sessions on the second day of the Chile negotiations. Delegations were challenged to provide the real draft texts to enable more accurate and truly informed debate.

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OPEN LETTER 'RELEASE THE TPPA TEXT'

The Hon. Julia Gillard
Prime Minister

The Hon. Dr Craig Emerson
Minister for Trade

Your Government has pledged that the Trans-Pacific Partnership Agreement (TPPA) currently being negotiated will be a new model of trade agreement for the 21st century. For us, that means it must not limit the ability of governments to address the challenges that will shape our livelihoods, our communities and our planet over the next ninety years: climate change, financial instability, energy scarcity, food security, inequality and poverty, and constraints on corporate greed.

Instead, business is lobbying for the proposed TPPA to intrude far behind our national borders in ways that could restrict financial, social, health and environmental regulation. Business also wants special rights for foreign investors to sue governments on the grounds that regulation would harm their investments. Pharmaceutical companies are demanding changes to the Pharmaceutical Benefits Scheme so they can charge higher prices for medicines, agribusiness companies want to abolish GE food labeling, and media and services companies want to weaken Australian content rules in audiovisual media, and in government purchasing. Such changes would weaken and limit the laws that will govern us for the entire 21st century.

And all these changes are being debated in secret behind closed doors. The essence of a democracy is the right of the people to scrutinize what governments are doing in their name and debate the direction of policies and laws through democratic parliamentary processes. Instead, these negotiations are conducted in secret, shielded from scrutiny by and accountability to both the public and Parliament. Citizens and legislators would never tolerate the text of domestic legislation being kept secret until it was passed.

Our concerns are compounded by the fact that signatory countries would be bound by the rules of the TPPA in perpetuity, even when an elected government has a different mandate or new realities demand different policies, because its terms can only be changed by consent of all parties.

With respect we reject the argument that draft texts are works in progress and that greater transparency would undermine negotiations. That presumes that negotiators are discussing policies that would not survive the sunshine of scrutiny by the full diversity of interests that they have a duty to serve. If the politicians who set the negotiating mandate and the negotiators who draft the text cannot convince the populace through robust, open and informed debate, they should not proceed.

Enhanced transparency in the TPPA process has many benefits. A more diverse array of informed observers with access to text can safeguard against errors and the risks posed by limited understanding of the possible consequences of proposals. An open process could also dispel current suspicions and build confidence among the public and parliamentarians that TPPA talks will indeed replace the past trade pact models through which benefits and privileges were bestowed on various special interests and large multinational firms to the detriment of the many in signatory countries.

Even the practicability argument for secrecy has been dispelled by recent practice. TPPA countries were involved in negotiations of the recently completed Anti-Counterfeiting Trade Agreement (ACTA) for which draft text was widely circulated. An even more compelling precedent is the practice of the 153-member World Trade Organization (WTO), which now posts country documents and negotiating texts on websites for scrutiny. All the countries involved in the TPPA negotiations are WTO members.

If TPPA talks are truly intended to produce a new model, then we need a negotiating process that can evaluate the costs and benefits of various positions that are being proposed. We are therefore making the following demands of the TPPA negotiators collectively:

- 1) The TPPA parties collectively establish a public website on which government and civil society organizations can post information and participate as equals in a dialogue and debate;
- 2) Post the composite draft text of each chapter as it is completed to open them to expert and public scrutiny;
- 3) Post countries' position papers on specific subjects that are tabled in each phase of the negotiations;
- 4) Guarantee that all civil society has equal access to information and engagement with the process.

We fear that failure to agree to such transparency will discredit the TPPA negotiating process and deprive it of the goodwill needed from people and parliamentarians to make it work for the 21st century.

Sincerely

Australian Fair Trade and Investment Network (AFTINET)
Australian Council of Trade Unions (ACTU)
Australian Catholic Social Justice Council (ACSJC)
Australian Pensioners and Superannuants Federation Inc (APSF)
Australian Education Union (AEU)
Australian Manufacturing Workers Union (AMWU)
Australian Nursing Federation (ANF)
Australian Services Union (ASU)
Australian Writers Guild
Community and Public Sector Union State Public Services Federations (CPSU-SPSF)
Finance Sector Union (FSU)
Friends of the Earth (FOE)

Greenpeace Australia
Media Entertainment and Arts Alliance (The Alliance)
Public Health Association of Australia (PHAA)
Peoples Health Movement OZ (PHM OZ)
Textile, Clothing and Footwear Union of Australia (TCFU)
Aid/Watch
Combined Pensioners and Supperannuants Associatin of NSW (CPSA NSW)
Conference of Leaders of Religious Institutions in News South Wales (CLRI-NSW)
Edmund Rice Centre (ERC)
Economic Refom Australia (ERA)
Fairwear Campaign NSW
Franciscan Missionaries of Mary
SEARCH Foundation
The Alliance ot Expose GATS (Qld)
The Grail (Australia)
Public Interest Advocacy Centre (PIAC)
Republic Now Association
West Australian Regional Meeting of the Reuigious Society of Friends
WTO Watch Queensland

YB Dato' Sri Mustapa Mohamed
Minister
Ministry of International Trade and Industry
Kuala Lumpur

13 February 2011

Dear YB Dato' Sri,

You are currently negotiating the Trans-Pacific Partnership Agreement (TPPA), a free trade agreement that includes the USA. These negotiations are happening behind closed doors and the texts being discussed are not shown to the public, so we cannot know what you are agreeing to on our behalf.

Your government, our elected representatives, say the TPPA you are negotiating will be a 21st century trade agreement.

For us, a 21st century agreement must address the challenges that will shape our livelihoods, communities and our planet over the next ninety years - climate change, financial instability, food sovereignty, energy scarcity, pandemics, insecurity, inequality and poverty, and constraints on corporate greed.

Instead, we understand that the proposed TPPA would intrude far behind our national borders to not only restrict our financial regulation and grant new rights for foreign investors, but also limit how things like healthcare, energy, natural resources and culture will be regulated; how our tax dollars may be spent; what sort of food safety and labelling will be allowed; whether medicines will remain affordable; and more.

What you are proposing and the way it is being negotiated are undemocratic and hypocritical.

First, a TPPA would bind our domestic policies and laws for decades ahead; even when the government changes its policy in future or faces new realities, its hands will be tied.

Second, Malaysia's obligations under the agreement would be enforced in international, not domestic courts: as a minimum, the government could face trade sanctions if it failed to comply; and, at worst, foreign investors could sue the government in a secret international court to enforce their special new rights.

Third, you are conducting these negotiations in secret. A more transparent TPPA process would provide some basic safeguards against errors and identify risks that may not be apparent to negotiators and the government. It could also help convince people that a TPPA really will replace the past trade pact models that benefitted and privileged special interests and multinational firms.

The reason commonly given for needing to keep the negotiating texts secret is that greater transparency would undermine negotiations. But this presumes that your proposals would not survive the sunshine of scrutiny. Even the World Trade Organization (WTO), hardly renowned as a bastion of transparency, now posts country documents and negotiating texts on its website for scrutiny. If politicians and negotiators cannot convince the public through robust, open and informed debate about what you are proposing in our name, the talks should not proceed.

We are demanding, at a minimum, that the Malaysian Government proposes to all the other the TPPA negotiating parties at the forthcoming negotiations in Chile in February 2011 that they agree collectively to:

- 1) Create and maintain a public website which governments and civil society can post information and participate as equals in a dialogue and debate;
- 2) Post the draft text of each chapter as it is completed to open them to expert and public scrutiny. Given the global financial crisis, the perfect starting point is the texts on investment and financial services, completed in the December 2010 Auckland round;
- 3) Post countries' position papers on specific subjects that are tabled during negotiations;
- 4) Guarantee that all civil society has equal access to information and engagement with the process, regardless of whether they are supportive or critical of the proposed agreement.

Failure to agree to such transparency and allow for open debate will further discredit the TPPA negotiating process and strip any negotiated text of legitimacy.

Thank you for your kind attention.

Yours sincerely,

1. Consumers' Association of Penang (CAP)
2. Dewan Muslimat PAS Pusat (DMPP)
3. Lajnah Pengguna & Alam Sekitar PAS Pusat
4. Monitoring Sustainability of Globalisation (MSN)
5. Positive Malaysian Treatment Access & Advocacy Group (MTAAG+)
6. Sahabat Alam Malaysia (SAM)
7. Solidariti Wanita Muda Malaysia (SWiMM)
8. Third World Network (TWN)

The Honorable Ron Kirk
United States Trade Representative
600 17th Street NW
Washington, DC 20508

February 14, 2011

Dear Ambassador Kirk:

You have often said that you intend for the Trans-Pacific Free Trade Agreement (FTA) currently under negotiation to be a “new, high-standard, 21st century trade agreement.” Obtaining this result, which we support, will require a more transparent process than has characterized past U.S. trade negotiations or the first year of Trans-Pacific FTA talks.

We appreciate the opportunities you have provided for civil society participation around the Trans-Pacific FTA but feel strongly that more can and should be done. USTR moved early on to open space for civil society participants at the San Francisco negotiations, a step which other host countries have reciprocated at subsequent negotiating rounds. USTR has also provided post-negotiation civil society debrief sessions. However, it remains absolutely clear that important policy discussions and decisions are being made without the input of civil society (outside of the limited access provided to non-industry cleared advisors). Indeed, the overall level of transparency does not meet the standard expected of a 21st century trade agreement. At the center must be the U.S. public, which has a direct and long-term interest in the outcome of this negotiation.

Some Trans-Pacific FTA countries were involved in negotiations of the recently completed Anti-Counterfeiting Trade Agreement (ACTA). International civil society objected to the secrecy surrounding that process, and its draft texts were eventually widely circulated. Even the 153-member World Trade Organization (WTO) now posts country documents and negotiating texts on websites for scrutiny. Yet, to date, this practice has not been adopted in the context of Trans-Pacific FTA talks, even though the involved countries are all WTO members.

Enhanced transparency in the Trans-Pacific FTA process has many benefits. Having the expertise of a more diverse array of informed observers with access to text can safeguard against errors and the risks posed by limited understanding of possible consequences of proposals. An open process could also build confidence among the public and parliamentarians that Trans-Pacific FTA talks will indeed replace the past trade pact model – through which benefits and privileges were bestowed on various special interests and large multinational firms to the detriment of many in signatory countries.

In the past, nontransparent trade negotiations that are only made public after the final deals have been signed and sealed have had expansive implications for the daily lives of millions of people. If Trans-Pacific FTA talks are truly intended to result in a new model, then a negotiating process with greater transparency and regular access to draft text is necessary. This is the only way to ensure that those who would live with the results can have a meaningful part in the process.

The special circumstances of Trans-Pacific FTA negotiations greatly increase the need for such

openness. The current negotiations are premised on a process started in 2008 to add foreign investor protections and financial services regulatory limits to a Pacific-4 Free Trade Agreement (P4 FTA) existing between Singapore, New Zealand, Chile and Brunei. The P4 FTA certainly does not represent a new model for the 21st Century. And, especially in light of the global financial crisis, the prospect of adding new limits on financial regulation and new foreign investor rights to the P4 FTA is worrisome.

Indeed, the scale and scope of the proposed Trans-Pacific FTA is expansive. All signatory countries would be required to conform their domestic laws and regulations to certain provisions with an enforcement mechanism that would allow indefinite trade sanctions against countries that fail to comply. Trans-Pacific FTA negotiations cover not only financial regulation and new rights for foreign investors, but limits on how an array of services relating to healthcare, energy, natural resources, culture and more may be regulated; how domestic tax dollars may be expended; what sort of food safety and labeling and quarantine policies will be permitted; and more.

Citizens and legislators would never tolerate policymakers keeping secret the text of domestic legislation until it was passed. Yet, the Trans-Pacific FTA could require the alteration of wide swaths of our domestic policies under terms that do not facilitate later modifications as governments or public demands change. Indeed, the enforceability and permanence of such terms, with later changes to an adopted Trans-Pacific FTA requiring agreement by all of the signatory countries, necessitate extreme care and complete transparency on the front end.

Your USTR colleagues have confirmed that the investment and financial services texts initially developed during 2008 negotiations are being used as the basis for current negotiations. We request that these available draft texts be released immediately. Past requests by civil society representatives to our countries' negotiators for access to these two texts has been met with the argument that some *other* country objects to such transparency and that is why our government cannot allow us to have access. The February Santiago negotiations provide an excellent opportunity for the Trans-Pacific FTA countries to agree *together* to make the draft investment and financial service texts available and to release other draft texts as they are created.

We request that your negotiating team propose to the other negotiating parties at the February 2011 Santiago Round that they collectively agree to create a joint FTA website to facilitate enhanced transparency and to make available information about upcoming rounds (time, place, issues to be considered) and contact information for key negotiating personnel, as well as all white papers, draft texts, offers and counter-offers, trade and other data, press statements and declarations in the FTA process. Only such a robust, open and informed debate about possible Trans-Pacific FTA provisions will ensure a desirable outcome for a high-standard, 21st century trade deal.

Sincerely (continued on following page),

AFL-CIO
Center for International Environmental Law
Columban Center for Advocacy and Outreach

Earthjustice
Environmental Investigation Agency
Friends of the Earth
Global Exchange
International Brotherhood of Boilermakers
National Family Farm Coalition
NETWORK: A National Catholic Social Justice Lobby
Public Citizen
Sierra Club
United Church of Christ Justice and Witness Ministries
Witness for Peace