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DeLauro, Miller Push for More Transparency, Congressional Consultation in Trade Negotiations

WASHINGTON, DC—Reps. Rosa DeLauro (D-CT) and George Miller (D-CA) led a group of more than 130 House members today urging United States Trade Representative Ambassador Ron Kirk to include stronger congressional consultations, and a more open and transparent process, as the United States negotiates the Trans-Pacific Partnership (TPP) Free Trade Agreement (FTA) with Australia, Brunei, Chile, Malaysia, New Zealand, Peru, Singapore, Vietnam, Canada and Mexico.

The representatives stressed the need for Congress to have input in the laws they are responsible for writing, saying in part “the negotiations USTR is pursuing will create binding policies on future Congresses in numerous areas” including “labor, patent and copyright, land use, food, agriculture and product standards, natural resources, the environment, professional licensing, state-owned enterprises and government procurement policies, as well as financial, healthcare, energy, telecommunications and other service sector regulations.” Independent polls have consistently shown the public supports *fair* trade deals, across all incomes, occupations and political affiliations.

The letter to Ambassador Kirk is as follows:

Dear Ambassador Kirk:

We write with regard to the ongoing negotiations over a potential Trans-Pacific Partnership (TPP) Free Trade Agreement (FTA), an agreement that continues to grow in scope. Specifically, we write to urge you and your staff to engage in broader and deeper consultations with members of the full range of committees of Congress whose jurisdiction touches on the wide-ranging issues involved, and to ensure there is ample opportunity for Congress to have input on critical policies that will have broad ramifications for years to come.

As the President noted in his remarks at the November Asia-Pacific Economic Cooperation (APEC) summit, those involved in the TPP FTA negotiations are seeking “a high-level trade agreement that could potentially be a model, not just for countries in the Pacific region, but for the world generally.” In doing so, this pact would establish rules that extend far beyond traditional trade matters to include “a whole range of new trade issues that are going to be coming up in the future - innovation, regulatory convergence, how we’re thinking about the Internet and intellectual property.”

The TPP FTA represents an opportunity to create a new, sustainable model that respects domestic policy choices and promotes economic development with shared prosperity. Unfortunately, reports indicate the agreement is likely to repeat, rather than improve upon, the existing trade template—including the weakening of Buy America provisions, providing extraordinary investor-state privileges, and restricting access to lifesaving medicines in developing nations, to name a few.

Since the United States will be obliged to bring existing and future U.S. policies into compliance with the norms established in the TPP FTA, the negotiations USTR is pursuing will create binding policies on future Congresses in numerous areas. These could include those related to labor, patent and copyright, land use, food, agriculture and product standards, natural resources, the environment, professional licensing, state-owned enterprises and government procurement policies, as well as financial, healthcare, energy, telecommunications and other service sector regulations.

As you know, past U.S. trade negotiations conducted under the now-expired Bipartisan Trade Promotion Authority Act of 2002 (P.L. 107-210), also known as “Fast Track,” required various stages of congressional consultations before and during negotiations as a condition of Congress’ delegation of its exclusive constitutional authority “to regulate commerce with foreign nations.” The Fast Track law also required the Administration to consult with “all committees of the House of Representatives and the Senate with jurisdiction over laws that would be affected by a trade agreement resulting from the negotiations” and mandated the creation of a Congressional Oversight Group of these committees with “access by members of the Congressional Oversight Group, and staff with proper security clearances, to pertinent documents relating to the negotiations, including classified materials.”

Such consultations are essential because the TPP FTA negotiations are of unprecedented scope due to the number of countries and issues involved. According to USTR statements, the TPP membership could ultimately include half of the nations of the world. Accordingly, the proposed TPP FTA necessitates extreme care at the front end, which includes input from Members of Congress serving on committees whose jurisdiction is directly implicated by the broad array of trade and non-trade policies being negotiated. We are troubled that important policy decisions are being made without full input from Congress.

Under the trade advisory system, representatives from over 600 business interests have such access to both USTR negotiators and the negotiating text. However, American small business, civil society, and other interests who have a direct and long-term interest in the outcome of these negotiations have little meaningful input. In the past, most important U.S. trade agreement texts have not been made available until after they were signed and changes were all but impossible. If Congress and the public are not informed of the exact terms of the agreement until the conclusion of the process, then any opportunity for meaningful input is lost.

Given the laudable priority given to improved government transparency since the first day of the Obama Administration, we are troubled that there may be needless secrecy and over-classification of documents associated with the release of drafts of the pact’s various chapters, or even providing a summary of each of the Administration’s policies that they have proposed to other countries. Press reports and a recent USTR letter indicate that the negotiating parties signed a confidentiality agreement in 2010 imposing heightened secrecy for the process. Accordingly, we ask that you provide us with a copy of the confidentiality agreement and an explanation as to what role USTR or other governments played in crafting it.

Fortunately, there is precedent for greater openness which could bring needed daylight to this process. For example,

- a full draft text of the Free Trade Area of the Americas (FTAA) was released in 2001 during negotiations on that 34-nation pact;
- the World Trade Organization now posts composite negotiating texts on its website, including various texts during the Doha round negotiations; and
- a draft text of the recently-completed Anti-Counterfeiting Trade Agreement (ACTA) was released.

We would urge you to adopt a similar approach in the context of TPP FTA talks, especially now that there are draft texts with bracketed provisions for most chapters of the prospective pact. To the extent that secrecy provisions in the confidentiality agreement preclude the unilateral release of negotiating text, then we would urge you to work with our TPP negotiating partners to obtain their consent to do so and inform us if there are countries that are unwilling to cooperate.

With regard to U.S. proposals, we request that you provide us and the public with summaries of the proposals offered by the U.S. government, so we have a clearer idea of what positions are being advanced on behalf of the U.S. citizenry. Full U.S. proposal texts should be made available not only to Members of Congress, but also to their staffs. To the extent that classification of documents is required, then we would urge you to make them available to all staff with appropriate security clearances.

We share your goal of making any TPP FTA a high-level agreement that serves as a model for the world. We believe reaching that standard requires transparency and sustained, ongoing consultations with the many impacted congressional committees and the public. We look forward to working with your administration to ensure we meet our shared goals.

Thank you for your consideration.

Sincerely,

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Henry A. Waxman

John Conyers, Jr.

Chaka Fattah

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