

LABOR DECLARATION ON THE NEGOTIATION OF THE TRANS-PACIFIC PARTNERSHIP TRADE AGREEMENT

March 15, 2010

On March 15, 2010, the governments of Australia, Brunei Darussalam, Chile, New Zealand, Peru, Singapore, the United States of America and Vietnam will commence negotiations for a proposed Trans-Pacific Partnership Trade Agreement (TPPTA). The undersigned unions are not opposed in principle to trade agreements. As always, however, the agreement will not have our support unless it is well balanced, foments the creation of good jobs, protects the rights and interests of working people, leads to long-term, balanced economic development and promotes a healthy environment. We set out below what that means in practice. Throughout the negotiations, we urge negotiators to adopt a jobs lens, which asks how decisions at the negotiating table contribute to a coordinated strategy for the promotion of high-quality jobs and sustainable economic development among TPPTA member countries. It is time for a new trade framework that will make a positive difference in the lives of working people. We cannot afford another trade agreement that privileges substantial new opportunities for investors over good jobs for workers. Further, to work well, trade agreements must also be fairly and consistently enforced.

This declaration outlines the substantive and procedural principles for the negotiations, which if respected, will result in an agreement that may benefit us all.

PROCESS

1. A Single, High-Standard, Fair Trade Agreement

For many, the TPPTA represents the second or third potential trade agreement with another party to the negotiations – all of which failed to meet our aspirations. We believe that the only way to truly bring trade policy into the 21st century is for the TPPTA to supersede the existing agreements to the maximum extent possible, bringing them up to the highest standards. Of course, we realize that individual countries, especially developing countries, may pose unique challenges that may call for some variation in the text from country to country. However, we believe the core principles should be common to all.

2. Transparency and Civil Society Participation:

In the past, civil society organizations have been excluded from any meaningful participation in trade agreement negotiations. This is unacceptable and must be remedied this time around. All the participating governments must conduct regular and meaningful consultations with their respective civil societies throughout the negotiations – both during and between negotiating rounds. Further, draft texts, proposals and requests should be made available for public review and comment. Without access to such information, informed participation in the negotiating process is impossible. Finally, the

respective legislatures must have an opportunity to conduct full and open hearings and to amend the agreement.

SUBSTANCE

1. Worker Rights

Labor rights are an essential component of trade. Workers who are able to exercise their fundamental labor rights are empowered to bargain collectively for better wages and working conditions, ensuring that the benefits of trade accrue not only to capital but also to labor. Unfortunately, most of the agreements among the proposed TPPTA parties contain either no labor provisions or very weak ones. The TPPTA must at a minimum require that each party adopt and maintain laws and regulations consistent with the International Labor Organization (ILO) core labor rights and effectively enforce those rights, as well as all domestic laws with regard to wages, hours of work and safety and health. Further, parties must commit not to derogate from these laws. A violation of these and other labor obligations should be subject to effective dispute resolution procedures with strong remedies up to and including trade sanctions should more cooperative efforts fail. The monitoring of these provisions should include workers' and employers' representatives, and the agencies responsible for enforcement must be adequately resourced.

Further, as labor laws of each of the potential TPPTA parties fall short, to varying degrees, of the core labor rights, we urge governments to initiate immediately a process, together with workers and employers representatives, to identify ways in which to bring labor laws into compliance with those international minimum standards. Those efforts should be concluded in tandem with completion of any TPPTA.

2. Investment

Most current trade agreements contain investment provisions that allow foreign investors to claim substantive and procedural rights above and beyond those that domestic investors enjoy. Further, flawed investor-to-state dispute resolution mechanisms contain none of the controls, such as an exhaustion of remedies requirement or a standing appellate mechanism that could limit abuse of this private right of action. Under certain existing investment chapters, investors have used the rules on expropriations and the minimum standard of treatment to challenge environmental laws and public health and safety protections, among others. Together, these and other investment provisions may provide foreign investors greater rights than the rights available to domestic investors in their own legal systems. The TPPTA should not include an investor-to-state dispute resolution mechanism, nor should the rules allow for challenges to legitimate public interest regulations. Foreign investors simply must not be given any greater rights than those enjoyed by domestic investors.

3. Services

Except for the very limited situation in which *no* private providers compete with a government provided service, any public service can be subject to the rules of a trade agreement. This allows parties to challenge domestic policies that protect governmental services if they believe these policies put private providers at a competitive disadvantage - even where government involvement is necessary to guarantee access to essential services in areas such as health care, education, and utilities. Services rules also penalize governments that reverse privatizations, even if such privatizations have lowered service quality or have led to less public accountability and access.

The TPPTA must include a broad, explicit carve-out for essential public services, including education, employment services, health care, post, sanitation, social services, transport and utilities. Public services should be excluded regardless of whether or not the public provider competes with private providers. In addition, governments must retain their ability to regulate foreign service providers in order to enact and enforce certification and licensing standards, consumer protections, and other public interest laws. We also urge that the negotiations proceed on a positive list approach.

Further, we are concerned that existing trade agreements contain ambiguous language that may constrain the ability of governments to adopt prudential financial regulations, including structural separation between commercial and proprietary trading banking institutions. We urge negotiators to make absolutely clear that efforts by a country to prudentially regulate its financial sector will not run afoul of financial services rules.

4. Environment

Protection of the environment is a critical trade policy objective. Trade rules should require full compliance with an agreed-upon set of multilateral environmental agreements, with effective sanctions for non-compliance. At the same time, the agreement must ensure that other rules, such as investment rules on expropriation, do not jeopardize efforts to enact and enforce environmental laws and regulations.

5. Procurement

Often, governments use procurement policy in furtherance of important public policy aims such as local economic development and job creation. Governments have also conditioned procurement to promote environmental and social goals. Governments should ensure that the procurement chapter does not constrain the ability of central, regional or local governments and authorities to carry out these objectives.

6. Intellectual Property and Health

Intellectual property rules and other provisions in trade agreements have been used to weaken the ability of governments to supply medicines to their citizens at an affordable

cost. We oppose any government efforts in the context of the TPPTA to negotiate language that would reduce access to affordable medicines.

7. Consumer Protection

Our domestic consumer safety and trade policies must be crafted to prevent tainted or defective products from reaching our shores and, subsequently, our shelves. Such goods present a serious threat to the general public. Thus, the agreement should include language that would further facilitate cross-border food and consumer and industrial product safety inspections by, for example, giving safety inspectors of a TPPTA member enhanced rights to inspect the facilities of another member. The TPPTA should also include language requiring country of origin labeling, which would clearly identify the origin of food and consumer goods, as well as labeling of GMO-containing goods.

8. Market Access

In many previous trade agreements, tariff reductions have not resulted in new access. We urge negotiators to pay particular attention, and give particular emphasis, to ensuring that any market access expected from the agreement is actually achieved. Effective market access depends on addressing both tariff and non-tariff measures, though we recognize that non-tariff measures to protect health, public safety and the environment serve an important purpose if fairly applied. Further, while taking into account the complexity of the global supply chain, the rules of origin should be negotiated such that the signatories are the primary beneficiaries of any new market access.

9. Trade Remedies

The TPPTA should not in any way weaken trade remedy and safeguard mechanisms.

10. Competition Policy

We are greatly concerned that the current competition chapter of the P-4 agreement could compromise the right of governments to provide services on a privileged or monopoly basis, and to support economic development. We oppose any move to make the P-4 language with regard to public services enforceable in the TPPTA and urge greater protection for public services and economic development.

11. Temporary Movement of People

We do not believe that a trade agreement is the proper instrument to make commitments on the temporary movement of people.

12. Beneficiaries

Negotiators should ensure that countries not party to the agreement cannot gain its benefits.

The unions that are signatory to this Labor Declaration have a broad range of interests not limited to those mentioned above. We reserve the right to raise other issues jointly or individually, and expect to be consulted on developments in the negotiations as they arise.

Signed,

Sharan Burrow, President
Australian Council of Trade Unions (ACTU)

Helen Kelly, President
New Zealand Council of Trade Unions (NZCTU)

John De Payva, President
National Trade Union Congress (NTUC)-Singapore

Richard L. Trumka, President
American Federation of Labor &
Congress of Industrial Organizations (AFL-CIO)