

December 3, 2015

The Honorable Barack Obama
President of the United States
1600 Pennsylvania Avenue, NW
Washington, D.C. 20500

Dear Mr. President:

Pursuant to Section 135(b) of the Trade Priorities and Accountability Act of 2015, I am pleased to transmit the report reflecting the opinions of the Advisory Committee for Trade Policy and Negotiations (ACTPN) on the Trans-Pacific Partnership (TPP).

A majority of ACTPN endorses the TPP agreement, negotiated between the United States (U.S.), Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam. These 12 countries represent about 800 million customers and GDP of \$28.1 trillion. The supporting ACTPN members believe this 21st century high-standards agreement meets the negotiating objectives set forth in the Trade Priorities and Accountability Act of 2015, and believe it to be strongly in the best economic interest of the United States. We also believe the TPP will boost U.S. economic growth, support American jobs, and increase Made-in-America exports to some of the most dynamic and fastest growing countries in the world. TPP is a comprehensive state-of-the-art agreement that also will provide a strong base on which to construct additional bilateral or regional agreements in the Asia-Pacific region.

This is a significant and game-changing plurilateral agreement. Each country has committed to high-standards in areas such as labor and environment and it is important that the current TPP partner countries work to ensure progress in achieving these standards. As a living trade and investment compact, it contains provisions triggering reviews and updates that will continue to enhance the benefits to the U.S. and the other signatories over time. Therefore, capacity building and enforcement must be priorities going forward.

It is clear that all signatories had to accept compromises across a number of areas in order to reach final agreement. A majority of ACTPN believes, on balance, the TPP is a strong agreement that conforms to U.S. priorities to liberalize trade and investment rules to open new markets, and we commend U.S. Trade Representative Mike Froman for his leadership. The supporting ACTPN members are confident that it will have a greater impact than other U.S. trade agreements on U.S. exports and the U.S. economy, even with the concessions. The views of dissenting members are appended to the majority's report.

The majority believes the agreement should be enacted into law as soon as possible, so American farmers and ranchers, manufacturers, businesses, workers and consumers can begin to receive the benefits of this agreement.

Sincerely,



Harold ("Terry") McGraw III
Chairman, Advisory Committee for Trade Policy and Negotiations

The Trans-Pacific Partnership Agreement (TPP)

The Report of the Advisory Committee For Trade Policy and Negotiations (ACTPN)

December 3, 2015

**The Advisory Committee
for Trade Policy and Negotiations (ACTPN)
Report to the President, the Congress,
and the United States Trade Representative on the
TRANS-PACIFIC PARTNERSHIP (TPP)**

I. Preface

Section 135 (b) of the Trade Priorities and Accountability Act of 2015 (“TPA”) requires that advisory committees provide the President, the U.S. Trade Representative, and Congress with reports required under Section 135 (e)(I) of the Trade Act of 1974, as amended, not later than 30 days after the President notifies Congress of his intent to enter into an agreement. Under Section 135 (e) of the Bipartisan Trade Promotion Authority Act of 2002, as amended, the report of the Advisory Committee for Trade Policy and Negotiations (“ACTPN” or “the Committee”) must include an advisory opinion as to whether, and to what extent, the agreement promotes the economic interests of the United States and achieves the overall and principal negotiating objectives set forth in the Bipartisan TPA of 2015.

Pursuant to these requirements, ACTPN hereby submits its report.

II. Description of the Committee

The Advisory Committee for Trade Policy and Negotiations (ACTPN) is the U.S. government’s senior trade advisory panel. It was established to provide the U.S. Trade Representative with policy advice on: (1) matters concerning objectives and bargaining positions for proposed trade agreements; (2) the implementation of trade agreements once they are in force; and (3) other matters arising in connection with the trade policy of the United States. Advice on matters affecting individual sectors or policy areas is expected to be provided by several Policy Advisory Committees in the areas of agriculture, non-Federal governments, labor, environment, the Agriculture Technical Advisory Committee and the Industry Technical Advisory Committees (ITACs).

In keeping with its broad charter, the membership of ACTPN is representative of key economic sectors affected by trade. Members are drawn from manufacturing and service industries including small business and retailers, labor, think tanks, agriculture and consumer interests. The ACTPN membership list is appended to this report.

III. Majority Advisory Committee Opinion on Agreement

A majority of ACTPN endorses the Trans-Pacific Partnership agreement (“TPP” or “the agreement”) as negotiated by the President’s U.S. Trade Representative. We believe the agreement promotes the economic interests of the United States (“U.S.”)

and achieves the overall and principal negotiating objectives set forth in the Trade Priorities and Accountability Act (“TPA”) of 2015. The views of dissenting members are appended to this report.

The TPP will substantially enhance U.S. commercial and strategic interests in the Asia-Pacific region. The TPP was negotiated between the U.S., Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam – creating an economic trading zone representing about 800 million customers and GDP of \$28.1 trillion. ACTPN commends the efforts of US negotiators in achieving a comprehensive and high-standard accord among a diverse group of countries that together represent almost 40 percent of global output.

The Committee believes the TPP will expand trade and economic relations between the Trans-Pacific region and the United States by leveling the playing field in these countries for America’s farmers and ranchers, manufacturers, and service businesses – large and small. As required by the TPA of 2015, incorporated into the body of the agreement are provisions reflecting American values, including commitments to improve labor and environmental standards in TPP partner countries. The compact builds off the rule of law and contains provisions that will substantially enhance transparency, good governance and go a long way to eliminate corruption within the trading bloc.

We recognize that, in a complex negotiation like the 30-chapter TPP, involving eleven other countries, no one country can achieve all its goals fully. Overall, however, the TPP meets the criteria established by Congress in the recently enacted TPA and merits Congressional approval. It no doubt will expand trade for the U.S. with one of the world’s fastest growing regions by opening markets and in most cases eliminating tariffs for American goods.

There is particular value in both TPP trade-liberalization provisions and TPP disciplines that substantially upgrade obligations, in some cases beyond requirements for members of the World Trade Organization (“WTO”) by:

- **Eliminating or lowering tariffs that have constrained and sometimes blocked access by U.S. firms to foreign markets;**
- **Achieving substantial new export opportunities for U.S. farm exports, especially pork, beef, grains products;**
- **Developing innovative new disciplines on state-owned enterprises (SOEs), digital trade and e-commerce, performance requirements on investments, and trade-related environmental and labor practices;**
- **Providing balanced intellectual property protections, improving business facilitation requirements, and market access for service providers;**

- **Uniquely containing new provisions to support the growth of small and medium-sized enterprises (SMEs); and**
- **Expanding investment provisions, largely comparable to those set out in the U.S. Model Bilateral Investment Treaty, that provide important rights for U.S. investors in foreign markets and updated investor protections that incorporate lessons learned from the experience with prior U.S. trade pacts.**

Appropriate transition and adjustment times have been built into this living agreement. More than ten cooperating committees are established to keep the agreement up-to-date with capabilities and new challenges that arise going forward. Importantly, ACTPN notes that the TPP establishes trade rules with countries with which the U.S. has no current agreement. For example, it substantially opens the Japanese market to U.S. goods, services and investment. In so doing, Japan has agreed to remove important and longstanding nontariff barriers that have impeded the ability of U.S. firms, including in the auto sector, to compete fairly in the Japanese market.

In addition, the TPP upgrades and augments the North American Free Trade Agreement (NAFTA). Of particular note, it fully integrates NAFTA side agreements on labor and the environment into the core text of the accord and requires that their commitments be subject to the TPP's binding dispute settlement procedures. It incorporates new provisions on energy that were excluded from the pact when Mexico signed NAFTA more than two decades ago. The agreement also adds provisions on dairy market access for Canada that were not incorporated in NAFTA.

Overall, the Committee considers the TPP as "state of the art" for international trade agreements -- not perfect, but the best platform for building and deepening U.S. trade relations with TPP countries and establishing standards for further agreements. To that end, it contains clear rules and procedures for expanding participation to other countries that are able to fully implement and enforce the full range of TPP obligations. It also creates useful precedents for both broader Asia-Pacific economic integration and new initiatives that could revitalize plurilateral and multilateral trade talks in the WTO.

The TPP will also make a critical contribution to U.S. foreign policy and national security. For the first time, it will provide a binding institutional relationship between the U.S. and a number of key countries in the Asia-Pacific region. U.S. participation in the TPP will reassure the region of an ongoing U.S. presence and, indeed, that the region remains a priority for U.S. foreign policy. The TPP will thus provide strong support for maintaining the U.S. security partnerships in the Asia-Pacific and make a major contribution to global stability.

In particular, the TPP will reinforce U.S. relations with four of its closest allies in the region: Australia, Japan, New Zealand and Singapore. It will update and strengthen the NAFTA with our neighbors, Canada and Mexico. It will forge new links with key ASEAN members Brunei and Malaysia. It will develop new ties with Vietnam. It will encourage the further evolution of free markets in Latin America through the inclusion of Chile and Peru and possibly others going forward.

The Committee welcomes the open accession clause in the TPP and recommends that it be used to broaden the agreement to include all economies in the region, subject to the specific statutory consultation with and approval of Congress, as soon as those countries are willing and able to implement and enforce TPP's comprehensive rules and trade reforms. Additionally, ACTPN expects to be involved in the consultation and to provide its views on each additional signatory.

Below are our specific views on key sections of the TPP.

Trade in Goods – The TPP will facilitate and increase the export of U.S. industrial and manufactured goods. Approximately 44 percent of U.S. goods exports currently go to TPP countries. TPP will eliminate or reduce remaining tariff and non-tariff barriers on industrial goods and provide preferential access for trade among the TPP countries. Most tariff elimination in industrial goods will be implemented upon entry into force of the agreement – an expected 86 percent duty-free treatment across all tariff lines – although the tariff elimination for some products will be phased in over a longer period of time. These provisions are a key accomplishment of TPP – building on the market-access standards for exported goods established in existing U.S. trade agreements with six TPP countries (Australia, Canada, Chile, Mexico, Peru and Singapore.) For example, in 2014, the U.S. exported \$56 billion in machinery products to those TPP countries. The elimination of taxes and customs duties on originating goods of U.S. manufacturers will provide substantial benefits for U.S. exporters and accomplish the stated objective of setting a high-global standard for eliminating tariffs on industrial and manufactured goods.

Trade in Services – The Committee supports the Cross Border Trade in Services provisions which will expand competitive opportunities for American service providers in TPP countries by opening markets and eliminating or reducing non-tariff barriers. Services account for about one-third of U.S. exports in 2014, with a US global surplus of more than \$230 billion. ACTPN believes the agreement will substantially increase U.S. exports to TPP countries for services like software, R&D, cloud-based computing, engineering and architecture, logistics and delivery. The financial services chapter of the TPP includes the same type and scope of market access and national treatment protections that appear in existing high-standard U.S. trade agreements. The TPP should therefore preserve significant commercial opportunities for U.S. financial service suppliers. We would hope that the TPP could provide a foundation for expanded liberalization in the future, which would require that certain country-specific exceptions in the Agreement are narrowed or eliminated over time. In addition, the financial services chapter

provides important protections that were not included in previous agreements, including, for example, the commitments on cross-border supply of electronic payment services.

We regret, however, it does not prohibit local server requirements for financial service providers; includes certain country-specific commitments that are not as robust as we would have preferred; and withholds the full scope of the protections in the investment chapter from financial service suppliers. We hope that these issues may be addressed going forward.

Trade in Agriculture – ACTPN finds the U.S. agricultural sector to be among the biggest beneficiaries of expanded market-access opportunities resulting from the TPP. The benefits principally will be in the countries with which the U.S. does not already have trade agreements (mainly Japan, Malaysia, and Vietnam) and where high tariffs and other import restrictions in the sector are widespread. Under the TPP, 70 percent of agricultural tariff lines in these countries will go to zero immediately upon implementation, representing 83 percent of U.S. food and farm exports. Examples of commodities that will gain significantly from the agreement include beef, pork, horticultural products and processed foods.

These benefits will only accrue to U.S. producers and exporters, however, if the concessions agreed upon are not nullified by the introduction of domestic policies that offset the intended market effects of the agreement. Subsequent to the conclusion of the agreement, the U.S. pork industry has learned that this may be the case in Japan with respect to pork and it may also extend to other agricultural products.

Overall, expanded trade in the sector will be largely one-way in favor of U.S. exports, due to the fact that the U.S. is a highly competitive net exporter and, with much lower average tariffs, our market is already largely open to imports of agricultural products.

ACTPN commends U.S. negotiators for ensuring all agricultural products, including the most sensitive products, will be covered under the agreement. This as an important achievement and one which should form the basis for future agreements, as additional countries join the TPP. Still, the Committee must note its disappointment that market-access gains for sensitive products in Japan (rice and dairy, in particular) and Canada (for dairy and poultry products) fall short of U.S. expectations for those sectors.

Sanitary and Phytosanitary (SPS) – ACTPN notes that, for the first time in any trade agreement, the TPP Sanitary and Phytosanitary (SPS) chapter includes enforceable obligations that go beyond the WTO SPS Agreement on matters such as risk assessment and management, transparency, border checks and laboratory testing. The Committee endorses this achievement, as well as the inclusion of a rapid-response tool, which will help to resolve shipment-specific issues.

Also included are: rules governing the adoption and use of geographical indicators (GIs) to help avoid their application to generic names, which would undermine the free flow of trade in many U.S. products; provisions on agricultural biotechnology that will provide for greater transparency in TPP countries' decision-making processes and timely authorizations as well as improved coordination when a low-level presence of genetically modified organism is detected; commitments on export subsidies and export restrictions; and, for the first time in a U.S. trade agreement, cooperation in recognizing equivalency of organic standards.

Small and Medium-Sized Enterprises (SMEs) Benefits – ACTPN wishes to highlight that the TPP is the first trade agreement that contains a dedicated chapter on small and medium-sized enterprises (SMEs). This chapter requires all TPP countries to maintain a publicly accessible website that contains information about the agreement and the benefits available under it. The website must include specific information for SMEs regarding the provisions of the agreement that are relevant to SMEs, as well as the regulations applicable to imported goods. These provisions will create transparent and predictable customs processes for U.S. products and streamline the barriers to trade created by complex standards and technical regulations. The SME chapter also establishes an SME committee which will seek to expand opportunities for small and medium-sized businesses and help ensure the elimination of trade barriers.

Beyond the SME chapter, the TPP also lowers the costs of exporting to TPP countries by eliminating tariffs on more than 18,000 products. It strengthens the protection of intellectual property rights and reduces the vulnerability of small businesses to intellectual property infringement and theft, while also establishing reasonable exceptions and limitations to such protections. The agreement further benefits small-business service suppliers, such as architects, engineers and web designers, by providing market access and greater legal certainty. Many U.S. small businesses are active in digital products and e-commerce trade. The TPP promotes trade in these products by prohibiting rules that force businesses to locate infrastructure in the markets in which they seek to operate.

The Customs Administration and Trade Facilitation chapter also includes many provisions that will help SMEs and micro-businesses access the global market. In particular, mandates that countries publish customs, duties and tax information, preferably online, will aid time-strapped SMEs in navigating complicated requirements. Provisions requiring countries to expedite release of goods within 48 hours and requirements to facilitate express shipments, including the establishment of de minimis customs exemptions for such shipments, will also help many SMEs expand into new markets.

We regret, however, that the agreement does not include harmonized and increased de minimis customs and duties exemptions for all physical goods. ACTPN recommends the Administration seek to include de minimis exemptions in future

trade agreements, as they have enormous potential to reduce the export barriers SMEs and micro-businesses face.

Foreign Investment – ACTPN supports strong and non-discriminatory investment-protection provisions in any trade agreement in order to safeguard the interests of American businesses and workers. The TPP sets forth rules requiring non-discriminatory investment policies and protections based on the rule of law and allowing for TPP governments to achieve legitimate policy objectives and regulate in the public interest. While this section of the agreement was very difficult to negotiate, it still provides numerous high-standard protections and new due process and transparency provisions. Some members of the Committee, however, are concerned about the precedent of denying companies access to investor-state dispute settlement for disputes that arise over tobacco products given that they are legally traded products, and with regards to financial services.

Intellectual Property Rights (IPR) – The TPP contains strong and balanced intellectual property rights (IPR) standards covering key aspects of patents, trademarks, copyrights, industrial designs, geographical indicators, trade secrets and other forms of intellectual property (IP), which are critical for fostering innovation and creativity, as well as generating economic growth and supporting American jobs.

The IP chapter includes strong IPR enforcement mechanisms and penalty provisions, particularly requiring that TPP countries include effective criminal penalties for piracy and counterfeiting. The IP chapter also will make it easier to search, register and protect IP rights in new markets, very important gains that will especially benefit small and micro-businesses. The cooperative activities outlined in the agreement also will help SMEs overcome the IP challenges they have.

The agreement takes a balanced approach to copyright protection. The IP chapter provides for extended terms of protection for copyrighted works and establishes anti-circumvention provisions to prohibit removing codes or other devices designed to prevent piracy. Government agencies are required to use only legal computer software, setting a positive example for private users. At the same time, the agreement requires countries to establish reasonable exceptions and limitations to copyright for legitimate purposes, such as criticism, comment, news reporting, teaching, scholarship and research. The IP chapter also establishes important requirements that countries provide copyright safe harbors for Internet Service Providers (ISPs), providing a tried and true means to protect IPR while enabling digital platforms to grow and thrive.

The agreement is also notable for its IP provisions that will facilitate high-quality health care, including through continued access to innovative products by ensuring fair, transparent, and non-discriminatory treatment for U.S. pharmaceutical products and medical devices. Several members of the Committee are troubled, however, that the level of protection for biologic drugs is considerably less than is provided under U.S. law.

Digital Trade in Goods and Services and Cross-Border Data Flows – The TPP is the first trade agreement to incorporate important provisions to assure the uninhibited flow of digital trade and Internet-based commerce. ACTPN supports the strong provisions that will protect a key area of commerce in which America plays a leadership role already, as well as protecting a free and open Internet for consumers and businesses.

The agreement includes strong commitments ensuring that data may move freely across borders with appropriate safeguards for privacy, cybersecurity and intellectual property protections. It calls for dropping barriers to e-commerce such as “data protectionism,” the practice of forcing businesses to keep data onshore or requiring business to hand over source code as a condition of market access. Data protectionist measures raise the costs for all business, but particularly hurt small businesses and digital commerce. The TPP also reduces customs duties on the flow of music, video, software and games with our TPP partner countries. It would have been preferable to include financial service suppliers in the e-commerce chapter and ACTPN recommends that the Administration seek to include such protections for financial services providers in future trade agreements.

Importantly, TPP streamlines trade by encouraging the use of electronic customs forms, electronic signature and authentication; and by ensuring secure on-line payment.

State-Owned and State-Controlled Enterprises – The TPP is the first trade agreement negotiated by the U.S. to include a chapter seeking to address state-owned enterprises (SOEs), as well as entities that have significant state-controlled activities. ACTPN applauds the negotiators for progress toward enforceable rules applying to SOEs to make them compete on quality and price and not protected by discriminatory regulation, subsidies or favoritism. For the first time, in most cases, SOEs will be subject to courts with jurisdictions and not be able to claim sovereign immunity. ACTPN acknowledges that the new elements build on and go beyond WTO principles and previous U.S. trade agreements.

It is important that the TPP approaches the issue by specifying that the activities of SOEs should be based on commercial considerations. The Committee is concerned that the text provides limited guidance as to what a “commercial” activity is and, that more needs to be done to address the existing and rising challenge of SOEs to U.S. businesses and their workers. In addition, the “adverse consequences” test will, in most cases, require that injury or threat of injury occur for a period of a year or more. This test fails to recognize market realities where many commercial transactions are based on spot market or bid transactions. ACTPN notes the list of excluded SOEs and related activities in several of the partner countries could negatively affect U.S. interests, particularly as other countries become signatories to the TPP.

We urge the U.S. government to build upon these provisions and continue to raise the bar for SOEs in future trade agreements to level the playing field for U.S. businesses and workers.

Labor – ACTPN recognizes the significant achievement in gaining important protections for labor. Labor rights help ensure that workers are able to equitably share in the fruits of their labor and help ensure access to, and the growth of, the middle class. In the TPP, parties agree to adopt and maintain in their laws and practices the fundamental labor rights as recognized in the International Labor Organization (ILO) 1998 Declaration, namely freedom of association and the right to collective bargaining; elimination of forced labor; abolition of child labor; and elimination of discrimination in employment. The TPP parties also agreed to enact laws governing minimum wages, hours of work, and occupational safety and health. ACTPN supports applying the labor-rights commitments in the TPP agreement to export-processing zones. The commitments in the chapter are subject to the dispute-settlement procedures laid out in the Dispute Settlement chapter. ACTPN expects the U.S. government to be vigilant in enforcing these provisions.

Environment – The TPP contains the most comprehensive and innovative provisions covering trade-related environmental issues of any international trade accord. The new obligations are subject to the same binding dispute-settlement procedures that apply to the other TPP chapters. This result is notable, given the initial reluctance of all other TPP countries to accept such strong enforcement rules in this area.

A majority of ACTPN believes the TPP substantially addresses the concerns about investor-state litigation being used to roll back or constrain new environmental regulation. New language clarifies that regulations designed to protect legitimate public welfare objectives will not be considered to cause indirect expropriation. Particularly notable are: provisions regarding sustainable fisheries management and new disciplines on specific fish subsidies; obligations regarding the taking and trade in illegal wildlife, fishing, and logging; and commitments to conservation programs for specific marine species and forest management. The TPP also reconfirms and reinforces, and in some cases, go beyond commitments to implement and enforce the multilateral environmental agreements in which each country participates.

ACTPN wishes to highlight that the TPP contains provisions related to the development of renewable energy and cooperative trade and investment policies to transition to a low emissions economy; however, not all of the obligations are as far reaching as some would have preferred. These are important areas for the TPP partners to be focusing on because of the benefits for both businesses and the environment through investment in R&D and the deployment of innovative technologies, both sectors in which the U.S. is most competitive.

Overall, however, the TPP achieves a balance between the scope of the obligations and the acceptance of binding dispute settlement strongly serves the environmental

objectives put forward in the TPA. The TPP environment chapter is also valuable because it establishes important precedents that can be applied both to ongoing and prospective trade initiatives.

Currency – A majority of the Committee believes that procedures to pursue TPA negotiating objectives regarding exchange rates are being put in place with the announcement by Treasury of the Joint Declaration of the Macroeconomic Policy Authorities of Trans-Pacific Partnership Countries. The new Declaration in fact incorporates much of the language of the negotiating objective in committing all TPP member countries “to avoid manipulating exchange rates or the international monetary system in order to prevent effective balance of payments adjustment or to gain an unfair competitive advantage.” The countries also agree to “avoid persistent exchange rate misalignments” and to “refrain from competitive devaluation.” In addition, they pledge to publicly disclose a wide range of their economic data, including on foreign exchange reserves and intervention in the currency markets, which will strengthen our ability to make sure that they fully implement their commitments. The new consultative mechanism created among members will provide, for the first time, an ongoing forum to monitor and assess the exchange-rate policies of partner countries in a free trade agreement. This new set of measures should ensure TPP members will avoid manipulating their exchange rates as called for by the Congress.

Currency provisions (the “Bennet-Hatch-Carper amendment”) included in the Senate-passed Trade Facilitation and Trade Enforcement Act of 2015 (H.R. 644) are currently being debated in Congress. The Bennet-Hatch-Carper amendment, if enacted into law, will require the Secretary of the Treasury to provide an “enhanced analysis” of any major trading partner of the United States that runs a significant bilateral surplus with the U.S. and a material global current account surplus, and that engages in persistent one-sided intervention in the foreign exchange market. The Secretary is then required to commence “enhanced bilateral engagement” with any such country to remedy the situation and is provided with additional policy tools to do so, including “taking into account” any such country’s currency policy in determining whether to pursue a bilateral or regional trade agreement with it.

Negotiators indicated that the inclusion of enforceable currency disciplines in the TPP was not possible, but a majority of ACTPN believes that the new policies can be effective in achieving the negotiating objectives set out in the TPA. The Committee urges the earliest possible adoption of those policies and vigorous implementation by the Administration.

Dispute Settlement – A majority of ACTPN supports the Investor-State Dispute-Settlement mechanism reforms that provide increased transparency, clear rules and efficient timelines. TPP provides tools to dismiss frivolous claims and other safeguards, effective remedies in the event of breaches and allows for access to neutral, transparent international arbitration for disputes. Importantly, if a TPP government expropriates an investment, it must do so for a public purpose, must

apply due process of law and provide prompt, adequate and transferable compensation. The agreement with few exceptions bars local content requirements, export requirements, technology transfer or technology localization.

Enforcement – ACTPN has been and is a strong advocate and supporter of many of the Obama Administration’s enforcement efforts targeted at ensuring that U.S. laws against unfair trade are aggressively enforced. Ensuring that our trading partners fulfill their commitments results in increased exports, market access and job opportunities for U.S. businesses and their workers. The broad enforcement agenda, including the creation of the Interagency Trade Enforcement Center (ITEC), has helped advance U.S. economic interests.

The TPP represents the largest trade agreement entered into by the U.S., and it is vital that a comprehensive implementation, monitoring and enforcement agenda be an integral component of the Administration’s action plan. Additional resources may be required to ensure that all the expected benefits of the TPP actually materialize. A true, 21st Century trade approach requires that Americans have confidence that the commitments made by our trading partners are actually implemented.

Textile and Apparel – ACTPN supports the TPP’s textile and apparel provisions and believes the agreement will lead to increased exports for U.S. textiles. The TPP will also create an integrated supply chain within the TPP countries. The agreement reduces all tariffs on the first day of implementation and, for those that are not eliminated upon entry into force, the TPP provides for the remaining tariffs to be completely phased out over 10 or 12 years. Thus, the TPP will create opportunities for significant cost savings, which will support U.S. retail jobs and benefit U.S. consumers through lower prices or greater choices. It applies a “yarn forward” rule of origin that provides that, with some noted exceptions, textiles and apparel must be made with TPP originating products within the TPP countries in order to qualify for the preferential tariff treatment. Some benefits to this sector, however, may be delayed given the limited flexibilities and backloaded tariff phase outs on apparel.

The TPP calls for close custom cooperation among TPP parties to facilitate enforcement and to be sure U.S. companies have access to temporary relief if an import surge causes or threatens to cause damage to their business. Importantly, the agreement includes provisions that will help reduce duty fraud and evasion, and smuggling through customs coordination. U.S. textile and apparel manufacturers sold nearly \$11 billion to TPP countries in 2014 and stand to also win under this agreement.

Rules of Origin – ACTPN expects the TPP will provide an incentive to create an integrated production and supply chain within the TPP countries. The agreement has clear requirements and definitions to allow only originating goods that are produced in TPP countries to receive the TPP tariff benefits. It sets forth rules on “Cumulation” to allow TPP countries to promote the use of materials from other TPP countries when these materials are used to make a TPP good, reducing the

incentive for firms to shift production outside their country. While the sourcing strategies of some auto producers differ, some members of the ACTPN are concerned with the TPP rule of origin requirements for autos and auto parts that may impact domestic production and employment in the U.S.

Government Procurement – The TPP contains important core commitments that will level the playing field for U.S. suppliers to compete with domestic suppliers on covered government contracts based on quality and price. The agreement provides for the same treatment for foreign bidders as their national bidders and on a most favored nation basis. The increased transparency and fairness around government procurements in TPP countries regarding bid requirements, procedures, and the opportunity to appeal are worthwhile provisions. The agreement provides provisions barring the use of technical standards as discriminatory barriers. As in the U.S., there are exceptions for Buy America-like provisions for certain sensitive procurements in TPP countries, but progress is made with this agreement. Government contracting is a key export opportunity, including for U.S. businesses, particularly SMEs.

Advisory Committee for Trade Policy and Negotiations (ACTPN) Membership

Ms. Jill Appell, Co-owner, Appell's Pork Farms
Mr. Ajay Banga, Chief Executive Officer, MasterCard
Dr. C. Fred Bergsten, Senior Fellow and Director Emeritus, Peterson Institute for International Economics
Mr. Chad Dickerson, Chief Executive Officer, ETSY
Ms. Victoria Espinel, President, BSA: The Software Alliance
Mr. Leo Gerard, International President, United Steelworkers
Mr. Gary Hirshberg, Chairman of the Board, Stonyfield Farms
Mr. James Hoffa, President, International Brotherhood of Teamsters
Ms. Sandra Kennedy, President, Retail Industry Leaders Association
Mr. Todd McCracken, President, National Small Business Association
Mr. Harold McGraw, III, Chairman Emeritus, McGraw Hill Financial
Mr. Wade Randlett, Founder, Randlett Renewables
Mr. Matthew Rubel, Senior Advisor, Roark Capital
Mr. David Segura, Chief Executive Officer, VisionIT
Mr. Robert Stallman, President, American Farm Bureau Federation
Mr. Robert Stevens, Retired Chairman, President and Chief Executive Officer, Lockheed Martin
Mr. Dennis Williams, President, United Auto Workers

Dissenting Views
Of
Leo W. Gerard, James P. Hoffa and Dennis D. Williams
On the Trans Pacific Partnership
Prepared for the
Advisory Committee on Trade Policy & Negotiations

It is with deep regret that we are filing these comments to voice our strong opposition to the Trans Pacific Partnership and dissent with the views of the majority. Our unions have worked diligently to pursue the goal of reaching a TPP that would improve production and employment in the U.S., advance workers' rights, environmental protection and sustainability here and around the globe and create a new framework for trade policy that would ensure broadly shared prosperity among all the citizens of the participating countries. Unfortunately, the final TPP falls far short of achieving those goals and Congress should, therefore, reject the agreement.

We are losing production and jobs today due to many factors which are exacerbated by our nation's flawed trade policies and inadequate enforcement infrastructure and commitment to adequately maintain and strengthen it. Thus, a trade agreement, done right, could have helped promote our economic interests. It cannot stand in isolation but instead must be coupled with progress on many of the policies so necessary to advance our economic interests; from budget and tax policies to education, to manufacturing policy, training and labor market policies to infrastructure and research and development investments. Action on those issues has not occurred. Trade policy, however, is the link to the world economy and in an increasingly interconnected world, determines whether or not our citizens win or lose. It is vital to the survival of the American standard of living that we get it right. Rising trade deficits, increasing unfair trade, expanding state-led capitalism all contribute to lower growth, stagnating wages, and rising income inequality. Our trade policies have made significant contributions to all of these trends and the TPP will only worsen them.

As the representatives of millions of working Americans, our duty is not to simply fuel policies that advance corporate profits no matter where they may be obtained or whether they are gained by pitting country-against-country and worker-against-worker in the pursuit of profit maximization. Unlike most other stakeholders, our primary goal is to create good jobs in the United States, not to boost profits for shareholders.

Throughout the TPP negotiations, organized labor has engaged with our negotiators to try to improve the U.S. negotiating posture with concrete, substantive and detailed proposals. In the past, the labor movement has supported a number of trade initiatives designed to promote more open trade. In 1994, the AFL-CIO endorsed a fast track trade negotiating authority approach that would have provided the president with the desired authority while ensuring that the authority would be based on the actual pursuit of Congressionally-defined negotiating objectives. That approach, along with common-sense, broadly-shared opportunity-creating objectives, was rejected as part of the recent grant of fast track. Many in organized labor have supported initiatives ranging from the US-Jordan Free Trade Agreement to

extensions of the Generalized System of Preferences, the passage and reauthorization of the African Growth and Opportunity Act, extensions of the Export-Import Bank and other policies. We reject the notion that there is no agreement that we could endorse or that we are against fair trade.

The final TPP, however, fails to advance the interests of domestic producers and their employees. That, in essence, is what the American middle class is most concerned with in terms of whether the TPP meets the statutory test that it “promotes the economic interests of the United States”. It is the fundamental question this Committee was asked to evaluate.

U.S. trade law provides for a broad array of advisory committees that will also comment on the TPP. The Labor Advisory Committee is tasked with evaluating an Agreement’s impact on the interests of working people. Our comments here are not meant to replicate that report, which will delve much more deeply into many of these issues. This statement disagrees with the majority’s opinion and we will only highlight topics that had the most significant bearing on our decision to dissent.

The TPP fails to promote the economic interests of the United States in a number of fundamental ways:

1. The TPP fails to sufficiently advance labor rights and offers only false promises of progress.

The key to expanding trade, growing the middle class and increasing opportunity of citizens in all countries is to ensure that they may share in the fruits of their labor. Unfortunately, existing trade policies have done little to advance workers’ rights in participating countries. Experience with existing rules under the so-called May 10 framework, which has provided the foundation for the Labor Chapter provisions in free trade agreements for eight years, has done little to promote workers’ rights. Without expanded rights and assured and timely enforcement, there is little hope for progress in this critical area. The TPP provisions limit the ability to ensure that International Labor Organization (ILO) standards, as defined in the Conventions, will be the basis for workers’ rights in the TPP countries. In addition, the text of the TPP limits the reliance on the jurisprudential standards and precedents set forth by the ILO. The TPP relies on terms without definitions. For example, while countries are required to adopt and maintain laws to provide for a minimum wage, that wage could be set at 1¢ per hour without running afoul of their TPP commitments. Similarly, hours of work could be set at 24 hours a day and still be compliant with the TPP Labor Chapter. The provisions identified by proponents of the TPP as being “May 10th Plus” are largely without meaning.

In multiple instances, the Chapter on workers’ rights includes terminology such as “may”, “endeavor” and “as appropriate.” The impact of those terms, combined with the wholly discretionary nature of the enforcement provisions is clear: countries will have to do little, if anything, to comply with the commitments of this Chapter. The only workers’ rights cases that have been pursued have been because of petitions filed by AFL-CIO. Nearly eight years after the petition on Guatemala was filed, workers are still awaiting final action. Similarly, the case involving Honduras has yet to move beyond informal discussions after more than three and a half years. Even the very best labor provisions -- absent in the TPP -- if not enforced, will yield no benefits.

The TPP does contain consistency plans for Vietnam, Malaysia and Brunei. We are concerned about the actual operation of these side agreements and whether they will, in fact, yield

benefits. As well, the fact that the agreement's benefits can be enjoyed without full compliance with the agreed-upon terms provides little incentive for the countries to abide by the promises they have made. In the case of Vietnam, for example, certain commitments do not have to be met for five years or more while the benefit of tariff cuts will be showered upon their producers immediately. Per the consistency plan, if a case were to be brought for non-compliance and won, the only sanction in that area would be to delay further tariff cuts. For the vast majority of tariff lines, the benefits would already have been received in full, so the deterrent effect is likely to be minimal.

Mexico, however, must be singled out for its refusal not only to agree to a consistency plan within the context of the TPP, but its ongoing refusal to even comply with its NAFTA commitments. The impact of Mexico's failure to adequately provide workers' rights has an even more direct and immediate impact on workers in the United States. Since the passage of NAFTA, low wages and inadequate workers' rights (combined with extraordinary investor protections) in Mexico have resulted in billions of dollars of investment by U.S. companies in Mexican operations to serve the U.S. market. Many of these investments – and the jobs they produce – would have been made in the U.S. had it not been for the labor conditions in Mexico, which drive wages down. This has a clear, direct and continuing negative impact on U.S. wages and employment, which the TPP is likely to exacerbate rather than remedy given the U.S.'s failure to insist that Mexico fully comply—in law and in practice—with internationally recognized labor rights before the TPP heads to Congress for a vote.

- 2. The TPP will have a serious adverse impact on domestic manufacturing.** While the economy has rebounded from the impact from the financial crisis, manufacturing growth and employment are lagging. The success of the manufacturing sector is crucial for the long-term prosperity of our country and its workers and is critical to our national security.

There are several reasons that manufacturing will be negatively affected by the TPP. First is the fact that the agreement is designed to support the global supply chains of multinational companies through continued outsourcing of production and offshoring of jobs. Existing U.S. tariffs are ultimately eliminated under the TPP, but we have little assurance several of the other countries will indeed eliminate persistent non-tariff barriers. Indeed, proponents of the TPP have highlighted the investments by U.S. companies in the TPP countries as an important goal of the agreement and a way of advancing our interests in the Pacific Rim. Domestic manufacturing workers aren't interested in trading away their jobs based on academic or ideological pursuits.

Of serious concern is that the rules of origin in the auto and auto parts sector will have a significant long-term adverse impact on domestic production and employment. Over time, U.S. trade agreements have reduced the percentage of parts produced in our trade agreements required for an automobile to receive preferential treatment. In the NAFTA, the requirement was 62.5%. In the US-Australia FTA, the requirement was reduced to 50% and in the US-Korea FTA; the percentage was further reduced to 35%. The TPP includes a 45% requirement but, with the vastly expanded number of countries participating in the agreement, that approach, on its own, will put at risk production and employment in the U.S. In short, a majority of a vehicle's value could come from parts produced in China or other non-TPP countries and be

considered to be Made In America for purposes of export to another TPP country. That is not what our citizens want and runs counter to their interests.

Early in the negotiating process, the Steelworkers, along with the International Association of Machinists and the United Auto Workers co-authored a proposal calling for a standard rule of origin that eliminates loopholes found under the NAFTA standards and uses 62.5% as a floor that increases after new entrants join. Our proposal would help retain and increase production and jobs in this critical sector. That proposal was disregarded, as was the proposal to adopt safeguard provisions to ensure that products critical to meeting our domestic emissions and fuel economy standards would be produced in the U.S.

The agreement also includes a new subset of parts – including bodies made of steel, aluminum or other materials, laminated auto glass and other products – that may be treated as produced within the TPP whether or not a majority of their content is actually produced in a TPP country. The U.S. auto industry is the single largest customer for domestically-produced steel; and this provision could further reduce the already inadequate 45% threshold to a level potentially as low as 35 or 30%. This will lead to the substantial loss of jobs in the auto parts, components and materials sourcing sector.

The provisions seeking to provide new disciplines on state-owned enterprises (SOEs) will have little impact in reigning in their increasing competitive threat. Proponents of the agreement argue that TPP is intended to write the rules, so that China doesn't get to. As a result, we must look at the TPP's provisions in this area not only for the impact they may have on SOEs in TPP countries, but for the framework they create for future potential TPP partners, especially China. The SOE provisions fail to provide sufficient guidance and disciplines to address the anticompetitive impact of existing SOEs or cover the broad range of entities operating on behalf of, or with the support and direction of, the state. The standards, if ever used, will simply generate dispute resolution cases rather than definable disciplines.

Existing support for SOEs by our TPP partners has been substantial but not actionable; and neither will the U.S. be able to oppose any support that will be provided prior to implementation of the agreement, providing an opportunity for massive expansion of existing and new subsidies. The agreement fails to limit the activities of sub-central SOEs. In the case of China, for example (anticipating its accession to "our" rules), there are only a relative handful of federal level SOEs compared to more than 155,000 sub-federal entities. Finally, economic injury, under normal circumstances, would have to occur for a year or more to be actionable. Any business leader knows that strategic, surgical but repeated losses of business opportunities will decimate a business. The current impact and rising threat of SOEs around the world demand a more robust set of disciplines than offered in this TPP.

The TPP fails to include effective or enforceable disciplines on currency manipulation.

Currency manipulation has had a devastating impact on U.S. manufacturing, costing hundreds of thousands of jobs. It acts as a tax on our country's exports and a subsidy for imports from currency manipulating countries. China's currency manipulation has essentially gone unanswered and, this summer, Vietnam and Malaysia took early steps to mimic China's actions, recognizing that there was little potential for a U.S. response. Currency manipulation has the very real potential to negate a substantial portion of the few benefits that might be anticipated

under the market access provisions of the TPP. Any benefits that might otherwise accrue to the dairy, meat or food processing industries from lowered tariffs or expanded TRQ's, for example, absent enforceable disciplines grounded in IMF standards, will be erased when TPP partners, present or future, adjust their currencies against the dollar.

As we saw shortly after the entry into force of NAFTA, Mexico engaged in a substantial devaluation of the peso, wiping out possible benefits of the controversial pact and fueling a rising trade deficit. We predict that the vaunted economic growth that TPP boosters proclaim will be nullified by currency management throughout the Pacific Rim.

Sadly, the agreement reached by TPP finance ministers will have no measurable impact – it is not an effective deterrent. It amounts to little more than a conversation about competitive devaluations, fueled by requested information about the activities of TPP economies. Without the ability to access dispute resolution, the provision will be as ineffective as existing standards in U.S. law that has been ignored by Administration after Administration.

The TPP's docking clause will expand the benefits of the agreement to other countries, thereby multiplying the negative effects of the agreement. The docking clause is undefined at this point but is viewed as an avenue for additional countries to join the agreement in an expedited manner. Countries ranging from Indonesia, Thailand, South Korea and, notably, China have been identified as potential entrants. The implementing legislation that the President submits to Congress must not describe a path to entry that does not include a specific vote of Congress on whether each new entrant should be granted the preferences of the TPP. We take the opportunity of this Dissent to call on Congress to establish its Constitutional prerogative over the docking process, in law, so the TPP cannot be expanded without a specific grant of authority for each new entrant that will depend on the detailed final provisions of an accession offer prior to entry into force.

The TPP includes no integrated enforcement measures and existing U.S. enforcement infrastructure is insufficient. Even the best rules, if left unenforced, will lead to further decimation of domestic manufacturing, loss of jobs and increased income inequality. While the Obama Administration deserves credit for taking more trade enforcement actions than any prior Administration, immeasurable damage has been done to U.S. interests from inadequate or nonexistent enforcement efforts. Indeed, while U.S. law provides tools to Administrations to pry open foreign markets, address unfair practices such as subsidies and currency manipulation, and address other foreign predatory and protectionist trade practices, the tools are rarely used. The vast majority of actions against unfair trade have had to be brought by the private sector after substantial injury has been inflicted. In many areas, bringing cases is difficult, if not impossible, because multinational firms are more concerned with their foreign operations than domestic sourcing. Numerous proposals have been offered but, to date, there has been no serious engagement on the enforcement issue. Congress should refuse to consider any new trade agreements without substantial new resources, a more automatic system to ensure that unfair trade practices will be dealt with and a commitment for action.

In ACTPN meetings and elsewhere, the Administration has argued that the agreement is needed to strengthen our ties to countries in Asia and increase our sphere of influence. We support the goal of strengthening ties to friends and allies in the region but do not believe it is a sufficient justification to ratify the agreement. This argument ignores the fact the United States already has strong ties with

many of the countries in the TPP and has shared interests that go well beyond trade. The implication that our influence is dependent on the adoption of this deal is flawed and ignores our military and economic power. We will have strong relationships with many countries in the TPP regardless. The best way to strengthen our influence is to create an agreement that lifts wages for working people here and abroad. As previously stated, the TPP falls short on this account. The TPP is a far-reaching trade agreement that sets the framework and architecture for the future. The foregoing comments only touch upon some key areas of especial interest to the labor movement, but much else in the TPP – arguably the environmental provisions that fall short of the May 10th standards of previous agreements, and certainly the expanded coverage for investor-state dispute resolution -- reinforces our opposition and informs this Dissent.

The TPP will result in more outsourcing of production and offshoring of jobs. Our nation's manufacturing sector will be needlessly subjected to increasing competition from many countries that maintain closed markets and have abysmal track records on human rights. The results can be disastrous without the rules and enforcement infrastructure needed to respond. The agreement will increase our manufactured goods trade deficit, fuel further wage stagnation and rising income inequality. The agreement undermines the economic interests of U.S. workers.