



26 January 2012

Senator Patrick Leahy
Chairman, Judiciary Committee
United States Senate
Washington, DC

Dear Senator Leahy:

We write to you to express our concern with the secret nature of the ongoing negotiations of the Trans-Pacific Partnership Agreement (TPPA). This a comprehensive trade agreement. While our comments and concerns focus in particular on the sections of the agreement dealing with intellectual property, investment, government procurement, regulatory coherence, technical barriers to trade and pharmaceutical drug pricing, the issues of transparency undoubtedly extend to other parts of the agreement.

Under procedures that have been aggressively pushed by the USTR, all versions of the negotiating text of the agreement are withheld from the general public. Although the general public is not permitted to see the texts, hundreds of “cleared advisers”—often representing large corporate interests—are permitted to analyze the text and offer feedback, but are not allowed to discuss the information with the public. USTR also routinely provides detailed briefings to corporate lobbyists. It is therefore only the general public that is intended to be kept in the dark as regards the substantive proposals.

More recently, the secrecy has gotten worse and trade negotiators refused to confirm the negotiating venue for the “intersessional” round on intellectual property negotiations for the TPPA taking place from approximately January 31, 2012 to February 3, 2012. Thus, not only is the public denied access to the negotiating texts, but is denied any information about the time and place for negotiations, thus curtailing access to negotiators. This secrecy is an effort to further limit public participation.

Intellectual property represents one area of particular concern to the general public, highlighted by the recent protests over the Stop Online Piracy Act (SOPA) and Protect Intellectual Property Act (PIPA). On January 18, 2012, thousands of websites, including the frequently visited Wikipedia, Reddit and Google sites, opposed these bills through site “blackouts” or other means. The January 18th shutdowns and protests demonstrate the fact that intellectual property is not merely a technical issue for policymakers, but one that has far reaching impacts on the public. The intellectual property concerns for the public are not limited to enforcement in the digital environment, but extend to other copyright, patent and enforcement issues, and touch on such issues as access to medicine in developing countries.

We will mention just a few of our substantive concerns about the agreement. There are credible but unconfirmed reports that the USTR is seeking provisions in TPPA on the availability of injunctions that are inconsistent with several U.S. Statutes, including provisions in the Affordable Care Act on biosimilar drugs and our statutory exception for the enforcement of patents against surgeons and other health care professionals. There are reports that the USTR proposals on damages for copyright infringement are inconsistent with proposed legislation to provide expanded access to orphaned copyrighted works, and which will increase the business risks of many US technology firms that serve global markets. There are reports that the TPPA will undermine efforts to reform certain outdated and wasteful regulatory monopolies on prescription drugs, including those dealing with the unethical

duplication of clinical trials. In all of these cases, only corporate lobbyists and foreign governments have the best information about the proposals tabled in the negotiations – the voters in the U.S. are kept ignorant as a matter of policy.

The public should have access to negotiating texts of trade agreements, such as the TPPA, in order to have access to information about policies that will affect them and effectively participate in our democratic society and voice their concerns. Without access to the actual texts, the right of the public to express informed opinions and participate in political affairs is seriously threatened.

The trading area of the TPPA is already quite large and is likely to be expanded to a much wider group of countries. Currently, there are nine negotiating parties: the United States, Australia, Brunei, Chile, Malaysia, New Zealand, Peru, Singapore, and Vietnam. Canada, Mexico and Japan have also formally expressed interest in joining the negotiations and several other countries have also reportedly sought information on joining the agreement. The trading area therefore represents a sizable portion of not only the Asia-Pacific region, but global trading as a whole. Its impacts are therefore not limited solely to the United States, but will be far-reaching across countries in both North and South America, Asia and Oceania.

Negotiations of this magnitude, where new global norms are established, should not be shrouded in secrecy. We ask for you to urge the Obama Administration to release the texts and allow full public participation.

Sincerely,



James Love
Director



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cc: Ambassador Ron Kirk, USTR