

Thursday, 25 March 2010



Trade Commitments Branch
Department of Foreign Affairs and Trade
Attn: Ms Cathy Raper
Director, FTA Commitments and Implementation Section
R.G. Casey Building
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Re: Invitation for Submissions Regarding Negotiations on a Trans-Pacific Partnership Agreement

Dear Ms Raper:

It is with pleasure that the American Chamber of Commerce in Australia (AmCham) submits this follow-up letter with more specific comments in response to the Department's ongoing invitation for submissions on negotiations for a Trans-Pacific Partnership (TPP) Agreement. AmCham is a national organisation with over 2,000 members around Australia. Our members include many of the largest companies in Australia, involved in a diverse range of activities in the manufacturing, technology and services sectors.

I. Overview

Some time ago, we wrote to you in support of the concept of a TPP agreement building on the framework established in the P-4 free trade agreement. The meetings this month in Melbourne were a promising step in what we trust will be a very successful set of negotiations on a final agreement. AmCham continues to be highly supportive of initiatives intended to enhance and further facilitate trade and investment between the United States and Australia and in the Asia Pacific region. Many of our members have multinational operations and conduct business throughout this part of the world. Initiatives such as the TPP have the potential to achieve both increased liberalisation and greater consistency in the trade and investment environment and are therefore desirable.

It is also our understanding that the United States and Australia are interested in achieving "high quality" trade agreements to provide tangible and meaningful benefits to companies and individuals doing business in the region. In our view, the P-4 serves as an excellent platform from which to negotiate a further liberalising agreement. With the addition of the United States, Peru and potentially Vietnam, there is the potential for significant additional progress of tangible benefit to the economies of the negotiating nations. To achieve this, the TPP must be a comprehensive, ambitious, and commercially significant agreement.

Finally, we should point out that a substantial portion of AmCham members are engaged in some form of services trade. A TPP agreement could afford one of the most promising opportunities to achieve significant improvements regionally in the area of services including by helping to create greater economies of scale for services companies. This outcome could also serve as a model for expanded improvements both outside of the TPP and within the agreement if and as it is

expanded to more countries. Indeed, a TPP could play a useful complementary role to the ongoing efforts within the Asia Pacific Economic Cooperation (APEC) forum to achieve trade and investment liberalisation within a realistic time frame. There is also a clear need to ensure that TPP and APEC efforts are complementary and do not in any way conflict.



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II. Specific Comments

Based on input from and consultations with our members and affiliated organisations, we have identified a number of specific goals and objectives which we believe are critical to the successful negotiation of a TPP agreement.

Negotiating Objectives

- Early Elimination of Tariffs and Non-Tariff Barriers—including removal of all remaining tariffs, quotas and other barriers to trade;
- Comprehensive FTA with No Exclusions—no particular commodity, product, service or sector should be excluded;
- Transparency and Predictable Regulatory and Rulemaking Procedures—Lack of transparency and lack of equal access to the regulatory process are among the most significant market access barriers affecting companies in the Asia-Pacific region. Greater transparency and stakeholder input, the use of sound science, quality data, economic and cost-benefit analysis, and the consideration of the impact of proposed regulations on trade and investment will lead to increased regulatory stability and predictability. This is important to ensure that business, investors and consumers in all TPP member countries will reap the full potential economic benefits of an agreement.

Sectoral Issues

- Services—The agreement should remove market barriers in all service areas. Key areas include financial services, telecommunications, computer services, legal services, accounting services, engineering and architecture, the media and express delivery services.

As a set of general principles, the agreement should set high standards for market opening, including rights to own 100% of any investment, fullest possible market access, full national treatment, and elimination of other regulatory barriers to equal access to competition. In respect of financial services this would support the Government's stated objective of further developing Australia as an international financial services centre. (See the recent report of the Australian Finance Centre Forum.) The agreement should also encourage the mutual recognition of professional training and licensing as appropriate to facilitate cross-border trade in professional services.

The agreement should include anti-corruption provisions similar to those in the U.S.-Peru FTA.

- Pharmaceuticals/Medical Devices—The TPP should ensure that the value of innovation is adequately recognised in partner countries' healthcare systems and that doctors have the freedom to prescribe medications that best address a patient's needs.



The TPP should ensure that very high standards for intellectual property (IP) protection are adopted that will help provide market-based incentives for innovation, creativity, and advanced global drug discovery while curbing counterfeit copies of IP-protected products which can severely jeopardize public health.

Policy and regulatory decisions should be governed by transparent and verifiable rules guided by science-based decision making. There should be meaningful opportunities for input and appeal rights. Reimbursement regimes should be fair, reasonable and non-discriminatory. The process for setting reimbursement should be transparent, reasonable and in step with global requirements on the evidence required for reimbursement.

For medical devices, the TPP should seek to attain the highest possible degree of harmonisation in partner countries' regulatory environments. Partner countries should seek the elimination of unreasonably-high market barriers while recognizing each other's right to ensure the safety of its own population. The guidelines of the Global Harmonisation Taskforce (GHTF) should be used as a basis for the agreement in this area.

- **Electronic Commerce**—The agreement should guarantee full national treatment to companies doing business in this sector. It should contain an e-commerce chapter that includes non-discrimination provisions for “digital products,” including software, similar to such chapters in previous U.S. FTAs.

In addition, the agreement should expressly recognise the emerging importance of trade in the digital and information economy. The TPP should seek to negotiate an appropriate framework that would enable open and secure trade in information and data. At present, there are a range of legislative provisions and regulatory practices and policies that inhibit the flow of and storage of information within and between jurisdictions. While recognising the importance of security and privacy concerns, the TPP should have as an objective the harmonisation of national laws that relate to information storage and transfers, with the aim of facilitating trade in information.

General Provisions

- **Investment**—The TPP agreement should protect investments on the principle of national treatment, in line with the provisions in other recently concluded FTAs.
- **Competition Policy**—The explicit inclusion of competition policy in U.S. trade agreements has been a positive addition to the U.S. approach to trade negotiations. The TPP agreement should include competition policy to help ensure that trade between the various parties is conducted on a level playing field. The agreement should seek to bar anti-competitive practices and require parties to agree effectively to enforce their competition laws and policies.
- **Customs Cooperation**—The agreement should provide for increased transparency and predictability in customs valuation procedures. Commitments should be applied to all TPP member countries equally to ensure that regional harmonisation benefits are fully achieved.

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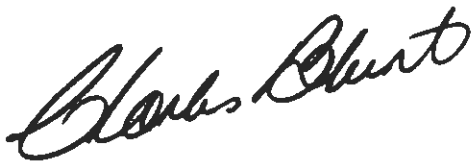
- **Supply Chain Security**—Supply chain security is a key concern for all trading nations. The World Customs Organization has published its SAFE Framework of Standards to Secure and Facilitate Global Trade. The WCO is actively encouraging customs administrations to implement Authorised Economic Operator (AEO) programs. New Zealand, Singapore and the United States already have such programs and others are in the process of developing them. While participation in these voluntary programs by importers and exporters can deliver tangible commercial benefits, significant differences have developed. Uniformity of these programs, or at least mutual recognition among TPP members would be a desirable outcome for business. The U.S. and New Zealand have already concluded a mutual recognition arrangement. The negotiations for a TPP agreement present an ideal opportunity for the member countries to create the groundwork for common standards both among current member and candidate nations and potentially throughout the 21 APEC economies.
- **Intellectual Property (IP)**—The agreement should include measures to ensure that IP protection and enforcement keeps pace with developments in technology and distribution methods as piracy continues to be a problem in TPP member countries. It should be an objective of the TPP to raise the level of IP protection in the region to international best practice. The agreement should also require the parties to implement fully and effectively obligations for the protection of IP already included in their other international agreements, including TRIPS and bilateral agreements between the parties.
- **Rules of Origin**—The agreement should contain effective rules of origin that discourage transshipments and other abuses of the benefits of the FTA, and that provide for partial FTA treatment of finished goods not qualified for full FTA duty-free treatment. Under this provision, the value of originating content contained in goods traded between the parties would be subject to duty-free treatment.

The agreement should adopt an easily administered and transparent rule of origin that assumes an “across the board” approach for all products. The current P-4 agreement is a model of clear drafting. The rules of origin contained in Section 5.3 and Annex II are significantly simpler and clearer than the rules of origin in many other FTAs. As more countries aspire to membership, there will be an inevitable tendency towards product-specific rules of origin that favor nations' domestic industries. The expansion and complication of the rules of origin would ultimately undermine the effectiveness of the agreement and add complexity and cost to industry compliance. The TPP members should strive to retain the clarity and relative simplicity of the rules of origin in the P-4 agreement.

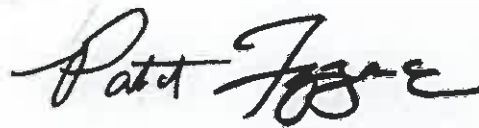
- **Standards and Technical Barriers to Trade**—TPP member countries should commit to providing foreign companies with the same access to standards-setting processes that domestic companies enjoy. The agreement should require transparency and predictability in member countries' standards and testing procedures. Standards development and implementation should be voluntary, industry-led and consensus-based, so that users and implementers have freedom of choice in selecting among competing standards.

The American Chamber of Commerce in Australia and its affiliated organisations look forward to working with the Australian and TPP member governments in achieving an agreement that advances the interests of our members and of businesses, investors and consumers in all of the TPP member economies. Please do not hesitate to contact the undersigned if we can be of any further assistance in this matter.

Yours faithfully,



Charles W Blunt
National Director
American Chamber of Commerce



Patrick Fazzino
Chairman
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