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Congress of the United States
House of Representatives
Washington, DC 20515-3701

October 6, 2010

The Honorable Barack Obama
President of the United States
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear President Obama:

As U.S. trade negotiators participate in the latest round of Trans-Pacific Partnership (TPP) talks this week in Brunei, I am writing to request attention to a critical aspect of these talks that currently is being overlooked: ensuring that this and every U.S. trade pact promote human rights and that we only engage in trade agreements with democratic countries. This is not only a matter of ensuring that U.S. values are being promoted in our international agreements, but is critical to these pacts providing economic benefits to U.S. workers, firms, and farmers.

That these talks are in Brunei—and that Brunei is being considered as a prospective U.S. free trade agreement (FTA) partner—highlights my concerns. Brunei is a sultanate that the State Department has cited for “arbitrary detention; limits on freedom of speech, press, assembly, and association; restrictions on religious freedom; discrimination against women; restricted labor rights; and exploitation of foreign workers.” The TPP talks also include Singapore, an authoritarian state that restricts freedom of expression, association, and assembly. Moreover, I am deeply troubled that Vietnam—a repressive authoritarian regime that violates internationally recognized labor rights, cracks down on dissent and internet freedom, and imprisons peaceful activists—is a prospective TPP partner.

Properly designed, a trade pact can help to address these human rights issues. Many other countries have included “democracy clauses” in their recent trade and integration agreements, from the European Union (EU) to the Southern Cone Common Market (MERCOSUR) nations to the countries signing the Commonwealth Charter. Given that the State Department has identified significant democracy and human rights problems with some of the prospective TPP countries, it is critical that any TPP agreement set clear standards on democracy and human rights.

To that end, any TPP into which the United States enters must require that a condition for participation is the maintenance of a democratic form of government. Setting this goal can provide an incentive for countries interested in having a TPP pact with the United States to undertake democratic reforms. In effect, having a democratic form of government could become “readiness criteria” for entry into TPP in the same way that countries seeking entry into the European Union (EU) or MERCOSUR must meet such criteria. For instance, the 1998 Ushuaia Protocol to the MERCOSUR agreement states: “Fully functioning democratic institutions are an indispensable condition for development of the process of integration between the States Parties to this Protocol.” The notion of employing such readiness criteria is demonstrated by the 148

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bipartisan cosponsors of the Trade Reform, Accountability, Development, and Employment (TRADE) Act of 2009, which includes such a policy.

Further, a TPP FTA must include a mechanism, such as contained in Articles 2-7 of the Ushuaia Protocol, which provides for a country's trade pact benefits to be suspended if there is an interruption of democratic governance. That protocol states that "[s]uch measures may range from suspension of the right to participate in various bodies of the respective integration processes to suspension of the rights and obligations deriving from those processes." The need for such a mechanism was made evident by the debacle of Honduras continuing to enjoy the full benefits of the Central American Free Trade Agreement (CAFTA) after the coup there, and indeed CAFTA imposing constraints on economic sanctions the U.S. otherwise might have employed to pressure the coup leaders to restore democratic governance.

The call to add a democracy clause to a multi-country U.S. FTA is not new. In 2001, a Progressive Policy Institute briefing paper authored by Richard Feinberg and Jenny Bates called for a democracy clause for the Free Trade Area of the Americas (FTAA), noting that "the European Union added an explicit democracy clause to its formal charter.... The clause [for the FTAA] should be modeled on those found in other regional economic agreements, such as the European Union and the Southern Cone Common Market (MERCOSUR), but could be stronger than those in three respects: the definition of democracy could be elaborated, institutional mechanisms for responding to problem cases could be specified, and actors other than national governments could be given standing to bring cases." They also called for defining democracy to "include broad principles such as universal suffrage, regular free and fair elections (with independent monitoring), a plurality of political parties, and freedom of speech and association."

Finally, the notion of making human rights a part of a commercial agreement is also not new. For instance, the 2000 agreement between the EU and Mexico on Economic Partnership, Political Coordination and Cooperation states: "Respect for democratic principles and fundamental human rights, proclaimed by the Universal Declaration of Human Rights, underpins the domestic and external policies of both Parties and constitutes an essential element of this Agreement." The EU-Chile Association Agreement contains similar language: "Respect for democratic principles and fundamental human rights as laid down in the Universal Declaration of Human Rights and for the principle of the rule of law underpins the internal and international policies of the Parties and constitutes an essential element of this Agreement."

There are many members of Congress who are eager to be able to support a trade agreement that they believe will be commercially beneficial and promote our fundamental values. Adding a democracy clause, as well as human rights standards similar to those found in Section 4 of the TRADE Act, to a prospective TPP agreement would be good policy and would help build congressional support for a prospective pact.

With warm regards,

A large, stylized handwritten signature in black ink, appearing to read 'David Wu', is written over a horizontal line.

David Wu
Member of Congress