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MEMO TO REPORTERS

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While Obama Criticizes Job Offshoring and Touts Transparency, His Trade Officials Will Be Negotiating a Secretive Deal That Would Send More U.S. Jobs Offshore

Next Round of Trans-Pacific Partnership Talks Are Sept. 6-15 in Leesburg Va., Will Overlap Democratic Convention

On Sept. 6, as President Barack Obama promises jobs and transparency in his Democratic National Convention acceptance speech, his top trade officials will be cloistered in conditions of extreme secrecy at the Lansdowne resort in Leesburg, Va., negotiating a massive "trade" agreement that will promote more U.S. job offshoring and ban Buy American procurement preferences.

The deal is called the Trans-Pacific Partnership (TPP) "free trade" agreement. The Obama administration has negotiated the TPP for three years in conditions of unprecedented secrecy, with the goal of concluding legal rules this year. The TPP includes the U.S., Vietnam, Brunei, Singapore, Malaysia, New Zealand, Australia, Peru and Chile, with Mexico and Canada just joining. The TPP is intended to be a "docking agreement" that any other Pacific Rim country can join over time, including China, Russia, Japan, Indonesia and others. (Obama's U.S. Trade Representative (USTR) Ron Kirk recently noted that the U.S. "would love nothing more" than for China to join.)

Most of the TPP's 26 draft chapters don't address trade, but instead establish strongly enforced limits on non-trade domestic policies ranging from food safety and medicine pricing to financial regulation and Internet access terms. There is a draft text of the pact, but the press, public and Congress are being denied access to it. Thanks to text leaks, quite a bit is known about the draft TPP – much of it worrisome.

The TPP Would Launch New Wave of U.S. Job Offshoring

While Obama criticizes GOP presidential contender Mitt Romney's record on offshoring and Romney attacks Obama's stimulus package for sending U.S. jobs abroad, both candidates

support a TPP deal that would incentivize offshoring, ban Buy American procurement policies and further erode the U.S. manufacturing base.

- **Incentivizing Offshoring:** The TPP is slated to include the extreme foreign investor protections that help corporations offshore American jobs to low-wage countries. These NAFTA-style terms provide special benefits to firms that relocate and eliminate many off the usual risks that make firms think twice about moving to low-wage countries. New incentives include a guaranteed minimum standard of treatment in the offshore venue and compensation for regulatory costs, including the right to obtain government compensation simply because a regulation is altered after a foreign investment is established. As well, firms that relocate avoid the risk of relying on domestic courts and instead would obtain access to sue TPP countries in foreign tribunals established by the World Bank and United Nations. Relocated firms can skirt domestic laws and courts and bring their contract disputes and claims for regulatory compensation to such tribunals, to which TPP countries would submit themselves with a commitment to pay foreign investors compensation at the orders of these extra-judicial panels. Members of Congress have demanded that these offshoring incentives be eliminated, to no effect so far.

- **A Ban on Buy American Policies**: TPP would give all firms operating in any signatory country equal access to U.S. procurement contracts – rather than us recycling our tax dollars here to create U.S. jobs. That means Chinese government-owned firms in Vietnam would get equal treatment with U.S. firms in getting contracts for goods and service bought by the government, paid for with U.S. tax dollars. In addition, the pact would limit the sorts of terms these contracts could use, basically turning what is now an important policy tool to create jobs and develop new green technologies into a new corporate offshoring opportunity. For instance, specifications like "renewable/recycled" or "sweat-free" and obligations for firms to meet prevailing wages could be challenged. The bottom line: Buy American preferences in place since 1933 and which enjoy 90 percent support from Republicans, Independents and Democrats alike would be waived to give these foreign firms equal access to U.S. government contracts relative to U.S. firms, which now enjoy preference. Practically, this would mean depriving U.S. businesses of preferential access to the $1.7 trillion U.S. government procurement market in exchange for just $70 billion worth of new procurement markets for U.S. companies doing business in TPP countries. That's a loss of $24 for every dollar gained, leading to a significant erosion of U.S. jobs. In response, dozens of members of Congress have urged the USTR not to proceed with the proposed procurement rules of the TPP.

A Complete Draft TPP Text Is Being Hidden from Press, Public and Congressional Offices, But Handed to 600 Corporate "Advisors"

Despite the TPP's sweeping influence on American jobs (and public health, Internet freedom, financial regulation and environmental protections – as explained below) , the Obama administration has refused to allow the public, or even congressional offices, to see the negotiating text. This stands in contrast to even the World Trade Organization, hardly a paragon of transparency, which now posts key texts online for public review. In addition, when the last major regional "trade" agreement (the Free Trade Area of the Americas) was at the same stage as TPP is now, the text was formally released by the 23 negotiating governments (in 2001). Indeed, Gary Horlick, a former U.S. trade official with decades in the trade policy world, said of TPP in January, "This is the least transparent trade negotiation I have ever seen." A leaked document referring to a Memorandum of Understanding dated March 4, 2010, shows that the U.S. and other TPP negotiating countries committed to an extraordinary degree of non-transparency by agreeing to keep the TPP text classified until four years *after* the agreement enters into force or talks collapse.

The USTR even has limited text access for congressional offices charged with oversight of trade negotiations. In May 2012, U.S. Sen. Ron Wyden (D-Ore.) aired his frustration with TPP secrecy on the Senate floor, stating that the USTR had denied his staff access to the text, despite their adequate security clearance and despite Wyden's chairmanship of the Senate's Subcommittee on International Trade, Customs, and Global Competitiveness, the body with explicit jurisdiction over trade negotiations. After Wyden submitted legislation to require access to the text for all congressional lawmakers members and security-cleared staff, the USTR allowed Wyden to see the negotiating text but prohibited access by other members of Congress and Wyden's trade subcommittee staff, and required Wyden to view the text at the USTR's office. Congressional ire over such non-transparency has been mounting. In May, U.S. Rep. Darrell Issa (R-Calif.), Chairman of the House Oversight Committee, publicly leaked the intellectual property chapter of the TPP and criticized the USTR's "secretive, closed-door negotiating process." In June, more than 130 members of the House of Representatives signed a letter, led by Reps. Rosa DeLauro (D-Conn.) and George Miller (D-Calif.), that called on USTR Kirk to release the full text to members of Congress and their security-cleared staff. When Kirk failed to respond, eight leading members of the House of Representatives requested to directly observe the TPP negotiations in Leesburg.

Meanwhile, the USTR has invited approximately 600 trade "advisors" not only to read the text, but provide feedback on its proposals. Unlike members of Congress, these members of the trade advisory system can access the text at any time or place via a secure online site. Also unlike members of Congress, 99 percent of these "advisors" have not been elected to serve the public interest. Despite a law mandating that the advisory system encompass a "broadly representative" makeup of business, non-governmental and government actors, 84 percent of these "advisors" exclusively represent corporations (including pharmaceutical giants like Abbott, agribusiness behemoths like Cargill, and private equity firms like Capital Partners) or industry associations. By contrast, non-governmental organizations (NGOs), think tanks and universities (of any political orientation) represent just 6 percent of the official advisors, while unions and governmental bodies both have a mere 5 percent share. Furthermore, 86 percent of the NGO, union and governmental advisors are cloistered into just five of the system's 28 committees. In 23 of the 28 committees, no more than three advisors represent any nonbusiness interests. The Government Accountability Office reports that these nonbusiness representatives have "felt isolated within their own committee." With such a skewed group of advisors, there is little hope of a trade deal with broad-based benefits – and the TPP has become a catchall for many corporate priorities that have failed in the sunshine of public debate in Congress.

Leaked TPP Texts Reveal That It Also Would Impose Stealthy Deregulation of Food, Financial, Health Standards While Establishing New Corporate Privileges

- **Empower Foreign Corporations to Sue Sovereign Governments in International Tribunals for Regulatory Compensation:** A recently leaked investment chapter reveals that the TPP would extend the extreme private enforcement system that allows foreign investors to skirt domestic laws and courts, and directly sue the U.S. and other signatory governments before UN and World Bank tribunals. There, they could demand taxpayer compensation for environmental, health, financial and other domestic regulatory policies and even court decisions if they think such policies undermine their "expected future profit" or their new investor privileges established in the pact. This regime elevates individual foreign corporations to the same status as a sovereign government – with rights to privately enforce a public treaty. Consumer, labor and other citizens groups have no such rights. In the past 13 years, corporate investor-state attacks before World Bank tribunals have jumped by 460 percent. Companies have won $365 million thus far in suits brought under just NAFTA-style deals, with an additional $13 billion in claims still pending. Even when countries successfully defend against the corporate attacks, they spend millions in legal fees. Australia has announced that it will not be bound to this regime in TPP. (Australia's tobacco regulations are now under attacks in such a tribunal by Phillip Morris.) This regime has come under criticism in many nations for undermining important public protections and exposing countries to mass liabilities.

- **Jeopardize Food Safety:** The TPP is slated to expand on existing trade pact limits on what safety standards the United States can require for imported foods and how much inspection is permitted. U.S. food safety laws that extend beyond these TPP restrictions would be subject to challenge as "illegal trade barriers" before foreign trade tribunals. The TPP would extend the requirement that we accept imports of meat and other foods that do not meet domestic standards if the exporting country claims that their safety regime is "equivalent." Such restrictions are particularly concerning in the context of the TPP, given that the pact includes major seafood exporters Malaysia and Vietnam. Members of Congress have spotlighted these problems.

- **Lock in Wall Street Deregulation:** The banks and investment firms responsible for the 2008 financial collapse have been lobbying hard to water down efforts to re-regulate Wall Street. The TPP would give them an extra boost in doing so. Negotiations are currently based on a text started prior to the financial crisis, during the George W. Bush administration, that forbids countries from maintaining or establishing certain types of regulation for financial sectors, even if such policies are applied to domestic and foreign firms alike. Forbidden would be bans on risky financial products and services (i.e. toxic derivatives and credit default swaps) and limits on the size of financial firms (i.e. prevention of "too big to fail"). The TPP also would severely limit the use of capital controls, which many nations have implemented since the crisis to stop sudden inflows and outflows of "hot money" that has destabilized entire economies. While U.S. Rep. Barney Frank (D-Mass.), among others, has spotlighted these problems, U.S. negotiators continue to insist on these terms favored only by Wall Street.

- **Open a Backdoor for Stop Online Piracy Act (SOPA)?:** The proposed SOPA ignited a wave of criticism early this year over concerns that the expansive legislation would inhibit online freedom of expression by blocking entire websites for common content sharing and hit consumers with hefty fines for small-scale, non-commercial copying. While massive, coordinated online protests and legislative opposition derailed SOPA, some of the same overreaching terms envisioned in SOPA may still see the light of day via the TPP.

- **Jack Up Medicine Prices:** Leaked U.S. proposals for the TPP would give multinational pharmaceutical companies new monopoly patent rights and empower new challenges on developed countries' drug-price containment formulary decisions. The TPP patent extensions would keep cheaper generic drugs off the market for longer, resulting in a spike in medicine prices and a decline in poor consumers' access to life-saving drugs. In addition, US negotiators are pushing rules that would conflict with Obama's goal of making medicines here more affordable. Many countries, including New Zealand and Australia, work to control medicine costs by employing drug formularies – lists of proven medicines covered by the government health care system for which the government negotiates lower prices. The U.S. Medicaid and Medicare programs also use such cost-saving lists, as does the U.S. Veterans Administration. But a U.S proposal would newly allow pharmaceutical firms to challenge such pricing decisions.

Limited Prospects for Increased U.S. Exports Under the TPP

What does the U.S. stand to gain from the proposed TPP? Proponents claim that it would expand U.S. exports, creating new jobs. But the United States already has trade agreements with six of the 10 other TPP negotiating countries (including Canada and Mexico). The combined GDP of these six existing FTA partners comprises 90 percent of the total GDP of all TPP countries.

The remaining four countries – Malaysia, New Zealand, Vietnam and Brunei – offer comparably little in new markets for U.S. exports. In Vietnam, annual income per person is just $1,374. New Zealand has a population of only about 4.4 million people – smaller than the metro area of Washington, D.C. Brunei has just 425,000 people—smaller than Huntsville, Ala. Taken together, the four TPP countries with which the United States does not yet have a trade agreement have a combined GDP equivalent to Pennsylvania.

The lackluster export opportunity represented by this agreement again confirms that the TPP deal is not really about trade. U.S. negotiators and their 600 predominantly corporate official trade advisors are not gathering in Leesburg to discuss the export prospects offered by Brunei. Rather, while branding TPP as a trade agreement, at issue is how to facilitate the establishment of the many new non-trade corporate policy goals, rights and privileges described in this memo.

The Economic Impact of NAFTA-Style Trade Deals at Home

U.S. public opinion has turned sharply against NAFTA-style trade deals, as demonstrated in the next section. However, the country has not become categorically anti-trade. Rather, the public opposes the very tangible consequences that NAFTA-style trade has brought to their lives.

The year before NAFTA took effect, the U.S. trade deficit with Canada stood at $28.5 billion, while the U.S. enjoyed a $2.4 billion surplus with Mexico. By 2011, the U.S. had a combined NAFTA deficit of $185.4 billion, spelling massive job loss. Since the U.S.'s passage of NAFTA and entrance into the WTO, five million U.S. manufacturing jobs – one of every four – have been lost. The Economic Policy Institute (EPI) estimates that the NAFTA trade deficit alone eliminated one million U.S. jobs by 2004. Of course, the offshoring of manufacturing jobs doesn't harm only those whose jobs are shipped overseas. It also reduces the base for state and municipal revenue, and puts downward pressure on the wages and benefits of jobs that are left. A study by EPI estimates that even with lower-priced imports saving us money, the downward pressure on wages caused by our trade imbalance has cost U.S. households an average of $2,135 each year.

Potential Political Ramifications of the TPP

Public opinion is decidedly against an expansion of NAFTA-style trade policies. A May 2012 Angus Reid Public Opinion poll found that U.S. respondents who believe that the country should "renegotiate" or "leave" NAFTA outnumber by a nearly 4-to-1 margin those that say the U.S. should "continue to be a member" of the deal (53 percent vs. 15 percent). Support for the "renegotiate" or "leave" positions dominated among Democrat, Republican and Independent respondents alike. Underscoring this anti-NAFTA sentiment, just one in three U.S. respondents think that NAFTA benefitted the overall U.S. economy, and only one in four see the pact as having benefitted U.S. workers.

Repeated polls have found trade-related outsourcing to be the foremost problem on the minds of U.S. voters. During the current election cycle, which is focused on job creation, a July 2012 poll conducted by the Mellman Group and North Star Opinion Research asked U.S. voters to name "the single biggest obstacle for creating manufacturing jobs in America today." "Our trade policies encourage outsourcing" was the top-picked response. A TPP deal that expands NAFTA and offshores more U.S. jobs stands wholly at odds with the overwhelming opinion of the U.S. public.