

Prepared Testimony of  
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Mr. Chairman. Members of the Committee. I want to thank you for the invitation to appear before you today regarding the ongoing negotiations on the Trans-Pacific Partnership. It's a pleasure to be here as I worked as a staffer for a Member of the Committee for twelve years and know the history of the Committee and the importance of the work you do.

My name is Michael Wessel and I am President of the Wessel Group, a public affairs consulting firm. In addition, I serve as a Congressionally-appointed Commissioner on the U.S.-China Economic and Security Review Commission. However, I want to highlight the disclaimer that I am speaking in my individual capacity today. My comments are informed by the work that I have done representing the United Steelworkers Union, the Communications Workers and coordination with others in organized labor as well as my work on the China Commission. But, I am not appearing here today on my client's behalf or for the Commission. That being said, I am proud of the work that I do with organized labor and completely share their goals of updating and reforming our nation's trade policies so that they work for working people.

The Trans-Pacific Partnership Free Trade Agreement (TPP) represents the first trade agreement initiated by the Obama Administration. It is designed to be a far-reaching agreement with countries strategically located in the Pacific Rim with the opportunity to expand beyond the current nine participants to other countries.

Much of the trade among the current TPP participants is already covered by free trade agreements. That, however, should not minimize the scrutiny and attention that these negotiations deserve. Expansion of the TPP to the four countries not presently FTA partners with the U.S. – Brunei, New Zealand, Vietnam and Malaysia – may not account for an enormous amount of trade, but it is vital that the terms and conditions of TPP be carefully crafted as the TPP is designed to be a template for our trade negotiations going forward and on the existing FTAs we have with TPP partners. Clearly, the need for strict scrutiny was highlighted by the recent announcements that Japan, Canada and Mexico are interested in participating in the negotiations.

In short, the template that is being developed will affect not only our trade and investment policies with the TPP countries, but with other more economically significant countries as well. For example, how the upcoming agreement treats State-Owned Enterprises will serve as the

basis not only for TPP countries, but for our actions and interactions with China on a variety of issues. Action on SOEs will provide important guidance to a revised model Bilateral Investment Treaty, if it proceeds. It will impact upon domestic competitive issues here in the U.S. It will inform efforts to provide effective regulations of financial markets. In this light, the TPP is a key policy initiative and not simply a “normal” trade agreement.

My perspective on this agreement is that the goal must be to maximize employment and opportunity first for U.S. workers, and secondarily for workers in the TPP countries. If results in simply maximizing profits for companies, many of which are increasingly globalizing their supply chains, it will sadly be another trade agreement that fuels our trade deficit, promotes overseas investment, contributes to joblessness and widens the income gap that exists in this country – and in others. It is vital, as part of the evaluation of any agreement, to assess the specific impact, sector by sector, on our country and for our workers and whether an agreement will fuel further offshoring and outsourcing, or result in maintaining and recapturing employment opportunities.

An agreement, properly constructed, can be a force for progress. But, that requires updating and reforming the existing approach and much work remains to be done to achieve that goal. I’m hopeful that we can be successful and believe that our current trade situation is unacceptable and that new trade agreements that focus on domestic production and employment can put us on a better track. But, as President Obama said during the campaign, success should not be measured by the number of agreements that we sign, but the results that they produce. For the vast majority of working Americans, the results of past trade agreements have been unacceptable.

The Obama Administration deserves to be commended for the outreach they have engaged in. As a cleared staff liaison for both the USTR and Department of Labor’s Labor Advisory Committee and for the Advisory Committee on Trade Policy and Negotiations, I have spent dozens of hours discussing with Administration negotiators the specific issues that are involved in the TPP talks and, I believe, offering concrete recommendations and criticisms of the approaches that are being considered. While the President and the TPP participants highlighted in Honolulu several weeks ago the progress that they had achieved, much work remains to be done and everything remains on the table.

But, action is accelerating and, as the Members of this Committee know, once texts are tabled, it is highly unusual for the tabling country to alter its approach. Thus, the coming weeks demand that significant energy and attention be put into ensuring that the approach our negotiators take in tabled text represent, if fully achieved, an agreement that merits the support of the American people and their elected representatives.

It's important, however, that process not determine the substance of this agreement. Arbitrary deadlines could very well undermine our nation's interests. We should let the specifics of any deal drive the process and not allow other considerations – primarily foreign policy – to dictate the result. Some view the TPP as important to other regional considerations and that may or may not be the case. Auctioning off our jobs and our economic success is simply unacceptable. It was troubling, therefore, to hear press reports recently of discussions about the potential for the Administration to seek enhanced trade negotiating authority in advance of determining how this potential agreement would be different from past agreements and how it would promote domestic economic activity and employment. If one looks back at the history of trade negotiating authority and tries to line up Congressionally-approved objectives with final results, one will find significant gaps. Congress should not cede authority in this area without substantially more work being done and confidence in the result.

Key to the process of developing confidence is understanding what opportunities and challenges are posed by a new template with these countries. When Mexico looked at entering into the North American Free Trade Agreement negotiations, there were sector surveys commissioned across the board – agriculture, autos, alcoholic beverages, telecommunications to name a few -- to guide the negotiators. To date, I am unaware of any similar effort being conducted here in the U.S. Generally, as this Committee knows, a macroeconomic study is completed at the end of the process to evaluate what the agreements' impact might be on our economy. Not only is that insufficient but the model has, all too often, dramatically underestimated the negative repercussions of our trade policies.

Organized labor has requested supporting economic data on several occasions. Indeed, to help evaluate the challenges posed in individual sectors, requests have been made to look not just at existing bilateral trade flows between the U.S. and each TPP partner but the regional and worldwide trade data, sector-by-sector, for those countries. So far, that data has not been provided and, indeed, there is concern that the data is unavailable because of inconsistencies in the data sets. Flying without a map should not be an option.

Mr. Chairman, the TPP, as I noted, is an exceedingly complex undertaking that seeks to address new issues and disciplines absent from earlier trade agreements. With the short amount of time I have today, let me focus on a couple of key areas.

### **State-Owned Enterprises**

The potential disciplines that will cover State-Owned Enterprises (SOEs) represent, perhaps, the most important area for new disciplines in the TPP. Vietnam's economy is dominated by numerous SOEs. Similarly, Malaysia and Singapore have SOEs in many sectors. As noted earlier, however, it is not only the disciplines that will cover these markets that are important,

but what effect the disciplines will have on non-TPP countries – most importantly China. And, as a recent study prepared for the US-China Economic and Security Review Commission indicated, SOEs and other so-called state actors, control roughly one-half of China’s non-agricultural GDP. We can’t afford to get disciplines in this area wrong.

SOEs, which should include State-Invested Enterprises, and other entities acting under the authority of the state, are of concern in three separate areas – their activities in their home market, their activities in third country markets and their activities in our market. All three are of concern, but let me concentrate my remarks on their activities here in the U.S., as there appears to be much more agreement between organized labor and the business community regarding the challenges posed by SOEs in their home and third country markets.

Let me start by saying that, from the workers’ perspective the location of the corporate headquarters is increasingly unimportant. There are good and bad employers no matter where they are headquartered and, indeed, many foreign-based companies are major employers of U.S. workers. The real question is what guides their activities, in all respects. I welcome foreign investment and, indeed, the size of our long-term trade deficit demands that some of our competitors’ dollars be reinvested in our market.

But, what are the goals of investors when they come to our market? Is it to engage in activities that conform to our laws, goals and principles? Are they seeking to benefit from the skills, quality, productivity and creativity of our workforce and operate as good corporate citizens, or are they approaching our market with a “cash and carry” approach designed to maximize their returns and profit at our expense?

Nowhere is this more of a challenge – and a threat – than with SOEs. By definition, they are interested in promoting the interests of their home country and are, all-too-often, guided by state interests rather than commercial interests.

Why does this matter? Let’s consider a Chinese SOE. Chinese SOEs benefit enormously from below-market rate financing by state-owned banks that are well below what American companies pay. Many of these loans may not have to be repaid at all. How does a commercial entity here in the U.S. compete with the U.S.-based operations of a SOE that sets up shop here? If a Chinese SOE sends a product here that injures a company and its workers, we have existing trade remedies to address the impact. But, if they invest in a green field operation here and, as a result of having little or no cost of capital can undermine the competitiveness of an existing U.S. manufacturer, there is no existing remedy in U.S. law to address that harmful activity. On top of that, in certain circumstances, they might have standing under our trade laws to challenge an action by a domestic producer here against unfairly traded products from overseas.

This is a real problem, and one that will grow over time. Already several Chinese entities have either entered into, or announced transactions that could pose problems. Tianjin Pipe, a SOE is investing \$1 billion in a Texas facility. What is their cost of capital? Can existing pipe producers compete successfully against them? Anshan Steel is reportedly in negotiations to set up operations here in the U.S. Yes, we want the jobs, but will those investments cost us more jobs at existing facilities? And, where will they source the inputs that they utilize – from existing U.S. suppliers or from their home market, as a way of advancing employment in China at the cost of employment here? Will SOEs establish token presences in the U.S. market to benefit from the legal standing we give to domestic manufacturers, while keeping almost all employment in their protected home market?

There are many ways that disciplines on SOEs can be developed as part of the TPP talks. The best approach would be to ensure that all transactions are based on commercial considerations. Where that is not the case, domestic laws should be updated to ensure that an effective remedy is readily available to the private sector to fight for its interests when a SOE is operating here in our market – not one that depends on dispute resolution within the context of an agreement and that depends on the U.S. government’s willingness to act. Additionally, our trade laws need to provide that SOEs’ rights to block action by injured parties here in the U.S. be severely restricted and that there be a rebuttable presumption that they are acting on their home country’s behalf, not the interests of our workers.

Additional transparency regarding the actions and activities of SOEs operating in our market should also be developed. Some existing legal authority already exists, such as where the entity is listed on a U.S. exchange and under Section 482 of the Internal Revenue Code. These provisions should be used fully to improve the current information gap and enhance enforcement. Other existing authorities, and potentially new ones, such as a screening mechanism, deserve to be discussed. Canada and Australia, for example, have pre-screening mechanisms that have, I am told, worked effectively without putting a chill on foreign investment.

### **Rules of Origin**

Rules of origin are another critical area of the negotiations. The goal of any agreement must to be maximize production and sourcing within the signatory countries and limit the benefits of the agreement to third parties – what I call “leakage.” We should not be entering into trade agreements where substantial amounts of the benefits are available for inputs or products sourced from non-signatory countries.

These rules should not result in further globalization of supply chains. Our goal should be to retain and increase jobs here at home. Recognizing that this is a trade agreement where

others expect to benefit, if anything, we should be seeking to reclaim and alter supply chains, with attendant economic benefits, among the signatories. I want those jobs here – that’s my goal. I recognize that other signatories want to benefit as well. Working together, our goal should be to minimize leakage and, over time, recapture production.

In doing so, we have to be realistic. The existing U.S. tariff on autos, for example, is 2.5%. Increasing the cost for a producer over that amount, in terms of demanding changes in the supply chain, will not result in immediate job gains. But, we should examine ways to incent producers to alter their activities so that we increase employment. A staged increase in the percentage of originating product covered by the rules is one approach worth considering that recognizes the investment patterns and time horizon of producers. Other ideas should be examined as well.

Most important, just because we’ve done it a certain way in the past doesn’t mean that it’s the right thing to do. Rules of origin need to be carefully crafted. Offshoring and outsourcing are critical concerns and trade agreements should improve our workers’ economic future, rather than undermine it.

### **Workers’ Rights**

Workers’ rights should not be a partisan or an ideological issue. The fair and proper functioning of free markets must include free labor markets as well, where workers can exercise rights – including the right to organize and bargain collectively -- enabling them to maximize their share of the pie, and join the middle class. Rising standards-of-living, fueled by enhanced labor rights, will help build stable and growing economies and increase economic opportunity for our companies as well. It’s a synergistic “win-win” opportunity for all. That’s clear from today’s economic challenges faced by the U.S. and countries around the globe where demand is lacking, because incomes are stagnant or falling and unemployment is unacceptably high.

The labor standards in the so-called May 10 framework need to be strengthened to address continuing problems and must be easily accessible to ensure that an enforcement climate exists that maximizes private sector voluntary compliance. The labor rights commitments must be clearly delineated to avoid ambiguity in interpretation or the inadequate compliance efforts that can arise from vague standards. In addition, adequate resources and infrastructure need to be associated with any agreement, especially with regard to countries like Vietnam, to facilitate effective implementation of the agreement’s provisions.

## **Additional TPP Participants**

Three new countries – Japan, Canada and Mexico – have indicated an interest in joining the TPP. TPP, as originally envisioned, was to include a “docking” clause that would allow for new entrants to join the agreement. How this clause is drafted, and the process for accepting new entrants, is of vital importance to the U.S.

Japan presents a unique challenge. Japan has one of the more closed markets in the world with a combination of Keiretsu business relationships and protectionist policies that limit market opportunities for others. While much of the focus, in terms of trade policy, has been on China in recent years, Japan continues many of its policies that disadvantage its trading partners.

Japan is a confident and competent competitor with world class producers. In autos, technology, and other sectors, it has proven its ability to succeed in world markets. Our bilateral trade deficit in autos and auto parts is testimony to its success and, also, the closed nature of its markets.

Any potential “docking” of new entrants should require upfront and staged commitments that ensure that the benefits of their eventual inclusion will actually inure to the benefit of our people. Since the early 1980s, America has faced challenges vis-à-vis trade with Japan that has had to be managed with tools ranging from the Market Oriented Sector Specific (MOSS) talks to voluntary restraint agreements. Further opening our market, without preliminary market-opening efforts by the Japanese will undermine our economic interests. We need actual proof that access to the Japanese market will yield identifiable and substantial benefits, not open-ended promises.

Challenges will also come if Canada and Mexico are included in any agreement. We have already seen the dispersion of supply chains in many sectors to these countries that were accelerated and deepened by NAFTA. We need a comprehensive review of the issues that will arise from the potential inclusion of these two countries. While the Obama Administration has issued Federal Register notices requesting comments on the inclusion of these three countries in the TPP, the submission date of January 13 does not leave much time for analysis. This Committee and Congress should carefully examine these issues.

## **Sequencing of Commitments and Enforcement**

There are rumors of the TPP providing for “staged commitments” whereby certain countries would have time to transition to full adoption and recognition of the disciplines and provisions of any agreement. My concern is not with regard to normal staging requirements, for example, the treatment of sensitive products, but with broader issues. That is a highly risky

recipe that, as evidenced by China's failed track record of compliance with its WTO accession commitments, could seriously jeopardize jobs and production in this country. While the Administration has ramped up its enforcement activities, by the time action occurs, substantial injury may have already occurred. And, we do not know what the enforcement approach will be of future administrations.

The staging of commitments needs to be eliminated or severely limited. And, if staging is allowed, there needs to be an enforcement regime that provides for automatic responses for failure to fully and faithfully implement the commitments. These approaches need to be included in the core text of any agreement with an expedited and mandatory monitoring and enforcement system. We shouldn't have to wait, for example, the ten years it has taken our government to simply counternotify on China's subsidies – leaving the underlying subsidies in place and still costing us jobs and production.

This is not a novel concept. Prior agreements have included "snap-back" provisions. And, the concept of reciprocal market access needs to be fully imbedded in the enforcement regime. Our producers should not have to accept enhanced access here at home for their competitors while being deprived of similar access to their markets. That requires not only attention to tariff barriers, but the vast labyrinth of non-tariff barriers maintained or erected by other countries.

### **Transparency and Enforcement**

Transparency is an issue in two respects: First, as it relates to the actual negotiations themselves. Second, as it relates to the activities and actions of our trading partners.

As I noted earlier, the level of engagement by the Administration with cleared advisors and stakeholders deserves recognition. The question, however, is what results from the engagement in terms of measurable progress on the texts that have been, and are to be tabled. In addition, the complexity of the agreement and the level of public interest in our nation's trade policies demands that there be greater transparency overall. The Administration should expand its engagement to other parties and share proposals and approaches so as to maximize input. Public scrutiny and participation can only strengthen the outcome.

In terms of transparency regarding the operation of any agreement, it is one thing to negotiate new disciplines and standards, but it is quite another to ensure that such disciplines, in practice, can be enforced. Our experience in attempting to enforce commitments China made in its accession to the WTO is that, in opaque societies, it is very difficult to prove that a government favors its SOEs. The parties involved have every incentive to keep such favoritism secret.

If we can't see into the true relationship between SOEs and government ministries how will we know when governments have their hand on the scale and fail to provide fair opportunities for

US firms? How will we know when an SOE investment abroad is supported at non-commercial terms or motivated by other than commercial objectives?

In a sense, we need to work backward from the enforcement perspective and ask, is there sufficient transparency afforded by our trade agreement to ensure that our legal teams can develop the proof needed to prevail in a dispute settlement proceeding when necessary?

### **Conclusion**

Mr. Chairman. Despite the length of my testimony, it only begins to scratch the surface of the issues and concerns that must be addressed as part of any TPP negotiations. Issues like access to intellectual property rights and access to medicines, regulations on a wide range of important issues, the digital economy and many, many other issues are either on the table directly, or impacted by the potential agreement. And other issues, such as currency manipulation, should be included.

I welcome the opportunity to work with the Members of the Committee and your able staff as the consideration of the TPP continues.

Thank you.