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USTR TABLES TPP LABOR PROPOSAL THAT GOES BEYOND MAY 10 TEMPLATE

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The complete labor proposal tabled by the Office of the U.S. Trade Representative in the Trans-Pacific Partnership (TPP) negotiations late last month has aroused the ire of congressional Republicans, who object to the fact that it goes beyond the labor provisions included in the so-called May 10, 2007, template. The proposal, which remains confidential, does not alter the fundamental standards contained in the May 10 template, according to informed sources. For instance, it would still require countries to adopt, maintain and enforce in their laws and practices the rights outlined in the 1998 International Labor Organization (ILO) Declaration on the Fundamental Principles and Rights at Work, not the core ILO conventions. But the TPP proposal lays out in greater detail what countries must do in order to uphold these rights, and also includes new details on other labor issues, such as how TPP countries should handle complaints about labor rights violations submitted by the public, sources said. For instance, it specifies that in order to uphold the 1998 Declaration, TPP countries should take measures to reduce trade in products made through forced or child labor. The proposal also clarifies that TPP countries must apply their national labor laws in export processing zones and free trade zones, sources said. U.S. labor sources confirmed that, in that sense, the proposal does go beyond the May 10 template, but argued that the Republican reaction is overblown because it does not represent a dramatic shift.

One labor source called the proposal a "move in the right direction," but said it essentially contains the same May 10 standard, plus some "improvements and clarifications." Moreover, labor sources argued that the proposal does not meet all of their demands. For instance, it keeps intact a footnote included in labor chapters of U.S. bilateral FTAs based on the May 10 template, which the AFL-CIO, among others, had urged USTR to remove in future trade deals. That footnote states that the obligations on fundamental labor rights only relate to the 1998 Declaration. The purpose of the footnote is to clarify that these obligations do not extend to upholding the ILO's core conventions themselves, many of which the United States has not ratified. In that way, it limits the scope of labor obligations. In addition to stipulating that labor laws had to reflect the 1998 declaration, the May 10 template for the first time made labor rights obligations fully enforceable and subject to the same dispute settlement provisions as commercial obligations. This template was applied to the labor chapters of U.S. bilateral trade deals with Peru, Panama, Colombia and South Korea. Without directly referring to the TPP proposal, Republicans highlighted their objections in a Dec. 21 letter to U.S. Trade Representative Ron Kirk. That letter was written after they had discussed the USTR proposal repeatedly with Kirk, sources said. The letter argues that any effort to expand the scope of labor obligations in the TPP beyond the May 10 template would "seriously undermine support for the TPP and jeopardize congressional approval of the agreement." They also criticized the new TPP labor proposal as possibly delaying the TPP negotiations, making other countries less willing to offer significant market access concessions for U.S. exporters and further opening up the United States to dispute settlement challenges from foreign countries over labor obligations. The letter was signed by House Ways and Means Committee Chairman Dave Camp (R-MI); Rep. Kevin Brady (R-TX), who chairs the subcommittee on trade; Finance Committee Ranking Member Orrin Hatch (R-UT); and Sen. John Thune (R-SD), the ranking member on the Finance trade subcommittee. A congressional source said there had been a number of discussions between Republican members of Congress and USTR Kirk when the complete TPP proposal was first unveiled, but that USTR did not heed members' demands to scale it back to reflect the May 10 template. A USTR spokeswoman, who declined to comment on the details of the proposal, confirmed that USTR shared the proposal with cleared advisors last month and then received comments before Christmas. USTR then tabled its final labor proposal just before the end of the year, building on an initial proposal tabled last fall, she

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said. The partial labor proposal tabled by the United States in late October left open the core labor rights issues (Inside U.S. Trade, Nov. 4). With respect to complaints about labor rights violations, the TPP proposal lays out in more detail the process for handling them and sets deadlines for doing so, sources said. By contrast, the U.S.-Peru free trade agreement, to which the May 10 template was applied, only states that each party's contact point for labor issues shall provide for the submission, receipt and consideration of communications from persons of one signatory country on issues related to the labor chapter and make them available to the other party. That FTA also states that each party shall review such communications in accordance with domestic procedures. Unions in countries participating in the TPP negotiations have pushed to strengthen those provisions in a model labor chapter they developed for TPP (Inside U.S. Trade, Nov. 4). For instance, they wanted language stating that the contact point should be required to accept a complaint relevant to any matter under the labor chapter if it meets certain requirements, such as clearly identifying the person filing it, or containing statements that, if substantiated, would constitute a failure to comply with a party's obligations. The new proposal also appears to create a new link between investment and sensitivity to labor rights. Such a link is already established in the Peru FTA between investment and the environment, but not for labor rights, sources said. For instance, Article 10.11 of the Peru FTA investment chapter states that nothing in that chapter shall be construed to prevent a party from "adopting, maintaining, or enforcing any measure otherwise consistent" with the chapter "that it considers appropriate to ensure that investment activity in its territory is undertaken in a manner sensitive to environmental concerns." One source hinted that the new proposal expands the scope of this article to include measures undertaken that a party considers to be appropriate to ensure that investment activity is sensitive to labor rights. Deputy National Security Advisor for International Economic Affairs Michael Froman this week highlighted the importance of including a strong labor rights chapter in a final TPP deal. He said that having a "high standard labor agreement" is part of having a high-standard TPP deal. At the same time, he stressed that TPP benefits that will help U.S. workers go far beyond the contents of the labor chapter of a final TPP deal. According to Froman, the administration is "trying to take a holistic and broad-based approach" to having strong labor provisions in TPP. "How one deals with state-owned enterprises around the world, how one deals with other practices that threatens manufacturing in the United States and elsewhere is also part of enhancing the protection of workers in the United States," he said during a Jan. 4 speech at the Center for Strategic and International Studies (CSIS). Froman also hailed what he called the "unprecedented" collaboration between the administration, Congress and stakeholders on TPP issues. "I'm convinced that this enhanced collaboration and cooperation with Congress and stakeholders not only has improved the quality of the agreement that we are trying to negotiate, but will yield better outcomes down the road," he said. Some congressional Republicans, on the other hand, feel that consultations on labor have not been robust enough. The United States **Council for International Business** (USCIB) also warned USTR against going beyond the May 10 template in a TPP labor proposal, according to a Dec. 23 letter to Kirk. Additional or more detailed labor provisions would mean the United States was "trying to dictate and micro-manage the labor laws of other countries, which is neither warranted nor appropriate," it wrote. USCIB also urged USTR to change the language governing the public submission process for labor complaints, although in a way that differs from the May 10 template. In particular, it urged USTR to clarify in the TPP labor chapter that complaints, in order to be accepted by a government contact, must cover labor matters that affect trade and investment. That stipulation is not included in the Peru FTA, or other bilateral trade deals to which the May 10 template was applied. One business source said this demand stems from the fact that the United States is now investigating a complaint that Peru has violated its FTA obligations in a dispute with domestic tax collectors even though, according to USCIB, it does not affect trade and investment between the two signatories. This source did acknowledge that the entire structure of the Peru FTA labor chapter, and the labor chapters of other agreements to which the May 10 template was applied, is premised on the notion that all labor complaints deal with failure to enforce statutes, regulations and practices in a manner affecting trade and investment between the signatories. Nevertheless, the USCIB wants an additional safeguard by expressly highlighting the trade and investment link, a source said. Both the USCIB letter and the congressional Republican letter emphasize that the real task is to help countries develop better enforcement of existing labor laws and core international standards. A USCIB source said the real issue is not the standard that the laws must reflect, but countries' implementation of those laws, adding that many countries need help to consistently and effectively enforce their laws.

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