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Testimony before the U.S.-China Economic and Security Review Commission
Hearing on "U.S. trade policy and impact of China's distortions on U.S. jobs, growth, and innovation"
April 14, 2022

Thank you for the opportunity to testify today. The Commission is performing a vital service by elevating public attention to challenges that have a direct impact on the lives of every American. Some experience the problem as consumers facing shortages of key goods and/or price spikes, including the shock of the United States being unable to make or get critical goods needed to keep their families safe and well during the peak of the COVID crisis. Some experience the problem as workers in communities across the country facing the absence of 70,000 manufacturing facilities that once supported middle-class lives for the large portion of working Americans who do not have college degrees as well as supporting the tax base for communities 'schools, public safety services, hospitals and more. Others focus on the hollowing out of U.S. production capacity and the weakening of U.S. economic resilience as a national security threat.

All of these perspectives are based on specific outcomes that are undeniably linked to policies and practices that have left the United States largely dependent on other countries in general and overly reliant on China in particular for access to the most essential goods. Decades of hyperglobalization as implemented by a particular model of trade agreements and trade policies have undermined our independence and resilience, as all Americans were forced to recognize during the peak of the COVID-19 crisis. With our economy organized to serve a production model focused almost exclusively on "efficiency" and reliant on long, brittle global supply chains and production of many goods in too few countries – often by too few firms after decades of global consolidation – today even the world's wealthiest countries find themselves vulnerable to untenable risks.

My testimony focuses on five main points:

1. **We have more than ample evidence that the hyperglobalization implemented by past U.S. "free trade" agreements, the World Trade Organization (WTO) and various U.S. trade and foreign investment policies during the last three decades have not delivered the promised gains but rather hollowed out U.S. manufacturing capacity and the related innovation it fostered, cost millions of well-paying jobs, subjected Americans to the perils of brittle, unreliable supply chains for even the most essential goods and weakened our national security.** The "stress test" of the COVID-19 pandemic has made most Americans, not only those who lost their jobs to the past U.S. trade model, aware of the untenable economic, public health and security vulnerabilities this model poses.

2. **Agreements like the Trans-Pacific Partnership (TPP), which was ever-so-slightly modified via suspension of a few provisions and renamed the Comprehensive Progress TPP (CPTPP), represent the failed model that has gotten us into this mess.** In numerous ways, TPP rules of origin (ROO), investment, procurement and other terms, among others, would greatly benefit

China without China joining. Given that and the improbability China would agree to various CPTPP terms, its request to join seems designed as clever geopolitical trolling rather than sincere accession interest.

3. **The premises and provisions of the TPP approach must be altogether replaced with rules designed to promote, not undermine, employment, resilient supply chain, domestic economic security and infrastructure, climate, public health and other goals**. Rebuilding U.S. economic security and resilient supply chains will require both rebuilding domestic production and diversifying the sourcing of our imports. Simply moving from overreliance on China to overreliance on Vietnam or other distant and low-wage countries is not a solution. And, to meet these goals in a manner that is consistent with the pro-worker, pro-equity, pro-community well-being goals of President Biden's worker-centered trade policy, we must also consider the rules and standards that will elevate workers' rights to organize and their wages, communities' health and the environmental incentives needed to save us all from the ravages of climate chaos. This will require truly creative thinking, with regional supply chains based on common values one part of the solution as well as changes to not only trade and investment, but U.S. procurement, tax, and other policies.

4. **Instead, the special interests that pushed the TPP and continue to flack for the old model are trying to rebrand and rename the old approach of locking in terms in "trade pacts" that further special interest agendas often unrelated to trade while promoting trade under terms that further weaken U.S. production capacity, drive down wages and undermine critical environmental protections.** This includes pushing for "digital trade" initiatives that promote job offshoring, undermine labor rights and consumer protections, and contradict the Biden administration anti-monopoly and pro-civil rights agendas. Another feature of this effort is fear mongering about the completion of the Regional Comprehensive Economic Partnership (RCEP) as if it were a threat to U.S. economic interests led by China versus an Association of Southeast Asian Nations (ASEAN)-led largely symbolic ROO-simplifying project limited largely to trade in goods (although not key agricultural goods) among countries that almost all already had duty-free trade among themselves. And the usual special interests and their allies are recycling the same arguments – from "either we write the rules or China does" to geopolitical claims to trade-flow arguments – that they have been using for decades and have proved to be entirely wrong.

5. **The TPP's lessons of how not to organize international commercial rules, a focus on goals first and rules second and a transparent and inclusive process will be essential if the prospective Indo-Pacific Economic Framework (IPEF) talks are to be successful.**

Critics of the past model of hyperglobalization and its implementing agreements warned in advance of the inherent, structural problems that have caused our current mess. The special interests that reaped windfall profits from the old model and the think tanks and policymakers that they fund promised us the old model would make us safer and richer and do the same for any and all countries involved. And today, as the evidence from several decades disproves those claims, they continue to try to repackage the same-old, same-old policies that benefit the few under new branding and names and the same claims of broad wonders for all. The Commission is doing a public service in exploring what has not worked and how we can replace the failed model with new policies explicitly designed to deliver resilient supply chains, support good jobs and wages, and enhance our economic and national security.

I. **We have more than ample evidence that the hyperglobalization implemented by past U.S. "free trade" agreements, the WTO and various U.S. trade and foreign investment policies during the last three decades have not delivered the promised gains but rather hollowed out U.S. manufacturing capacity, cost millions of well-paying jobs, subjected Americans to the perils of brittle, unreliable supply chains for essential goods and weakened our national security.**

The current regime of hyperglobalization, fueled by decades of corporate-rigged trade policies, has encouraged corporations to move production overseas in a never-ending race to exploit the cheapest labor and lowest environmental standards and to concentrate production with too few companies producing in too few locations. The mass outsourcing of U.S. industrial capacity and loss of 70,000 U.S. manufacturing facilities since the mid-1990s and the intensive global concentration of production with little redundancy in many sectors now leaves the United States unable to make or reliably acquire critical medicines, medical goods and personal protective equipment that we needed to combat a pandemic; microchips needed to produce a multiplicity of goods on which we all rely daily from autos to communications equipment; particular grades and shapes of steel and other materials needed for our national infrastructure and national security and even replacement parts for weapons systems.

How did this happen? For decades, our economy and the rules of the global economy have been organized to serve a production model focused almost exclusively on "efficiency" and reliant on long, brittle global supply chains and production of many goods in too few countries. Hundreds of corporate representatives who serve as official U.S. trade advisors pushed for trade and tax terms that rewarded relocating production overseas. Corporate-rigged trade rules and investment policies such as foreign investor protections and their investor-state dispute settlement enforcement made it easier and less risky to move production overseas to pay workers less. A lack of disciplines against currency misalignments undermined domestic firms trying to compete with imports. The lack of competition policy enforcement thanks to the misguided "consumer welfare" standard facilitated a merger mania that resulted in the elimination of "redundant" production facilities as a few dominant firms in key sectors sought to maximize "efficiency" by relying on thin, globalized supply chains with final production concentrated in a few locations.

The result is that the United States is extremely reliant on other countries to provide essential goods, a reality underscored by the United States maintaining the world's largest trade deficit year after year. Overreliance on imports, with increasingly some critical goods now mainly made in one or two countries, poses fundamental risks. When workers in a country on which much of the world is relying for critical goods fall ill, governments prioritize their own peoples 'needs before exporting goods away or goods or transportation systems get snarled, a worldwide shortage can quickly develop. Starting in early 2020, the United States experienced this critical supply chain vulnerability with respect to masks, gloves, medicine, and other goods necessary to combat COVID-19 and now the world is focused on shortages in microchips, which is reducing automobile production and more.

In the face of such shortages, the hyperglobalized production model makes it difficult to quickly increase production elsewhere. Long, thin globalized supply chains mean there often are not redundant sources for inputs, parts, and components needed to scale up domestic production during a crisis. And, with respect to pandemic-related goods, such as medicine, ventilators and more, monopoly patent protections in many trade agreements expose countries to trade sanctions if they produce without approval and licensing by and payment to pharmaceutical and other firms.

As production of key parts and assembly of goods in diverse sectors has become both geographically concentrated and concentrated in fewer companies, when production in a key country, region or company is disrupted – whether by illness in the current instance or natural disaster, war or other calamity – world supplies are affected. Experts have warned about the perils of hyperglobalized supply chains for years. As Barry Lynn's 2005 book "End of the Line" warned:

> "In September 1999, an earthquake devastated much of Taiwan, toppling buildings, knocking out electricity, and killing 2,500 people. Within days, factories as far away as California and Texas began to close. Cut off from their supplies of semiconductor chips, companies like Dell and Hewlett-Packard began to shutter assembly lines and send workers home. A disaster that only a decade earlier would have been mainly local in nature almost cascaded into a grave global crisis. The quake, in an instant, illustrated just how closely connected the world had become and just how radically different are the risks we all now face."[1]

The COVID-19 crisis forced people throughout the United States to recognize a problem previously mainly experienced by those in venues hurt by outsourcing and trade-related job loss: The United States no longer can make many basic goods it needs.

Fall 2020 written testimony[2] to the U.S. International Trade Commission on "COVID-19 Related Goods: The U.S. Industry, Market, Trade, and Supply Chain Challenges" that I submitted on behalf of Public Citizen and recommend the Commission staff review provides:

1. Updated data showing that the U.S. has grown even more dependent on imports from China and the rest of the world for key medical goods during the COVID-19 era as the U.S.-China and U.S.-world deficits in key medical goods increased.

2. Historical data showing the export countries of U.S. imports of critical COVID-19 response goods to demonstrate how the sources of critical goods have substantially shrunk over the last decades.

3. New information about the countries from which the United States imports medicines in 2019 that shows deep U.S. reliance on China and India for many categories of medicines.

Public Citizen's analysis of this data shows why the United States must both increase domestic production and diversify import sources for critical goods in order to better manage what will be an ongoing COVID-19 crisis for some time, and also be better prepared for the next crisis, health, climate-related or otherwise. The COVID-19 crisis has awakened people to the reality that under the current hyperglobalization regime, their governments do not have the means to protect the public interest. The mantra of just-in-time global supply chains maximizing efficiency has crashed into the reality that many governments and people now see: Obsession with efficiency has undermined resilience, reliable access, and public health. As most people understand, in addressing these problems, the choice is not between autarky and hyperglobalization. Rather, changes to trade, investment, procurement, tax, and other policies must be made to ensure that we both have more domestic production capacity for goods we deem essential for public health and security and that we diversify import sources so that if domestic production or that in one country or region is knocked offline, people can still be assured of reliable supplies of critical goods.

II. Agreements like the TPP, which was ever-so-slightly modified via suspension of a few provisions and renamed the CPTPP, represent the failed model that has gotten us into this mess. In numerous ways, TPP rules of origin, investment, procurement and other terms, among others, would greatly benefit China without China joining. Given that and the improbability China would agree to various CPTPP terms, its request to join seems designed as clever geopolitical trolling rather than sincere accession interest.

Especially after policymakers and the public have become unavoidably aware of the extreme vulnerabilities created by the trade agreements of the past decades, it is astonishing that any pine for the TPP, which was the apotheosis of the old model. And at least one of the main arguments these interests used to make in favor of the TPP – that it would "contain" or isolate China – has been sidelined by China's 2021 claim of interest in joining the pact even if most observers consider that prospect remote given China has opposed key CPTPP terms in the context of other agreements and negotiations. Indeed, to date neither Malaysia nor Chile have ratified the CPTPP, which contains almost all of the most extreme terms of the TPP.

Perversely, the few U.S. policymakers and advocates who do mourn the U.S. absence from TPP invariably argue the United States would have been better positioned in our economic and geopolitical competition with China as a TPP member. Yet, in many ways, the TPP rules favored China without China having to join and make any reciprocal commitments. Are those who argue otherwise uninformed about the TPP's actual terms, which were carried into the CPTPP? Or are they cynically making such claims knowing the truth?

For instance, the TPP's rules of origin provided products with up to 65% Chinese content duty-free access to the United States. One such category was auto parts. Thus, under TPP rules, an auto part could have had 65% Chinese content and 35% Vietnamese content and qualify for duty-free entry into the United States. The TPP ROO for automobiles would have allowed a vehicle to have 45% of its value made in Vietnam and 55% in China, and the car would qualify for special TPP duty-free entry into the United States. Because of the actual terms that U.S. negotiators agreed, these benefits accrued for China despite China not being a TPP member.

The TPP also would have granted Buy American procurement preferences to all firms operating in TPP countries, which includes numerous Chinese State Owned Enterprises (SOE) and firms controlled by Chinese sovereign wealth funds. Under the TPP, instead of reinvesting our tax dollars at home to build domestic production capacity, spur manufacturing innovation, and create jobs at home, the TPP would have required the United States to provide Chinese government-owned and -controlled firms as well as Chinese "private sector" firms operating in Vietnam, Singapore, Malaysia and other TPP nations equal access to U.S. government contracts as provided to U.S. firms. This would have occurred on a one-way basis, with China owing no reciprocal access to firms from TPP countries.

As well, the TPP's foreign investor rights would have enhanced China's relative economic might *within* the United States. That is because the TPP granted expansive foreign investor protections to subsidiaries of Chinese firms operating in any TPP country with respect to rights to own and control land, companies and an unlimited array of other assets and property in the United States. The TPP's Investor-State Dispute Settlement (ISDS) regime would have granted new rights to these TPP subsidiaries of Chinese SOEs and other Chinese firms with TPP subsidiaries and U.S. investments to sue the U.S. government before a panel of three corporate lawyers. Under TPP rules, the lawyers would have been empowered to award the corporations unlimited sums to be paid by America's taxpayers, including for the loss of expected future profits. These Chinese corporations need only have convinced the lawyers that a U.S. law or safety regulation violated their TPP rights. These TPP tribunals' decisions were not subject to appeal and the amount that could be awarded had no limit.

Despite the many ways that the actual pact benefitted Chinese firms, investors and the Chinese government, various commercial interests and Obama administration officials consistently made foreign policy claims in favor of the pact. First, trying to paint the TPP as a way for America to write the rules in Asia *so that China does not* is absurd. TPP was never about establishing "American" rules in Asia. It was about imposing rules that would hurt most Americans, but were favored by the 500 official U.S. corporate trade advisors that helped to shape the TPP. And, as the Annex to this testimony shows, with side-by-side charts of claims about TPP that are almost word-for-word identical to claims about granting China Permanent Normal Trade Relations that can be tested against the actual outcomes, the standard arguments have proven false. The same claims were also trotted out to promote a flagging NAFTA and then later Free Trade Agreements.

While U.S. concerns about the implications of China's rising economic power and influence are legitimate, the notion that the establishment – or not – of any specific U.S. trade agreement would control this process is contradicted by the record. For instance, we were warned that unless NAFTA and free trade deals with eight Latin American nations were enacted, China would write the rules and grab our trade in the hemisphere. NAFTA went into effect and in its first 20 years, the U.S. share of goods imported to Mexico dropped from 70% to under 50%, while China's share rose more than 2,600%. After U.S. pacts with eight other Latin American nations were enacted, China's exports to Latin America soared more than 1,280%, from $10.5 billion to more than $145 billion, while the U.S. saw only modest export growth. The U.S. share of Latin America's imported goods <u>fell</u> 36%, while China's share increased 575%.

Moreover, the notion that the TPP would somehow empower Pacific allies to act as a bulwark against Chinese influence was absurd, as are similar claims with respect to the Indo-Pacific Economic Framework enhancing U.S. influence in the region. Many of the TPP nations see China as a critical partner. Indeed, officials from Australia, New Zealand and Malaysia openly stated that if TPP were to become a China-containment project, they would no longer participate in negotiations. For instance, in February 2012, New Zealand Trade Minister Tim Groser stated: "The moment we smelt or sensed that this was an anti-China thing, we'd leave the TPP." Similar sentiments have been expressed about IPEF, even as that project is described for domestic consumption as a counter-China initiative.

Yet the same "national security" arguments are now being forwarded for IPEF that were also made to push the TPP despite being proved false by actual outcomes after they were used to pressure Congress to pass China PNTR. Instead of improving our situation, our national security was significantly weakened by China PNTR, says retired U.S. Brigadier General John Adams. He notes that we are now dependent on countries like China because manufacturing of critical inputs needed for U.S. military weapons systems and vehicles has been offshored there.

The official U.S. ITC study projected that the TPP would further worsen the balance of trade for 36 out of the 55 U.S. agriculture, manufacturing, and services sectors that the ITC selected to feature. This included vehicles, wheat, corn, auto parts, titanium downstream products, chemicals, seafood, textiles and apparel, rice and even financial services. Auto parts would be hard hit with employment losses projected. The ITC estimated that the TPP would have increased the overall U.S. global trade deficit and that even the U.S. services trade balance would have declined as service imports of $7 billion swamped the estimated increase in exports of $4.8 billion and that five of nine U.S. service sectors would have seen declines. The ITC projected a $24 billion dollar increase in the manufacturing trade deficit and a decline in output for U.S. manufacturing/natural resources/energy of $10.8 billion as exports would increase by $15.2 billion and imports would increase by $39.2 billion by 2032.

Meanwhile, the ITC projected tiny U.S. economic growth gains (42.7 billion or 0.15%) and income gains ($57.3 billion or 0.23%) by 2032. In other words, the ITC projected that the United States would be as wealthy on January 1, 2032 with TPP as it would be on February 15, 2032 without the TPP. The ITC's negative projections were especially notable, as the agency has been wildly optimistic in its past trade-pact projections with actual outcomes contrasting with projections not only in degree but in direction.

III. The premises and provisions of the TPP approach must be altogether replaced with rules designed to promote, not undermine, employment, resilient supply chain, domestic economic security and infrastructure, climate, public health and other goals. Rebuilding U.S. economic security and resilient supply chains will require both rebuilding domestic production and diversifying the sourcing of our imports. Simply moving from overreliance on China to over-reliance on Vietnam or other distant and low-wage countries is not a solution. And, to meet these goals in a manner that is consistent with the pro-worker, pro-equity, pro-community well-being goals of President Biden's Worker-Centered Trade Policy, we must also consider the rules and standards that will elevate workers' rights to organize and their wages, communities' health and the environmental incentives needed to save us all from the ravages of climate chaos. This will require truly creative thinking, with regional supply chains based on common values one part of the solution as well as changes to not only trade and investment, but U.S. procurement, tax, and other policies.

Rebuilding U.S. economic security, manufacturing and resilient supply chains will require the use of all of the tools available, from taxation to government procurement to trade to the "industrial policy" mechanisms employed by Germany and other nations relating to government investment in research, training, and incentivizing development of local supply chains. Two existing, underutilized domestic policy tools can be – and could have previously been - improved and harnessed quickly to promote greater domestic demand. First is tightening Buy American and other domestic procurement criteria for all U.S. government agencies. Second, and related, is the use of the Defense Production Act for the federal government to issue multi-year contracts to produce significant volumes of essential goods with contracts made with multiple firms per good so as to incentivize investment in equipment and hiring, in a way that invests in creating domestic competitors in sector now dominated by imports.

With respect to domestic procurement preferences, today, "Buy American" really means that goods and firms from 60 countries[3] obtain the same access to U.S. federal government contracts as U.S. goods and firms. That massive loophole is opened via domestic regulations that implement terms in U.S. trade agreements that undermine domestic procurement preferences.[4] The relevant statute does not require a president to waive domestic preferences for trade-pact partners, but authorizes discretion to do so and also explicitly authorizes presidents to alter the waiver list.[5] The Trade Agreements Act (TAA) Buy American Act (BAA) waivers should be reversed, which can be achieved by executive action, and the underlying terms in trade pacts renegotiated. In such renegotiation, the U.S. states[6] that are also forbidden to apply preferences for domestic firms must also be freed from obligations that result in the outsourcing of tax revenues, rather than their reinvestment in building domestic capacity.

Even without taking those steps, massive leakage in the Buy American preference program can be remedied. The U.S. government has discretion with respect to how it implements the trade-agreement waiver. Today, all procurements above a set threshold, which is now $182,000 for goods under WTO rules, evade domestic content rules! This is not required in the WTO agreements or the U.S. implementing legislation for the pact. It is agency discretion that now results in a "substantial transformation" rule of origin being applied, instead of requiring a set percentage of domestic content. Today the domestic content requirement is a meagre 55%, but the Biden administration just issued a new, more stringent standard to be phased in over the next few years. Yet, that improvement will be meaningless unless this practice is changed. Otherwise, as long as some assembly or other processing occurs in a TAA-waiver country that transforms a good, it qualifies for Buy American privileges regardless of it not in any way meeting the improved U.S. domestic content standard. The current way the policy is enforced, goods valued above the threshold price can source inputs from anywhere, including China and other countries not on the TAA waiver list, assemble in U.S. territory or in another of the 60 nations and compete on equal terms with high U.S.-content goods. *Stunningly, U.S. end products also are excluded from meeting the 55% domestic content component test*. That means for procurements above the $182,000 for goods for the WTO's GPA, a product assembled in the United States of 100% foreign content is considered a U.S. end product. Given many, many contracts are above $182,000, zero domestic content rules will apply unless this practice is ended.

Another eviscerating loophole is the commercially available off-the-shelf (COTS) waiver of domestic content rules. This allows firms to import tens of billions in components and parts, perform basic assembly operations and sell goods to the federal government as "domestic end products" with BAA preferences. What is considered COTS now includes military systems and aircraft, not the copier paper and paperclips one might imagine. Additionally, we support the setting of an across-the-board standard and stringent reviews by the new Buy American office with respect to "public interest" waivers, which are another exception to the Buy American requirement that boils down to a price differential standard. Currently, some agencies only apply a 6% price preference for domestic goods.

Perhaps if our only goal is cost efficiency, these exceptions-that-gut-the-rule practices made sense. But in the context of the COVID-19 experience, and the growing national interest in rebuilding our own supply chains, clearly there is a greater value in reliable supply. Finally, even if the notion of offshoring our tax dollars in exchange for opportunities for individual U.S. firms to have better access to contracts from other nations was a good one, the way it is done in trade pacts is a losing proposition for the United States. A recent GAO report found that the United States opened twice as much procurement to foreign firms as the next five largest AGP signatories *combined* (European Union, Japan, South Korea, Norway and Canada).[7]

With respect to creating and maintaining more diverse import sources, the trade flow data following the termination of the General Agreement on Tariffs and Trade Multi Fibre Arrangement in the 1990s has made clear simply offering lower tariffs will not maintain geographically diverse supply chains. Even as textiles and apparel from China, Vietnam and other nations faced tariffs in accessing the U.S. and other markets, as the quota regime that managed worldwide market distribution phased out, an enormous share of production concentrated in those nations. Caribbean, Central American, African and Andean nations having duty-free access into the United States for such goods under various preference programs and trade pacts did not counteract the rapid loss of production capacity in those nations and the concentration of production in China and a few other nations. Given this was the case in the context of a sector with relatively high Most Favored Nation tariffs, there is little prospect that, absent some sort of managed trade regime guaranteeing market access for more countries or creating regional mechanisms, production of essential goods will become more geographically dispersed.

Finally, with respect to creating a more reliable supply of pharmaceuticals and Active Pharmaceutical Ingredients (API), a significant problem is the lack of merger and competition policy and a lack of mandatory reporting by producers on the sources of API and how many facilities they have making finished medicines and APIs. The lack of information about API sources or the sources of finished medicine production is stunning. The closest proximation is information on the geographic location of production facilities that the FDA has inspected, yet that data provides no insight into the volume or types of medicines or API being produced. And, with so many finished medicines being produced overseas, it is unclear that all API or finished medicines are even coming from FDA approved facilities. This is a longstanding problem on which the pandemic has shone a spotlight.

A decade before the COVID-19 crisis, the National Institutes of Health was already reporting growing shortages of commonly used medicines.[8] The Food and Drug Administration was reporting shortages in more than 100 essential drugs at the end of 2019, well before COVID-19 hit.[8] When workers in China, India and Italy became ill with COVID-19 and factories shut down, worldwide shortages escalated quickly as China produces both a large amount of finished drugs and API, India produces many generic medicines sold worldwide and Italy produces a significant share of antibiotics – even as the exact amounts remain highly contested with the best informed sources suggesting most API and finished drugs are coming from China and India and others contesting this conclusion. As reported in the New York Times:“ Out of 21 antibiotics that would be critical for treating secondary infections in COVID-19 patients, 18 antibiotics have greater than 80% of their supply coming out of either China, India or Italy — all places that have had production disruptions,” said University of Minnesota's College of Pharmacy professor Stephen Schondelmeyer, whose work with the Resilient Drug Supply Project involves trying to map supply chains for key medicines used in the United States.[9]

Part of the issue is that pharmaceutical firms have engaged in a merger mania,[10] which has now also hit the generic sector,[10] such that relatively few large firms dominate many categories of medicines. In the course of rolling up the competition, they shut down the production capacity of the firms they acquired. Also in the name of efficiency, many do not produce more than previous years' sales show will be used. Thus, when health crises emerge, there are no stockpiles in drugmakers' warehouses nor capacity to quickly gear up larger volumes of medicines. This problem extends beyond trade pact rules, such as their patent terms, that could limit countries' abilities to quickly produce key medicines.

IV. The special interests that pushed the TPP and continue to flack for the old model are trying to rebrand and rename the old approach of locking in terms in "trade pacts" that further special interest agenda often unrelated to trade while promoting trade under terms that further weaken U.S. production capacity drive down wages and undermine critical environmental protections. This includes pushing for "digital trade" initiatives that promote job offshoring, undermine labor rights and consumer protections, and contradict the Biden administration anti-monopoly and pro-civil rights agendas. Another feature of this effort is fear mongering about the completion of the Regional Comprehensive Economic Partnership as if it were a threat to U.S. economic interests led by China versus an ASEAN-led largely symbolic ROO-simplifying project limited largely to trade in goods (although not key agricultural goods) among countries that almost all already had duty-free trade among themselves. And the usual special interests and their allies are recycling the same arguments – from "either we write the rules or China does" to geopolitical claims to trade-flow arguments – that they have been using for decades and have proved to be entirely wrong.

The January 2022 entry into force of the RCEP brought another round of commentary about how China was moving on "its" regional pact, the biggest trade deal ever. The implication was that the United States was being left on the sidelines. Yet, the RCEP is mainly a brand, rather than a meaningful trade agreement and it certainly is not an economic threat. And RCEP is not "China writing the rules." RCEP is not a Chinese initiative, but rather came from the Association of Southeast Asian Nations (ASEAN) bloc, which includes Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam. The RCEP final text, which connects the ten ASEAN nations with Australia, China, Japan, New Zealand, and South Korea, is based on ASEAN terms.

Amidst all the hype about the pact covering 30% of the global economy and 30% of the global population and being the biggest trade pact ever, there has been little attention to the pact's limited terms or impact.

To start with, all of the countries involved already had free trade agreements among themselves except for China-Korea-Japan. India started RCEP negotiations, but withdrew. India's exit is one reason the pact is projected to have little effect on the global or U.S. economy. Optimistic projections are for 2/100s of a percent in growth gains over the twenty years during which the pact's Japan-China-Korea tariff cuts go into effect.

And, unlike the TPP, a deal that had 30 chapters with only six actually focused on trade, the RCEP is about trade, although with limits. RCEP's actual trade terms are limited in that it does not cover all goods or zero out tariffs on the goods it covers. It also excludes key agricultural goods.

RCEP does not include the controversial Investor-State Dispute Settlement (ISDS) regime. RCEP does not set uniform product standards. RCEP does not have a procurement chapter. RCEP does not address state-owned enterprises. Its terms on intellectual property restate existing WTO terms while its rules on "digital trade" provide broad exceptions to allow countries to set their own domestic policies. RCEP's coverage of the service sector is not comprehensive.

Meanwhile, Indo-Pacific Economic Framework negotiations are being discussed with Biden administration officials seeking participation from various countries. The same interests that pushed the TPP hope the IPEF process might lead to the establishment of what they call "digital trade" rules as the tip of the spear to continue the old model of limiting domestic policy space via trade pact.

As the public and policymakers have become increasingly aware of the threats posed by the mega-platforms to the principle and practice of democracy and a fair and sustainable economy and livelihoods worldwide, governments worldwide have begun to develop digital governance policies. As a counter strategy, Big Tech lobbyists are simultaneously operating in numerous "trade" fora to try to quietly lock in enforceable constraints on nations' efforts to establish digital policy rules that ensure labor rights for gig economy workers, protect privacy and other rights online, break up Big Tech firms or otherwise counter the mega-platforms' expansive power over our societies and economies.

Effectively, by misbranding an attack against the very notion of digital governance as "e-commerce" or "digital trade" policy, Big Tech interests seek to quietly excavate the digital governance policy space out from under Congress and various U.S. agencies and the governments of countries worldwide. Initiatives labeled as "digital trade" form a stealthy new front in the *ongoing power struggle* between a relatively few major digital mega-platforms and the rest of us. The IPEF must not become a platform to contradict the Biden administration's July 2019 Executive Order on Competition nor its worker-centered trade policy. At issue is whether Big Tech interests can hijack the IPEF process to gut existing and stop future domestic policies that constrain digital entities' monopolistic size or anti-competitive market power, that protect privacy and individual rights over personal data, that fight algorithm discrimination, that hold platforms liable for dangerous products and violent incitement, and that protect gig workers' labor rights and safety. The "digital trade" rules now being pushed by Big Tech threaten many of these goals.

While Biden administration officials have said that the IPEF will not include market access, they have not been explicit in confirming whether that means no service sector market access terms. It is critical that is also excluded from the negotiations. Terms in the WTO-proximate Joint Statement Initiative on E-Commerce exploit service sector market access to promote further consolidation of corporate power and protect Big Tech monopolies by banning domestic policies that limit size or services offered by one entity or that require break-ups. As corporations exert increasing control over important social functions, governments must be able to combat anti-competitive practices, place limits upon corporate mergers and break up monopolies where warranted. But terms being pushed by tech firms include provisions that Wall Street firms inserted into past trade pacts that forbid countries from establishing or maintaining policies that limit an entity's size, limit the range of services offered by an entity, limit the legal structures under which they may be required to operate, or otherwise restrict the regulation of or break-up of monopolies. These terms have nothing to do with trade: While being labeled as "market access guarantees" in past trade pact texts, these terms really are anti anti-trust measures.

IPEF must also exclude the sorts of "digital trade" rules found in several past pacts that hurt working people by designating gig workers 'labor rights and other public interest safeguards to be illegal trade barriers that must be eliminated. The "digital trade" framework that was included in the TPP reinforces the Original Sin of the "digital economy." That is the notion that leading players in transportation, hospitality, retail, education, healthcare, logistics and other industries that provide services online are something altogether different than their brick-and-mortar counterparts and are excluded from domestic policies that generally apply to protect the rights of workers and consumers. Thus, the "digital trade" rules that Big Tech seeks characterize as illegal "trade barriers" requirements that large ride-sharing companies meet driver hours-of-service-rules or contribute to drivers social security, or requirements that buildings of short stay guest units booked online must meet worker and consumer safety rules. One trick is to use trade terminology and concepts, such as "non-discrimination." A common provision forbids domestic digital policies that may have a "discriminatory impact." That captures neutral policies that have a bigger impact on firms with dominant market positions. An example is the Korean law to end anti-competitive App Store practices, which is similar to U.S. House and Senate proposals with bipartisan support. Apple and Google pushed USTR to attack the law as "discriminatory" because it will affect them more based on their past monopoly practices. (Thankfully USTR did not do so.) Similarly, labor and other policies are characterized as forbidden limits on "market access" if the right to operate is conditioned on meeting such laws. This is not a hypothetical problem. Already, Uber has used trade-pact rules to try to escape registration as a transportation company in Colombia and compliance with applicable rules.

IPEF cannot include rules Big Tech interests seek to hide the discriminatory effect of source code and algorithms through "trade secrets" protections and thwart investigations of intrusive surveillance practices and violent incitement online. Governments increasingly are turning to private corporations for aid with “predictive policing” and other surveillance, law enforcement and security functions. And, every-day decisions made by artificial intelligence components of online platforms affect which individuals and communities access public and private services ranging from home loans to job postings to medical treatments – a sort of high-tech redlining. Making governments guarantee trade secrets-plus protection for code and algorithms would limit governments to accessing such information only to instances of *known* violations of law. Investigators, congressional committees and scholars would be barred from reviewing code or related data to identify racist, sexist and other discriminatory practices deserving of scrutiny, criticism and correction. And some of the few pacts with “digital trade” rules have required governments to enact liability shields for online entities that allow them to evade responsibility for discriminatory conduct, online racial incitement, and other civil rights violations.

IPEF must not undermine consumer privacy and data security by prohibiting limits on data flows or location of computing facilities. Peoples ’every move on the internet and via cell phone is increasingly tracked, stored, bought and sold — as are interactions with the growing “internet of things.” Many people may not even be aware nor may they have a feasible way to opt out. Trade pacts should not restrict governments from acting on the public’s behalf in establishing rules regarding under what conditions individuals ’personal data may be collected, where it can be processed or transmitted, and how or where it is stored. Yet provisions that guarantee the platforms “free flow” of data without constraint with respect to where data is processed, stored or transmitted are a core aspect of the Big Tech “digital trade” platform. In contrast, the RECP includes broad exceptions that allow signatory countries to condition how data is handled to meet privacy and other interests.

IPEF must not shield Big Tech firms from corporate accountability via imposing content liability waivers. How to address the ways in which certain online business practices, algorithms and moderation stoke racial and ethnic violence and contribute to other anti-social behavior is a hotly debated topic. While solutions may not yet be widely agreed upon, what is absolutely true is that this rapidly evolving area of public policy must not be restrained via trade agreements. Further, policies such as Section 230 of the Communications Decency Act, which was created to protect free speech online, have been stretched to allow massive corporations to evade liability for dangerous and deadly goods sold online. Using trade pacts to require countries to enact policies that insulate online sale platforms from product liability is unacceptable. Yet even as the U.S. Congress grapples with whether Section 230 should be altered and how, U.S. trade negotiators have worked to export the policy by obliging other countries to provide liability shields to online entities.

Annex:
Foreign Policy Arguments Made for China PNTR Recycled for TPP and Now Being Raised With Respect to the IPEF Versus Outcomes

The demise of the TPP was decried as a *foreign policy* disaster by its backers both at the time and to this day. This is especially notable because for years the agreement was sold as an *economic* panacea. But by the summer of 2016, it became increasingly apparent that the economic case for the final TPP deal had proved unconvincing. Months of intensive White House and corporate lobbying had failed to build majority support in Congress. So, the TPP's proponents shifted to foreign policy arguments to try to scare up the votes, a tactic that has been systematically employed in past contentious trade fights. They argued then, when Donald Trump's declaration that he would not proceed with U.S. approval of the TPP[11] formally buried the moldering deal, and today the thinned ranks of TPP defenders still argue that failure to implement the TPP:

- allows China to write the rules for commerce in Asia instead of spreading U.S. values across the Pacific;
- hurts U.S. national security, and
- undermines U.S. global leadership and strengthens China.

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If many of these arguments sound familiar, it's because they are. For two decades of U.S. trade debates, the same zombie foreign policy and national security justifications have been repeatedly resurrected, in nearly identical verbiage. The tables below compare quotes by prominent supporters of past trade deals with more recent quotes about the TPP and review the outcomes of old claims. The prospect that an agreement may not be implemented has been routinely characterized as benefitting our adversaries – such as China. Passing an agreement is declared to be essential to maintaining U.S. leadership in the world, to exporting "American values" to other countries, and to improving human rights everywhere.

These arguments helped to pass some trade agreements. So we can study whether those previous pacts 'enactment did, in fact, deliver these promised benefits. When Congress debated granting Permanent Normal Trade Relations to China to facilitate its admission to the World Trade Organization, proponents claimed doing so would be a foreign policy cure-all. It would moderate China's authoritarian government, improve human and labor rights, and enhance China's cooperation on an array of national security challenges while also ensuring new access to Chinese markets that would create U.S. jobs. The actual result was just the opposite, and the argument became known as "The China Fantasy."[12] Various U.S. trade pacts with Latin American were also sold as necessary to keep China (or Japan) from dominating the region politically and economically, and as vital to improving democracy and human rights in trade partner countries. Yet the very foreign policy (and economic) threats that the deals 'passage was promised to forestall occurred regardless, while the touted improvements in human rights failed to materialize.

Managing the U.S. relationship with a rising China is a real challenge, but the TPP and similar trade deals have never been the right tool for securing America's future.

NATIONAL SECURITY CLAIM: ***Approval of China PNTR/the TPP goes beyond economics. It is essential for national security and promoting strategic interests beyond trade.***

China PNTR	TPP
…I am strongly in favor of granting permanent normal trade relations to China... doing so would be very much in the U.S. national interest. This, in my judgment, goes far beyond American business and economic interests, as important as these are, to key U.S. political and security interests. –National Security Advisor Brent Scowcroft, April 2000	TPP would also lower barriers to American goods and services in the Asia-Pacific's fastest growing markets. But TPP also makes strong strategic sense... in terms of our rebalance in the broadest sense, passing TPP is as important to me as another aircraft carrier. –Defense Secretary Ash Carter, April 2015
China has the capacity to hinder or help us to advance our interests on a broad range of issues, including: nonproliferation, open markets and free trade, environmental protection, the promotion of human rights and democratic freedoms, counter-terrorism, counter-narcotics, Asian economic recovery, peace on the Korean peninsula and ultimately peace and stability in the Asia-Pacific region. It is only by engaging with China on all of these issues that we will make positive progress on any and thereby advance those interests and our security. –Senator John Kerry, Sept. 2000	[T]he strategic case for TPP is not just crystal clear. It could not be more vital to the national security interests and the long-term strategic goals of the United States of America... counterterrorism, nonproliferation, climate change, cyber security, protection of the ocean environment, sustainable fishery practices, maritime security, human trafficking, just to mention some of the most prominent... Simply put, TPP is a key way to gauge American engagement in the Asia Pacific... with TPP, we will be far better positioned to enhance our national security and to protect our interests... –Secretary of State John Kerry, Sept. 2016
[M]y support for permanent normal trade relations with China is based not just on an assessment of the economic benefits to the U.S., not just on the prospects for political reform in China, but also on the impact on our national security….We need to cooperate with China to rein in North Korea's nuclear missile ambitions, to prevent a destabilizing nuclear arms race in South Asia, and to combat the threats of international terrorism and narcotics trafficking. We cannot work effectively with China in these areas if we are treating them as an enemy in our trade relations. –Senator Joe Biden, Sept. 2000	T.P.P. would strengthen stability and security by deepening our relationships throughout the region and raising the bar to entry to protect the things that matter. This includes enhanced cybersecurity, privacy and intellectual property protections. T.P.P.'s provisions to combat the theft of trade secrets, including by cyber theft, and protects our defense industrial base. And obviously, our partners who've signed up for T.P.P. see it as a vital demonstration of America's enduring commitment to the region. –Admiral Harry B Harris, commander of U.S. Pacific Command, Sept. 2016

Fifteen years later, when the TPP claims were made in 2016, the national security arguments used to push China PNTR passage did not hold up to scrutiny. China's aggression toward its East Asian neighbors has increased: China has escalated territorial disputes with the Philippines in the South China Sea and with Japan in the East China Sea. Beijing is pressing claims to ownership of 90 percent of the South China Sea.[13] Through environmentally harmful dredging and filling operations, China has turned rocks and coral outcroppings into artificial islands with landing strips capable of handling military aircraft. The Permanent Court of Arbitration at The Hague ruled in July that there is no basis for China's land claims. China has refused to comply with the finding.[14] The disputed territory is included in all Chinese maps and since 2012 is embossed on passports issued to the country's citizens.[15]

Regardless of U.S. entreaties, China remained focused on its own interest in avoiding a flood of North Korean refugees into China rather than in pressuring the regime to shut down the North's nuclear weapons industry. Then-U.S. Defense Secretary Ashton Carter argued that, "It's China's responsibility ... China has and shares an important responsibility for this development and has an important responsibility to reverse it. And so it's important that it (China) use its location, its history and its influence to further the denuclearization of the Korean peninsula."[16] But Gary Samore, then-President Obama's former White House coordinator for arms control and weapons of mass destruction, noted that, "What's remarkable is how consistent U.S. policy has been over last three presidents, and how consistently it has failed ... We are really limited in what we can do as long as China has fundamentally different national interests."[17]

Indeed, U.S. national security has been weakened by China PNTR, according to U.S. Brigadier General (ret.) John Adams. He notes that many components needed for U.S. military weapons systems and vehicles are now manufactured in foreign nations, including China, after trade deals altered production patterns. The U.S. military is "shockingly vulnerable to major disruptions in the supply chain, including from substandard manufacturing practices, natural disasters, and price gouging by foreign nations. Poor manufacturing practices in offshore factories lead to problem-plagued products, and foreign producers – acting on the basis of their own military or economic interests – can sharply raise prices or reduce or stop sales to the United States."[18] After PNTR took effect in 2000, China quickly became a major supplier of U.S. arms and ammunition. Chinese exports of weaponry to the United States increased from $15 million to $183 million from 2000 to 2015, making China the sixth largest U.S. supplier.[19]

Moreover, the notion that a refusal to implement the TPP indicates that the United States is neglecting the Asia-Pacific region is deemed absurd by many China hands. Clyde Prestowitz, President Reagan's Asia trade negotiator, notes that the United States has never neglected or left the Asia Pacific region, nor will it. "The Seventh Fleet has been patrolling the waters of East and Southeast Asia since World War II, and America has had at least 100,000 troops based in Asia for just as long," says Prestowitz. "And, trade deals or not, America had enormous, chronic trade deficits with most countries in the region, guaranteeing economic and political engagement for decades to come. If the combination of the American military presence and their trade surpluses with the United States weren't enough to mollify Asian leaders, no free trade deal would significantly change the situation."[20] And the priority focus on defense matters by Japanese Prime Minister Shinzo Abe in his post-election meeting with Trump – the Seventh Fleet and U.S. troops in Asia providing defense for U.S. allies – reinforces that key countries in the TPP rely upon U.S. leadership in the region regardless of the TPP's demise.

AMERICA'S RULES CLAIM: ***By implementing China PNTR/the TPP, America will write the rules. Failure to do so will allow China to write the rules.***

China PNTR	TPP
This agreement forces China to adhere to our rules-based trading system. –U.S. Representative Rodney Frelinghuysen, May 2000	America should write the rules. America should call the shots. Other countries should play by the rules that America and our partners set, and not the other way around. That's what the TPP gives us the power to do. – President Barack Obama, May 2016
... at the end of the day the way in which to move China toward Western norms and Western values is not to repudiate China, it is to bring it into a rules-based system. –U.S. Trade Representative (USTR) Charlene Barshefsky, May 2000	U.S. leadership in writing the rules of the road for trade in the Asia-Pacific region is critical. After all, this isn't everyone's approach to trade. Other countries, such as China, are already moving forward with deals that don't reflect our interests and our values. –USTR Michael Froman, Nov. 2015
Over the last half-century, the United States has been the driving force behind successive rounds of multilateral trade negotiations... The United States must continue to lead the open trading system... –Committee for Economic Development, July 2000	If we don't establish strong rules, norms for how trade and commerce are conducted in the Asia Pacific region, then China will. –President Barack Obama, Aug. 2016

The Obama administration's inability to win a congressional majority in support of the TPP and then the Trump administration's formal announcement that it would not try to do so was greeted with a chorus of woe about the lost opportunity for the United States to write the rules for trade in the Pacific Rim and how China would call the shots to the detriment of the United States. "TPP is obviously a challenge at this stage. Trade is not going to stop, it will continue. We'll be part of it but we won't be as able to shape the framework to serve our values and our interests. That leaves a vacuum for countries like China and others to fill that is not in our interest," said Obama's National Security Advisor Susan Rice in November.[21] Abandoning the TPP would be "a catastrophic mistake," Charlene Barshefsky, President Bill Clinton's top trade negotiator, told a group of business leaders in early December. "China will fill the vacuum."[22] "There are signs that China will take full advantage of the American shift to press its own trade vision," argued the *New York Times* editorial board.[23]

Similarly, a central argument in support of China PNTR in 2000 was that Congress' approval would ensure that China would adopt the WTO rules that the United States had a prominent role in writing rather than forging its own policies. On the other hand, rejection of PNTR would, as President Clinton claimed, be "a gift to the hard-liners in China's government," who would be empowered to enact policies that would undermine U.S. interests.[24] This argument helped to pass China PNTR. But did China actually conform to "our" rules? If enacted, would the TPP have altered the commercial rules in Asia, especially given that China is the largest trading partner of most of the TPP nations? The post-PNTR reality is that China gamed the WTO rules to benefit its own pre-set interests.

TPP critics similarly predicted that China would have exploited the lax rules of origin in the TPP to circumvent anti-dumping penalty tariffs by shipping components to low-wage Vietnam and Malaysia for final assembly – thus gaining duty-free access to the U.S. market. The TPP also would have allowed access for the many Chinese state-owned enterprises on equal terms to U.S. firms for all U.S. procurement contracts without any reciprocal obligations on China.

Said Robert Cassidy, the principal negotiator on the U.S. side for China's WTO entry: "I have reflected on whether the agreements we negotiated really lived up to our expectations; a sober reflection has led me to conclude that those trade agreements did not."[25] In fact, 15 years after China's entry into the WTO, the U.S. government still considers China a non-market economy, as do the European Union and Japan.[26] Many of the same experts who theorized that PNTR would allow us to set the rules are now saying otherwise: Economist Derek Scissors of the American Enterprise Institute, for example, testified to the House Committee on Foreign Affairs in July 2015 that over the last decade, the Chinese government has made no real progress towards increasing the role of the market in the Chinese economy. Scissors singled out the state's domination of the Chinese financial system – its ability to "without legal or political delay, order the strongest institutions to save the weakest" – as an especially egregious characteristic.[27]

"[T]he only possible conclusion is that China is not a market economy," said Alan Price, chair of Wiley Rein LLP's International Trade Practice. He testified in the winter of 2016 to the U.S.-China Economic and Security Review Commission.[28] A recent report by the Congressional-Executive Commission on China recommended that the U.S. government "should continue to designate China as a non-market economy until the Chinese government makes concrete improvements to policies detailed in this report that violate China's existing international trade obligations."[29]

Those now complaining about China's failure to conform to "our" rules include the very organizations that once so strongly favored China PNTR. Jeremie Waterman, Executive Director for Greater China and Senior Policy Advisor for Asia at the U.S. Chamber of Commerce said in September 2016: "China has the most restrictive investment environment of all G20 economies, according to the OECD [Organization for Economic Cooperation and Development] ... U.S. and other foreign companies have become more concerned about their future in China, perceiving greater challenges to their operations, the business climate, and the fundamental questions about the direction of China's economic reforms."[30]

This view is not a recent development. The National Association of Manufacturers, like the Chamber an ardent PNTR supporter, in a 2010 submission to USTR's Special 301 Committee noted widespread counterfeiting and patent violations: "…member companies report that the problems of IPR [intellectual property rights] theft and enforcement remain rife in China. In spite of continued attention to this issue, most companies report that there has been little change in conditions over the past several years. Authorities at the provincial and municipal levels still are reluctant to take aggressive action to enforce IPR when it involves foreign companies."[31]

Specific commercial sectors that had argued China PNTR would get China to play by our rules have expressed similar criticism. "We, like the USTR, are concerned that China exceeded its [allowable subsidies] for corn, wheat and rice from 2012 to 2015," said Zippy Duvall, President of the American Farm Bureau Federation. "The World Trade Organization's Agreement on Agriculture applies to all members. Each country must follow agreed upon levels of domestic support. Violation of domestic support levels can lead to overproduction and price-depressing surpluses that affect farmers worldwide."[32]

America's manufacturing sector has also not seen the promised transformation: "China maintains state control over many critical aspects of its economy, including key strategic industries like steel. It is clear that China has not met criteria to be designated a market economy," said Thomas J. Gibson, President and CEO of the American Iron and Steel Institute and co-chairman of the Manufacturers for Trade Enforcement last July.[33]

Like China PNTR, the TPP was increasingly sold as a choice between "our rules" and "their rules" with the TPP standing in as America's rules versus "letting" China set rules that the United States may one day have to obey. President Obama stated this choice explicitly saying, "The TPP means that America will write the rules of the road in the 21st Century."[34]

But the TPP's rules are not "America's rules." The TPP represents the demands and the guidance of 500 official U.S. trade advisors primarily representing corporate interests involved in years of closed-door negotiations while the public, the press and Congress were locked out.[35] Many TPP rules would have undermined U.S. national interests by increasing income inequality here, raising medicine and energy prices, jeopardizing financial stability, and further gutting the U.S. manufacturing base that is essential for our national security and domestic infrastructure.

Two Nobel Prize-winning economists – and supporters of China PNTR, best make the point:

> *I am in general a free trader, but I'll be undismayed and even a bit relieved if the TPP just fades away ... What the TPP would do ... is increase the ability of certain corporations to assert control over intellectual property. Again, think drug patents and movie rights. Is this a good thing from a global point of view? Doubtful. The kind of property rights we're talking about here can alternatively be described as legal monopolies ... Now, the corporations benefiting from enhanced control over intellectual property would often be American. But this doesn't mean that the TPP is in our national interest. What's good for Big Pharma is by no means always good for America.*
>
> –Paul Krugman, February 27, 2014[36]

> *When agreements like the TPP govern international trade – when every country has agreed to similarly minimal regulations – multinational corporations can return to the practices that were common before the Clean Air and Clean Water Acts became law (in 1970 and 1972, respectively) and before the latest financial crisis hit. Corporations everywhere may well agree that getting rid of regulations would be good for corporate profits. Trade negotiators might be persuaded that these trade agreements would be good for trade and corporate profits. But there would be some big losers – namely, the rest of us.*
>
> –Joseph Stiglitz, March 15, 2014[37]

AMERICAN VALUES CLAIM: ***By implementing China PNTR/TPP, American values such as democracy would be exported to other nations and their human and labor rights and environmental protections will be improved.***

China PNTR	TPP
I believe the choice between economic rights and human rights, between economic security and national security, is a false one… I believe [China PNTR] will move China faster and further in the right direction, and certainly will do that more than rejection would. –President Bill Clinton, March 2000	[W]e can't let countries like China write the rules of the global economy. We should write those rules, opening new markets to American products while setting high standards for protecting workers and preserving our environment. – President Barack Obama, Oct. 2015
Bringing China into the WTO and normalizing trade will strengthen those who fight for the environment, for labor standards, for human rights, for the rule of law. –President Bill Clinton, March 2000	In short, these elevated standards can give to people across the Pacific Rim a window into a future of reform and human rights, a smoother and more equitable path to prosperity, an ample reason to build up businesses and communities, and never turn to tearing down their societies and resorting to conflict. –Secretary of State John Kerry, Sept. 2016
By learning to "play by the rules," both internationally and domestically, China will strengthen the rule of law, which will enable it to become a more reliable partner and a fairer society. It can even lay the groundwork for protection of core values in China, such as human rights, religious freedom, workers' rights and environmental protection. –Treasury Secretary Lawrence Summers, May 2000	...when we deepen our trade ties to countries along the Pacific Rim, we become better able to promote essential reforms – reforms that strengthen the rule of law, encourage partners to secure property rights, enforce contracts, fight corruption, and respect the basic dignity of their workers and citizens. –Secretary of State John Kerry, April 2016
Passage of PNTR and China's WTO accession will further open China to American values. –White House press release, May 2000	If, however, we fail to move forward with TPP, Asian economies will almost certainly develop along a China-centric model… Trade is how you export American values in the developing world. –Senate Majority Leader Orrin Hatch, June 2015

Trying to paint the TPP as a way for America to write the rules in Asia *so that China does not* was absurd. The TPP was never about establishing "American" rules in Asia, a fact reinforced by opposition to the deal by the environmental, human rights and labor organizations that promote protections for working people and the planet. Critics of China PNTR raised the same points about the WTO's lack of enforceable rules requiring human rights and other improvements when similar claims were made with respect to China's entry into the WTO.

Since Congress approved China PNTR, human rights violations in China have not declined nor have political freedoms increased. Freedom House still judges China as "Not Free." The Polity IV Project, a widely-used measure of democratic values and achievement, labels China as an autocracy, the same rating given to China in 2000. Human Rights Watch's 2016 World Report found China passed and proposed many new government laws that "conflate peaceful criticism of the state with threats to national security."[38]

The Cingranelli-Richards Human Rights Dataset provides scores for 15 internationally recognized human rights for 202 countries from 1981 to 2011. China has not improved its score among any of the human rights indicators from 2000 to 2011. For example, the Physical Integrity Rights Index ranks countries based on torture, extrajudicial killing, political imprisonment and disappearance indicators. A zero indicates "no government respect for these four rights" and an eight indicates "full government respect for these four rights." China was given a three in 2000, but a zero in 2011.[39]

The Empowerment Rights Index derives from the foreign movement, domestic movement, freedom of speech, freedom of assembly and association, workers 'rights, electoral self- determination, and freedom of religion indicators. A zero indicates "no government respect for these seven rights" and a 14 indicates "full government respect for these seven rights." China was already at a one in 2000, and this has since been lowered to a zero. These diverse human rights indicators show that the situation in China has not improved since China PNTR took effect.[40]

In his book, "The China Fantasy," former *Los Angeles Times* Beijing bureau chief James Mann laments the self-delusion of America's political leaders – who insist that the Chinese government will embrace democracy to please its trading partners:

> Since 1989, virtually every change in U.S. policy toward China has been justified to the American public on the basis that it would help to open up China's political system ... When (the Bush and Clinton) Administrations extended [PNTR] benefits to China, they asserted that the trade would help to open up China. When the Congress voted to support China's entry into the WTO, once again congressional leaders justified their votes as a way of helping to bring political liberalization to China ... Without the claim that trade would open up the Chinese political system, trade legislation would not have been enacted. One can look in vain for American presidents or congressional leaders who said, "It seems as if China's going to remain a deeply repressive country, but let's pass this trade bill anyway."[41]

With respect to the TPP, the words "human rights" do not appear on any of the more than 5,000 pages of the final text. Further, if it had been enacted, the TPP would have eliminated the important policy tools, such as the economic sanctions and selective procurement policies which were used successfully to pressure the apartheid-era government in South Africa to stop human rights abuses.

Among the TPP's signatories are the three notorious human rights abusers: Malaysia, Vietnam, and Brunei. Their inclusion drew Democratic and Republican members of Congress,[42] leading human rights, labor, LGBT, women's and religious organizations[43] into the fight against the TPP. The TPP would have granted Malaysia, one of the world's worst human trafficking offenders, privileged access to the U.S. market. The Obama administration not only allowed Malaysia to stay in the TPP, but removed Malaysia from the State Department's list of worst trafficking violators – even after mass graves for human trafficking victims were discovered.[44]

The TPP also includes Vietnam, despite the government's jailing of political dissidents, systematic anti-union repression and the widespread use of child labor. A group of NGOs including Human Rights Watch and Freedom House co-authored a letter to President Obama in April 2016 condemning Vietnam's inclusion: "Unfortunately, even in light of the agreements it has made as part of the TPP, Vietnam's crackdown on independent voices shows no signs of ceasing. We are particularly disturbed that in the final week of March, Vietnam sentenced seven bloggers and human rights activists to prison terms ranging from seven months to five years."[45] In October, Vietnamese officials arrested blogger Nguyen Ngoc Nhu Quynh on charges of "spreading propaganda against the state," which carries a sentence of up to 12 years in prison. Her "crime"? She wrote a blog post criticizing the Vietnamese government's handling of a foreign investor's toxic chemical spill.[46]

The deal would also forge closer ties between the United States and Brunei, which has enacted a Sharia-based penal code that criminalizes LGBT people and allows punishment for gay people and single mothers by stoning to death.[47] This has provoked LBGT activists to join in the fight against the TPP, as well as evoking consternation from many members of Congress.[48]

AMERICAN LEADERSHIP CLAIM: ***Implementation of China PNTR/TPP is a test of U.S. leadership in the world. Failure to act would cede the U.S. leadership role in the Pacific region to China.***

China PNTR	TPP
All of our Asian friends and allies would view rejection of PNTR as an unnecessary rejection of stable and constructive relations with their largest neighbor; and a turn away from the open, confident vision we have held for the Pacific over the years. –USTR Charlene Barshefsky, April 2000	TPP is seen as a litmus test for U.S. leadership…It's also seen as a demonstration of America's commitment to be a Pacific power. –White House Deputy National Security Advisor Ben Rhodes, Aug. 2016
Voting against PNTR…. Our friends and allies would wonder why, after 30 years of pushing China in the right direction, we turned our backs, now that they finally appear to be willing to take us up on it. –President Bill Clinton, March 2000	If the U.S. abandons TPP, our Asian allies and partners will perceive America as yielding to China, and they will accommodate accordingly. –Robert Zoellick, former USTR, May 2016
The bottom line is that turning down PNTR... hurts our reputation worldwide. We should not be reverting to isolationism at a time when it is more important than ever to show leadership to the world. –CEO of Honeywell International Michael R. Bonsignore, Feb. 2000	Our leadership demands our constant commitment to initiatives that advance our interests and promote our values, including high-standard, innovative proposals like the Trans-Pacific Partnership, or TPP – an agreement that is about boosting our economy at home and deepening our commercial ties in key markets, as well as strengthening our national security and strategic leadership in Asia and across the globe. –Secretary of State John Kerry, Sept. 2016

As you leave West Point, the attitude of China towards our country and our role in the Pacific will be of central importance to our country and to you personally ... [if PNTR fails] we make a very dark statement about the future possibility of a stable, mutually beneficial relationship with the world's largest country. –USTR Charlene Barshefsky, April 2000	I think not moving forward would undermine our position across the region and our ability to shape the rules of global trade in a way that reflects our values and our interests. –President Barack Obama, Nov. 2016

Beyond the damage done by the Obama administration proclaiming endlessly that failure to implement the TPP would undermine U.S. leadership in the region, how precisely might the TPP have enhanced the U.S. role and the TPP's demise undermined it? The examples of China PNTR failing to boost U.S. leadership in Asia are many. When the Obama administration opposed China's proposal to create an Asia Infrastructure Investment Bank to compete with established international development banks, its closest Pacific Rim allies refused to support the United States position. The bank was created in 2015 with Korea, Australia, Britain and Germany joining in over U.S. protests.[49]" We're contemplating a major institution in which the United States has no role, that the United States made substantial efforts to stop – and failed," said former Treasury Secretary Larry Summers.[50] Eswar Prasad, former head of the China desk at the International Monetary Fund (IMF), describes the new bank as "an instrument for China to lend legitimacy to its international forays and to extend its sphere of economic and political influence even while changing the rules of the game."[51] Similarly, U.S. allies in Asia broke with U.S. efforts[52] to stop the IMF from including the China's currency, the yuan, in the IMF's official reserve currency basket in alongside the U.S. dollar, the euro, the Japanese yen and British pound.[53]

While U.S. concerns about the implications of China's rising economic power and influence are legitimate, the notion that the establishment of any specific U.S. trade agreement would control this process is contradicted by the record. "The ever-closer linking of the U.S. economy to those of the TPP countries over the last 35 years has not prevented the rise of Chinese power, nor has it deterred U.S. trade partners and allies from developing ever closer ties with China," Prestowitz, who had served a senior Asia policy staffer in the Reagan administration, noted.[54] Nor do U.S. allies accept that excluding China from the TPP is a way of diminishing Beijing's influence. During TPP negotiations, New Zealand Trade Minister Tim Groser said that, "The moment we smelt or sensed that this was an anti-China thing, we'd leave the TPP."[55]

Indeed, rather than PNTR's passage enhancing American leadership in Asia, Beijing is forcing U.S. companies operating in China to adhere to Chinese rules and practices. "Cyber-governance with Chinese characteristics ... is the choice of history, and the choice of the people, and we walk the path ever more firmly and full of confidence," said Lu Wei, China's Internet czar.[56] U.S. companies operating in China are conforming to these rules, even as limits on free speech increase. In 2015, the Chinese government sent a letter to several American technology companies operating in China asking them to promise that they would not threaten Chinese national security. Some companies believe this means that the Chinese government will eventually require U.S. companies to add "back doors" to allow the government easy access to private information stored on phones, computers and servers.[57]

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[3] Products from and firms in the following 60 countries are treated as if they were American. Countries in formal font have obtained waivers from the Buy American Act, and similar domestic preference programs by being a signatory of the WTO's Agreement on Government Procurement. Countries in italics are waived because they have a free trade agreement with the United States. Underlined countries have both. Armenia, Aruba, Australia, Austria, *Bahrain*, Belgium, Bulgaria, Canada, *Chile, Colombia*, *Costa Rica*, Croatia, Cyprus, Czech Republic, Denmark, *Dominican Republic, El Salvador*, Estonia, Finland, France, Germany, Greece, *Guatemala, Honduras*, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxemburg, *Mexico*, Moldova, Malta, Montenegro, *Morocco*, Netherlands, New Zealand, *Nicaragua*, Norway, *Oman*, *Panama, Peru*, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, South Korea, Spain, Sweden, Switzerland, Taiwan, Ukraine, and UK.

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[5] See 19 USC Section 2511(c): "*The President may modify or withdraw any waiver granted pursuant to subsection (a) or designation made pursuant to subsection (b).*"

[6] For a list of U.S. states and a chart showing what procurement policy limits are imposed for each state in U.S. trade pacts, please see https://www.citizen.org/wp-content/uploads/statesboundtointernationaltradeagreements.pdf

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