



*Rep. Maxine Waters, Ranking Member*

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### Waters Urges President Obama to Keep U.S. Financial Reforms Out of TPP

Washington, DC, Jun 5

As the White House intensifies its push for Trade Promotion Authority from Congress so it can conclude talks on the 12-nation Trans-Pacific Partnership (TPP), yesterday **Congresswoman Maxine Waters** (D-CA), Ranking Member of the Financial Services Committee, expressed concern that the TPP could undermine essential financial reforms, including those passed as part of the Dodd-Frank Wall Street Reform Act.

In a letter sent to President Obama, the senior Democrat underscored the limitations and interpretive uncertainties of the standard “prudential exception” clause in U.S. trade agreements, which purport to give countries the policy space to enact financial measures for prudential reasons. Waters noted that the language in this provision is widely viewed by legal scholars and trade experts as ambiguous, undefined, and to date, untested.

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“When USTR Michael Froman met with the House Democratic Caucus this spring, he dismissed the concerns of many of us that the proposed TPP could limit governments’ policy space for financial regulation,” **Waters** wrote. “While I welcome the Administration’s confidence on this question...I’m afraid I am not persuaded that the language of our trade agreements – and of the prudential exception in particular – supports the level of confidence expressed by Administration officials.”

In the letter, Waters expressed particular concern over the inclusion of the “investor-state dispute settlement” mechanism, which would give foreign investors the right to directly challenge the United States in private arbitration panels for any financial regulations or actions that they claim frustrate their investment “expectations.”

The Ranking Member expressed concern that these panels could undercut reforms enacted to protect consumers and safeguard the stability of the financial system. She urged the President to ensure that the TPP’s investment terms would not apply to financial measures.

“When we are dealing with matters of such systemic importance – the security and stability of the international financial system – it seems to me profoundly misguided to trust in an ambiguous ‘prudential exception’ subject to review by private ad-hoc investment panels that have become increasingly controversial,” **Waters** added.

The full text of the letter is below. The PDF is [available here](#).

June 4, 2015

President Barack Obama  
The White House  
Washington, D.C., 20500

Dear Mr. President:

As a member of the House Financial Services Committee for the past 24 years, and as the current Ranking Member, I can tell you that this Committee has on a number of occasions taken the lead in formulating a responsible approach to some of the more difficult aspects of globalization -- from the bipartisan agreement we worked out in response to the Asian financial crisis in the late 1990s to the urgent and immediate responses to the 2007-2008 global financial crisis, followed, in turn, by the sweeping reforms to the U.S. financial system.

We have also over the years paid a great deal of attention

to some of the major institutions of the global economy, including the International Monetary Fund (IMF) and the World Bank, where we pushed reforms through to make these institutions more transparent, democratic, and responsive to the needs of the poorest people.

Since becoming the senior Democrat on the Committee, I have focused my international efforts on strong support for the pending IMF quota package, and more recently, on doing everything I can to secure the reauthorization of the Export-Import Bank so that U.S. companies can continue to fairly compete in the global export markets.

I have also long been concerned with trying to forge a U.S. trade policy that recognizes the importance of global economic cooperation in a way that promotes fairness, and this brings me to the purpose of my letter – which is the question of financial regulation and the Trans-Pacific Partnership (TPP). When USTR Michael Froman met with the House Democratic Caucus this spring, he dismissed the concerns of many of us that the proposed TPP could limit governments' policy space for financial regulation.

Ambassador Froman, citing the “prudential exception” – the standard clause in U.S. trade agreements that purports to allow countries to regulate for prudential reasons -- sought to assure us that the Administration would be able to successfully defend the sweeping Dodd-Frank financial reforms passed in response to the 2008 crisis, in addition to any new financial safeguards Congress wishes to enact.

While I welcome the Administration's confidence on this question because I agree that the Dodd-Frank reforms are, in fact, prudential in nature, I'm afraid I am not persuaded that the language of our trade agreements – and of the prudential exception in particular – supports the level of confidence expressed by Administration officials.

First, as you know, there has been vigorous debate by legal scholars and trade experts about the meaning, scope and application of the prudential exception. While there are some who believe the language of the prudential exception provides an adequate defense for prudential financial regulation, most experts have concluded that the language is, at best, ambiguous. There is also concern that the term “prudential” is not defined anywhere in our trade agreements, or at the WTO, which creates scope for different possibilities regarding how the exception might be interpreted by a dispute panel.

Moreover, “prudential” is a term that shifts with time and context, and this shifting foundation creates uncertainty for governments seeking to predict how its application of the

exception might be interpreted in a dispute. This uncertainty is heightened by the fact that there has never been a WTO ruling on the prudential exception, so there are no formal interpretations of the provision in the public record.

Most importantly, however, is the fact that the ultimate determination as to whether a challenged financial policy or government action was taken for legitimate prudential reasons, and whether it is actually protected by the prudential exception, would be decided by private international arbitration panels. As currently proposed, the TPP would allow financial regulations to be challenged not just by other governments, but also by individual financial firms via investor-state dispute settlement (ISDS). ISDS tribunals operate autonomously from any government authority, and their decisions are often unpredictable and are neither bound by precedent nor subject to substantial appeal.

When we are dealing with matters of such systemic importance – the security and stability of the international financial system – it seems to me profoundly misguided to trust in an ambiguous “prudential exception” subject to review by private ad-hoc investment panels that have become increasingly controversial.

I have strong concerns about the inclusion of the investor-state dispute settlement in our trade agreements generally. But I strongly urge you to ensure, at a minimum, that the TPP’s investment terms, including investor-state dispute settlement, will not apply to financial measures.

This would help ensure that our hard-fought efforts to protect consumers and preserve the stability of the financial system are not undermined.

Sincerely,

MAXINE WATERS  
Ranking Member

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