

# Friends of the Earth Blog

## Don't fast track a polluters' bill of rights

Posted Jan. 24, 2014 / Posted by: Bill Waren

Friends of the Earth opposes the “Bipartisan Congressional Trade Priorities Act” (HR 3830/S 1900), so-called “Fast Track” legislation sponsored by Representative Dave Camp (R-Mich.) and Senator Max Baucus (D-Mont.). The Camp/Baucus bill would undercut the constitutional authority of Congress over trade policy and would be used to rush the environmentally hazardous Trans Pacific and Trans Atlantic trade deals past Congress, without amendment or significant debate. The Camp/Baucus bill would amount to a major power shift from Congress to the executive, undermining the founders’ intention to provide checks and balances in our government through the separation of powers.

If approved, The Camp/Baucus bill would expedite, without proper consideration, congressional approval of a massive and controversial trade deal, the Trans Pacific Partnership, as well as a similar deal on the same model now being negotiated with the European Union, the Transatlantic Trade and Investment Partnership (or the Trans Atlantic free trade agreement as it is sometimes called). These trade agreements would allow big corporations and wealthy financiers to sue for millions in compensation for the cost of complying with environmental and other public interest regulations. More generally, the TPP and TTIP (TAFTA) deals could trump sensible safeguards related to food safety, toxic chemicals, and global warming, among many others

### TPP & TTIP threaten sound environmental policy

TPP and TTIP would allow foreign investors to seek awards of money damages from business-friendly tribunals in compensation for the cost of complying with environmental and consumer regulations -- even the “cost” of lost opportunities for future profits. Mining, oil drilling and infrastructure construction, like ports and pipelines, are all frequent topics of litigation under existing international investment agreements. For example, La Oroya, Peru, is one of ten most polluted places on earth. Renco, a U.S. company, has repeatedly failed to meet its contractual and legal deadlines to clean up the pollution caused by its metallic smelter at La Oroya. Renco has sued Peru before an international investment tribunal, seeking \$800 million in damages for the cost of complying with Peru’s environmental and mining laws.

Climate measures are also put at risk by the TPP and TTIP investment chapters. A wide array of energy policies could be challenged, conceivably including TPP attacks on any decision to stop construction of the Keystone XL pipeline. In the same way, local efforts to block fossil fuel export terminals in the U.S. might well be challenged before tribunals at the World Bank or the Permanent Court of Arbitration, applying investor rights under TPP or TTIP.

Other provisions in the agreements would undercut essential environmental and climate initiatives. Regulatory coherence and other chapters of the TPP and TTIP encourage inappropriate use of cost-benefit analysis, inhibiting government regulators from applying the “precautionary principle” when assessing the safety of toxic chemicals, food imports and genetically engineered products, among others. Overbroad concepts of “discrimination” could

lead to TTIP challenges to the European Fuel Quality Directive for its unequal treatment of tar sands oil from North America based on its threat to the climate. Regulatory constraints on high carbon exports of oil and liquefied natural gas could run afoul of prohibitions on export controls in international trade law.

The privatization of nature would also be encouraged. As just one example, a leaked version of the TPP chapter on intellectual property provides international legal protections for patents on plants and animals, giving corporations monopolies over the use of parts of the genetic code that are our common natural and human heritage. Corporate control of water resources is another threat.

### **Fast track undermines the constitutional authority of Congress**

Under the Camp/Baucus bill, the TPP and TTIP could be pushed through Congress under rules providing for mandatory and expedited floor votes in the House and Senate, without amendment. Congress would have no authority to approve or veto selection of negotiating partners, even with countries like Vietnam that are repeat violators of labor, human rights and environmental standards. The president and U.S. Trade Representative would also be authorized to finalize the legal text of the TPP and TTIP, regardless of whether negotiating objectives identified by Congress have been satisfied. Congressional negotiating objectives are unenforceable in the Camp/Baucus bill.

Also, the Camp/Baucus bill would empower the executive branch to write domestic legislation implementing trade deals and push it through Congress under fast track rules. Large swaths of federal law would be rewritten and a multitude of state laws would be preempted based on the mere allegation by the U.S. Trade Representative that they are inconsistent with the TPP or TTIP. The likely result would be a roll back of environmental safeguards and other public interest measures at both the federal and state levels.

### **Fast Track can be stopped**

People power is the way to stop the Camp/Baucus bill or any similar Fast Track legislation that may be introduced in the future. Concerned citizens can make a difference by reaching out to friends and neighbors, communicating to the local press and local elected officials, and by sitting down with their members of Congress to talk about the threat that Fast Track poses to the environment and democracy itself.

- See more at: <http://www.foe.org/news/blog/2014-01-dont-fast-track-a-polluters-bill-of-rights#sthash.uTTFPvnY.dpuf>

## Commentary: Trade agreements need meaningful congressional review, congresswoman says

**Rep. Chellie Pingree believes it is not advisable to fast track two very broad and complicated agreements through Congress.**

By Chellie Pingree

WASHINGTON — When the North American Free Trade Agreement was signed 20 years ago, there were many promises of how it would create jobs for U.S. workers, strengthen our trade and lower prices for consumers.

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### ABOUT THE AUTHOR

*Chellie Pingree, a Democrat, represents Maine's 1st District in the U.S. House of Representatives.*

Unfortunately, those promises have not come to pass, but some of our worst fears have. In Maine, it has severely weakened manufacturing and has led to the loss of thousands of good-paying jobs. And across the country it has contributed to growing income inequality.

After all that, our country still imports more than we export by about \$40 billion. With NAFTA's track record, it's clear that we need to give trade agreements the utmost review and careful consideration before entering into them, if we do so at all. That's why I have become so worried with recent proposals to fast-track two of these agreements through Congress.

The president's trade representative is currently negotiating two very broad and complicated trade agreements, with Asian-Pacific countries and European Union members, respectively, all with little consultation with Congress and no public disclosure.

I am deeply worried about losing the opportunity to review and consider important nontrade policy provisions that are included in these agreements, since the administration will ask for congressional approval of legal authority to "fast-track" these agreements through the ordinary legislative process.

Under the Constitution, Congress has the exclusive authority to set the terms of trade. Starting in 1974, Congress gave that authority to the executive branch by enacting trade promotion authority, also known as “fast track.” Fast track authority allows the executive branch to negotiate trade agreements on its own, without congressional input or oversight.

Once an agreement has been finalized, it also greatly curtails the normal legislative process in order to expedite congressional approval of the agreement. The deal is put on a “fast track” and provided only a limited amount of time for consideration in the committees of jurisdiction before it is automatically discharged to the floor where debate is limited and we have no ability to amend it.

If these agreements stuck to simply removing taxes on foreign goods, or tariffs, fast track authority would make sense. But, as we saw with NAFTA, modern free trade agreements involve much more than the removal of tariffs.

Modern free trade agreements aim at removing what are called “nontariff barriers” in member countries. That category includes a wide swath of laws and regulations affecting many parts of the economy – from labor and agriculture to natural resources and the environment. In the past, these agreements have resulted in a race to the bottom on rules for workers, consumers and the environment.

The two agreements currently in negotiation include chapters on all of those nontrade policies and more.

Negotiations on the European agreement, known as the Trans-Atlantic Trade and Investment Partnership, are just beginning, and it promises to be the largest trade agreement in history. Negotiations on the Asian agreement, known as the Trans-Pacific Partnership, are in their final stages.

Unfortunately, it seems that these agreements will continue the practices of the past.

The administration’s existing fast track authority expired in 2007. Anticipating the introduction of legislation re-authorizing fast track authority, in October, I joined more than 150 House Democrats in sending a letter to the administration asking that Congress be fully engaged in the final approval process of these agreements.

“Twentieth Century ‘Fast Track’ is simply not appropriate for 21st Century agreements and must be replaced. The United States cannot afford another trade agreement that replicates the mistakes of the past,” we wrote. “We can and must do better.”

I place great value on policies to expand foreign markets for U.S. goods, but strongly believe that Congress should retain its constitutional authority to weigh the policy issues contained in these agreements.

I’ve been a longtime supporter of policies and programs, like the Maine International Trade Center and the U.S. Export-Import Bank, that promote access to foreign markets for Maine companies in order to increase exports from our state and positively affect our trade balance.

However, if the TPP and TTIP trade agreements are going to get expedited consideration, it should come only after Congress has been meaningfully consulted, and after Congress, not the administration, has verified that legal protections for the environment, consumers and workers (to name a few) will not be compromised.

— *Special to the Press Herald*



Citizen Trade  
FOR IMMEDIATE RELEASE  
Monday, January 27, 2014

Contact: Arthur Stamoulis, (202) 494-8826 or [media@citizenstrade.org](mailto:media@citizenstrade.org)

## **SOTU: President's Base Opposes Fast Track for TPP**

*Over 550 Labor, Environmental, Family Farm & Community Groups Send Letter to Congress Opposing Fast Track Legislation*

WASHINGTON, DC — Over 550 labor, environmental, family farm and other organizations traditionally associated with President Barack Obama's political base sent a letter to Congress today opposing Fast Track legislation for the Trans-Pacific Partnership (TPP) and other pending trade agreements. The letter comes just a day before the President's annual State of the Union address. Corporate interests that fought the president's re-election are lobbying for him to use the speech to call on Congress to enact Fast Track authority for the TPP. The President's political base and many congressional Democrats stand in united opposition, emphasizing that the TPP threatens to exacerbate American income inequality.

"Income inequality and long-term unemployment are serious problems that the job-killing TPP would only worsen," said Arthur Stamoulis, executive director of Citizens Trade Campaign, which organized the letter. "Calling for Fast Track in the State of the Union would undercut positive proposals to battle growing income inequality and create middle class jobs which are expected to be the central focus of the President's speech. As short-sighted as such a call would be, even more short-sighted would be for Congress members on either side of the aisle to answer it, as they're the ones who would be dealing with the political repercussions this November."

The 564-organization letter urges Congress to oppose "The Bipartisan Congressional Trade Priorities Act" (HR 3830/S 1900), legislation which would revive the 2002 Fast Track "trade promotion authority" mechanism that expired in 2007. The bill was introduced on January 9 without a Democratic sponsor in the House by Ways & Means Committee Chair David Camp (R-MI), and by outgoing Finance Committee Chair Max Baucus (D-MT) and Ranking Member Orrin Hatch (R-UT) in the Senate.

"After decades of devastating job loss, attacks on environmental and health laws and floods of unsafe imported food under our past trade agreements, America must chart a new course on trade policy," the letter reads. "To accomplish this, a new form of trade authority is needed that ensures Congress and the public play a much more meaningful role in determining the contents of U.S. trade agreements... [The Camp-Baucus bill] is an abrogation of not only Congress' constitutional authority, but of its responsibility to the American people. We oppose this bill, and urge you to do so as well."

Among the signers are labor unions like the AFL-CIO, American Federation of State, County and Municipal Employees (AFSCME), American Federation of Teachers, International Brotherhood of Teamsters, United Autoworkers (UAW), United Brotherhood of Carpenters, United Steelworkers (USW) and Service Employees International Union (SEIU); environmental

organizations like [350.org](http://350.org), Friends of the Earth, Greenpeace, League of Conservation Voters, National Resources Defense Council (NRDC), Rainforest Action Network and the Sierra Club; family farm organizations like the National Family Farm Coalition, National Farmers Union and the Western Organization of Resource Councils; consumer groups like Food & Water Watch, Organic Consumers Association, National Consumers League and Public Citizen; and hundreds of others.

During last year's State of the Union address, President Obama claimed that the TPP would "boost American exports." He made similar claims in his 2011 State of the Union speech with respect to the Korea-U.S. Free Trade Agreement, urging Congress to pass that pact. U.S. exports to Korea *declined* ten percent in the first year of that agreement, while American-job-displacing imports from South Korea increased. The 37 percent increase to the U.S. trade deficit with Korea in the pact's first year equated to a loss of 40,000 U.S. jobs.

Trade negotiators have missed repeated self-imposed deadlines for completing the TPP, and more than three-quarters of House Democrats and a bloc of Republican House members have signed letters expressing their opposition to Fast Track for the agreement.

"Americans cannot afford a 'NAFTA of the Pacific.' Fast Track would ensure that the Obama administration's proposals for the TPP are never exposed to public scrutiny until after the pact is signed, amendments are prohibited and changes become all but impossible," said Stamoulis.

"Rubber stamping such a far-reaching agreement sight unseen is no way for Congress to create public policy."

A PDF copy of today's letter opposing Fast Track can be found online at: [http://www.citizenstrade.org/ctc/wp-content/uploads/2014/01/FastTrackOppositionLtr\\_012714\\_Congress.pdf](http://www.citizenstrade.org/ctc/wp-content/uploads/2014/01/FastTrackOppositionLtr_012714_Congress.pdf)

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January 27, 2014

**Re: Please Oppose "The Bipartisan Congressional Trade Priorities Act" (HR 3830 / S 1900)**

Dear Member of Congress:

The undersigned organizations urge you to oppose "The Bipartisan Congressional Trade Priorities Act" (HR 3830 / S 1900). This legislation would revive the outdated and unsound 2002 "Fast Track" Trade Promotion Authority mechanism.

Indeed, the legislation replicates the broad delegation of Congress' constitutional authorities that was provided in the 2002 Fast Track, undermining Congress' ability to have a meaningful role in shaping the contents of trade agreements.

The legislation includes several negotiation objectives not found in the 2002 Fast Track. However, the Fast Track process that this legislation would reestablish ensures that these objectives are entirely unenforceable. If this bill were enacted, the president could sign a trade agreement before Congress votes on it — whether or not the negotiating objectives have been met. It would also allow the executive branch to write legislation not subject to committee markup that would implement the pact and alter existing U.S. laws so that they come into compliance with the rules of the trade agreement. Additionally, if HR 3830 were enacted, trade pact implementing legislation would be guaranteed House and Senate votes within 90 days, with all floor amendments forbidden and a maximum of 20 hours of debate.

Fast Track was designed in the 1970s when trade negotiations were focused on cutting tariffs and quotas. Today's pending "trade" agreements, such as the Trans-Pacific Partnership (TPP) and Transatlantic Trade and Investment Partnership (TTIP), are much broader — setting binding policy on Congress and state legislatures relating to patents and copyright, food safety, government procurement, financial regulation, immigration, healthcare, energy, the environment, labor rights and more. Such a broad delegation of Congress' constitutional authorities is simply inappropriate given the scope of the pending "trade" agreements and the implications for Congress' core domestic policymaking prerogatives.

After decades of devastating job loss, attacks on environmental and health laws and floods of unsafe imported food under our past trade agreements, America must chart a new course on trade policy. To accomplish this, a new form of trade authority is needed that ensures that Congress and the public play a much more meaningful role in determining the contents of U.S. trade agreements. Critically, such a new procedure must ensure that Congress is satisfied with a trade agreement's contents before a pact can be signed and subjected to any expedited procedures.

HR 3830 / S 1900 is an abrogation of not only Congress' constitutional authority, but of its responsibility to the American people. We oppose this bill, and urge you to do so as well.

Sincerely,



# OFFICE OF THE ATTORNEY GENERAL

## For Immediate Release:

January 28, 2013

## Contact:

Tim Feeley, 626-8887

### **Attorney General Mills calls for trade deal to protect Maine's anti-tobacco efforts**

*AG Mills is working to amend the Trans-Pacific Partnership Agreement to preserve ability tobacco regulation by state and local governments – joins effort with 42 state Attorneys General.*

(AUGUSTA) Attorney General Janet T. Mills is troubled by a provision in a proposed international trade agreement that would negatively impact the ability of Maine and other states to protect the public health by regulating tobacco products. Attorney General Mills is calling on the United States Trade Representative to amend a provision that would treat tobacco products like any other product for sale. This provision could open state policies regulating tobacco products to challenge by other countries and ignores the devastating health affects tobacco has on Maine people.

AG Mills is concerned that a provision in the Trans-Pacific Partnership that would treat tobacco like any other product could open the landmark 1998 Tobacco Master Settlement Agreement [MSA], or even Maine's smoke-free workplace law, to challenge by other countries in a legal framework outside of the United States' normal proceedings. The MSA and other state and federal laws place major restrictions on the ability of tobacco companies to market their products and authorize states to enact a number of regulations to impact the sale, taxation and use of tobacco products.

"The MSA severely limited the ability of Big Tobacco to market their deadly products to children in America," said Attorney General Janet T. Mills. "Maine has a strong record of protecting the public health by using a broad strategy to keep products out of the hands of kids and to shield people from second-hand smoke. Despite the great strides Maine has made in cutting smoking rates, too many kids and adults in Maine are impacted by tobacco. We cannot allow our ability to protect the public health to be undermined by a trade agreement."

The American Lung Association's 2014 State of Tobacco Control notes that 20.3% of Maine's adults and 15.2% of Maine youth are smokers. Nearly 2,235 Maine residents die per year due to tobacco-related illness – including 744 smoking-attributable lung cancer deaths and 660 smoking-attributable respiratory disease deaths. Overall, the American Lung Association estimates that tobacco use costs Maine's economy more than \$1 billion a year.

Attorney General Mills joined 42 state attorneys general in sending the letter to Ambassador Michael Froman, the United States Trade Representative responsible for negotiating the Trans-Pacific Trade Agreement. The Attorneys General expressed their collective opposition to any proposals that undermine the ability of states to regulate tobacco or that subject those regulations to challenge under standards and forums that would not be available under United States law.





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January 27, 2014

Ambassador Michael Froman  
Office of the United States Trade Representative  
600 17th Street, N.W.  
Washington, D.C. 20208

Dear Ambassador Froman:

The undersigned Attorneys General write to request that the United States Trade Representative act to preserve the ability of state and local governments to regulate tobacco products to protect the public health. This request is prompted by the negotiations currently underway with respect to the Trans-Pacific Partnership agreement (TPP), but it applies generally to all international trade and investment agreements that the United States is considering or will consider entering into. In particular, we request that any such agreement explicitly provide that it does not apply to trade or investment in tobacco or tobacco products.

While discussion of the TPP's impact on tobacco regulation has focused primarily on regulation by federal agencies under such legislation as the 2009 Family Smoking Prevention and Tobacco Control Act, states and localities also engage in regulation of tobacco products to protect their citizens and their treasuries from the toll of death and disease that those products cause. Indeed, a full decade before the Tobacco Control Act, state Attorneys General entered into the Master Settlement Agreement (MSA) (as well as earlier settlements in four states) with the major tobacco companies, and a number of other domestic and foreign companies are now also parties to the MSA. As a result of the MSA, States enacted new statutes and regulations to enforce certain of the Agreement's terms. The public health achievements in the MSA should not be subject to backdoor attacks on the very legislation used to make those gains.

In addition to the legislation relating to the MSA, existing state and local tobacco regulation includes such areas as tobacco marketing that targets children; taxation; licensing; the minimum age for purchase of tobacco products; Internet sales; advertising (including health) claims and promotional methods; retail display; fire safety standards; minimum prices; and indoor smoking restrictions. Such regulation is specifically recognized and preserved by Congress in the Tobacco Control Act, and plays an important role in combating the health and financial consequences of tobacco use.

An example of this kind of state regulation is the recently settled case that Vermont brought against R.J. Reynolds Tobacco Company, alleging that advertisements for the company's Eclipse cigarette falsely claimed, among other things, that the cigarette "may present less risk of cancer, chronic bronchitis, and possibly emphysema." The trial court held that this claim was

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Re: Attorney General TPP Letter to USTR

deceptive because it was not sufficiently supported by competent and reliable scientific evidence, and therefore violated the MSA and the Vermont consumer fraud statute. The Court enjoined any similar future claims. The parties have settled the case, leaving the trial court's judgment and permanent injunction in place.

As the chief legal officers of our states, we are concerned about any development that could jeopardize the states' ability to enforce their laws and regulations relating to tobacco products.

Experience has shown that state and local laws and regulations may be challenged by tobacco companies that aggressively assert claims under bilateral and multilateral trade and investment agreements, either directly under investor-state provisions or indirectly by instigating and supporting actions by countries that are parties to such agreements. Such agreements can enable these tobacco companies to challenge federal, state, and local laws and regulations under standards and in forums that would not be available under United States law.

A recent example of such a challenge is a NAFTA investor arbitration brought by Grand River Enterprises Six Nations Ltd., a Canadian cigarette manufacturer that challenged certain MSA-related laws in 45 states – laws that have been upheld in every challenge to them in a United States court, including several by Grand River itself. The NAFTA challenge was rejected by an arbitration panel, but only after extensive litigation that consumed significant state and federal time and resources to defend. Other examples include Indonesia's successful challenge to the Tobacco Control Act's ban on flavorings as applied to clove cigarettes, and tobacco companies' challenges to cigarette package warnings in Uruguay, Australia, and Thailand. In sum, provisions in agreements that set forth vague standards and that are left to arbitration panels to interpret can undermine public health regulation by reducing the certainty and stability necessary to such regulation.

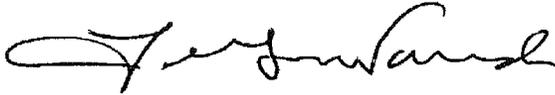
Unfortunately, the "Elements of Revised TPP Tobacco Proposal" that the Trade Representative announced this past August would not adequately protect state and local regulation from these potential adverse consequences of the current draft TPP agreement. As we understand from publicly available information, the August USTR proposal has two elements: first, an "understanding" that a general exception in the TPP agreement for "matters necessary to protect human life or health" applies to "tobacco health measures," and second, a requirement that there be non-binding consultations between the respective public health officials of the concerned parties before formal consultations are initiated with respect to any challenged measure. The USTR proposal, however, fails to recognize the unique status of tobacco as a harmful product; would not eliminate the need for arbitration to determine whether a measure falls within the exception; and in any event would apparently apply only to the TPP trade provisions and thus would have no impact on investor-state arbitration that the tobacco industry uses as a tool to challenge and stymie legitimate measures that countries (including their federal, state, and local governments) adopt to reduce tobacco use.

Based on the history to date with respect to such challenges to regulatory authority, we believe that the only way to avoid the damage to public health posed by a multilateral agreement like the TPP is to carve tobacco out of the agreement entirely, as the Government of Malaysia and others have proposed. Any "slippery slope" argument against such a carve-out should be rejected. Tobacco is the only product that, when used as intended, causes fatal diseases in many of its

Re: Attorney General TPP Letter to USTR

users without providing any nutritional or other health benefits. It kills 440,000 Americans every year and, at present rates, will kill more than one billion people worldwide in this century. There is no policy justification for including tobacco products in agreements that are intended to promote and expand trade and investment generally.

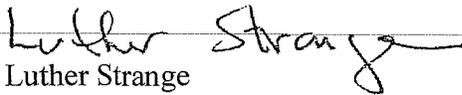
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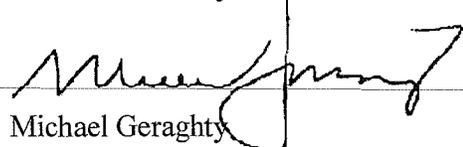
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Idaho Attorney General



William H. Sorrell  
Vermont Attorney General



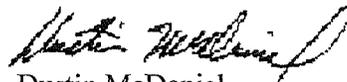
Luther Strange  
Alabama Attorney General



Michael Geraghty  
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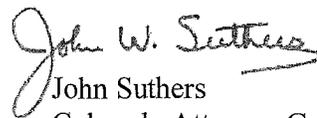
Tom Horne  
Arizona Attorney General



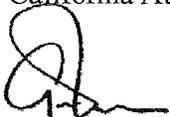
Dustin McDaniel  
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Kamala Harris  
California Attorney General



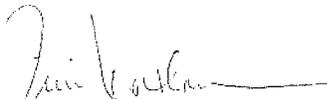
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George Jepsen  
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Joseph R. "Beau" Biden III  
Delaware Attorney General



Irvin Nathan  
District of Columbia Attorney General



Samuel S. Olens  
Georgia Attorney General



Lenny Rapadas  
Guam Attorney General



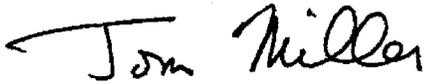
David Louie  
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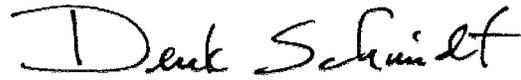
Lisa Madigan  
Illinois Attorney General



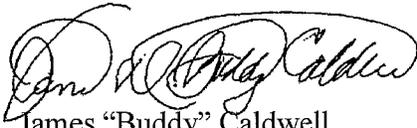
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Indiana Attorney General



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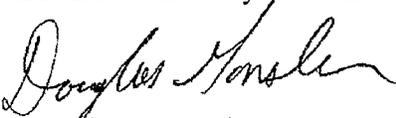
Derek Schmidt  
Kansas Attorney General



James "Buddy" Caldwell  
Louisiana Attorney General



Janet Mills  
Maine Attorney General



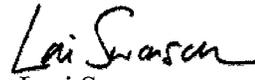
Douglas F. Gansler  
Maryland Attorney General



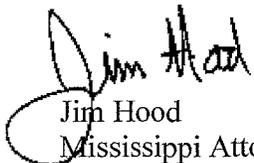
Martha Coakley  
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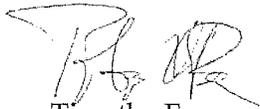
Lori Swanson  
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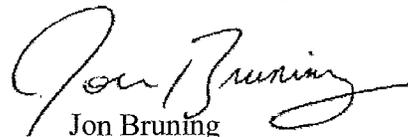
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Missouri Attorney General



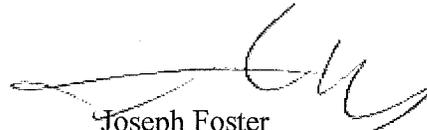
Timothy Fox  
Montana Attorney General



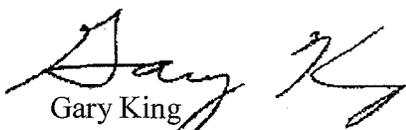
Jon Bruning  
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Catherine Cortez Masto  
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Joseph Foster  
New Hampshire Attorney General



Gary King  
New Mexico Attorney General



Eric T. Schneiderman  
New York Attorney General

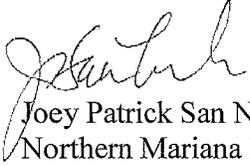
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North Carolina Attorney General



Wayne Stenehjem  
North Dakota Attorney General



Joey Patrick San Nicolas  
Northern Mariana Islands Attorney General



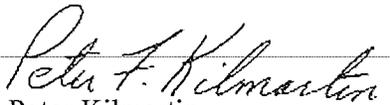
Scott Pruitt  
Oklahoma Attorney General



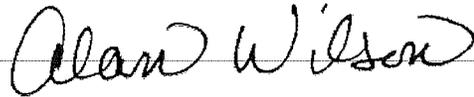
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Peter Kilmartin  
Rhode Island Attorney General



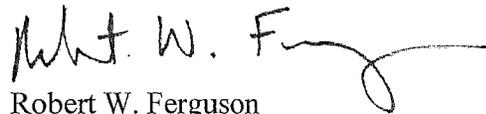
Alan Wilson  
South Carolina Attorney General



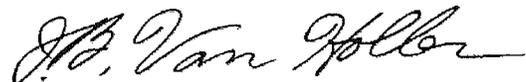
Marty J. Jackley  
South Dakota Attorney General



Sean Reyes  
Utah Attorney General



Robert W. Ferguson  
Washington Attorney General



J.B. Van Hollen  
Wisconsin Attorney General



Peter K. Michael  
Wyoming Attorney General



BNA 1-29-14

Congress

## **Timing of TPA Depends on Obama, Says Former Chief of Staff to USTR**

### **Cato Scholar Says Jettison Investor-State Dispute Settlement**

**Key Development:** Timothy Keeler says the timing of Congress passing Trade Promotion Authority is anyone's guess at this point, but the president must be willing to spend substantial political capital to get it done quickly.

**Next Step:** Bipartisan Congressional Trade Priorities Act of 2014 is before Senate Finance Committee.

By Brian Flood

Jan. 29 — The largest factor in when Congress will pass Trade Promotion Authority (TPA), also known as fast-track authority, is the president's willingness to expend political capital, the former chief of staff in the Office of the U.S. Trade Representative (USTR) said Jan. 29.

“Anybody who tells you they know what the timing is, is lying at this point,” Timothy J. Keeler said at a panel discussion hosted by the Global Business Dialogue in Washington.

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Keeler emphasized that “the timing is as much connected with questions about the administration's—and the president's—commitment to getting it done as anything else. If they want to get it done, then they're going to have to expend a lot of political capital, and I would think it's in their interest to get it done sooner rather than later, but the timing depends on when they make the big push.”

Keeler also said that TPA authorization may be slowed by the transition of the chairmanship of the Senate Finance Committee. Current chairman Max Baucus (D-Mont.) has been nominated as the next U.S. ambassador to China (19 ITD, 1/29/14).

Baucus, along with Senate Finance's ranking member Orrin Hatch (R-Utah), was a co-sponsor of the Bipartisan Congressional Trade Priorities Act of 2014, which would renew the fast-track authorization process. The bill would require up-or-down votes on the implementation of trade pacts and would direct the administration to pursue specific negotiating objectives and delineate the role of Congress in any negotiations (12 ITD, 1/17/14).

Ambassador Alan Wolff, the former U.S. Deputy Special Representative for Trade Negotiations, agreed that the president must get directly involved, in particular to prevent congressional “log-rolling” that would lead to more economic sectors excluded from trade agreements. He said he hoped that U.S. Trade Representative Michael Froman would position the president and his cabinet officers to engage more energetically.

Wolff also said that he hoped the ranking members and chairmen of the relevant congressional committees will act as key players in the discussion, “as opposed to the leadership, who are further from the issues.”

Dan Ikenson, director of the Cato Institute's Herbert A. Stiefel Center for Trade Policy Studies, said that the administration's handling of foreign trade negotiations has been deft but that its domestic negotiations have been wanting.

“The question remains as to whether the president is willing to stand up to some of his traditional domestic constituencies that supported him and to stand with Republicans in Congress,” Ikenson said. So far, he said, there is reason to remain skeptical of the president's commitment to this issue. His remarks at the State of the Union Jan. 28 didn't betray any sense of enthusiasm for the trade agenda, Ikenson said, and may have alienated Republicans on Capitol Hill with its emphasis on administrative action to bypass congressional gridlock.

### *Scare Tactics*

The administration's silence on the importance of trade agreements has allowed certain myths, perpetuated by the “shrill scare tactics” of groups on the political left, to flourish, Ikenson said. Those myths include that trade is an “us versus them” endeavor, trade deficits are necessarily a bad thing, free trade only benefits big businesses and the wealthy, trade agreements have led to a race to the bottom in regulatory standards worldwide and globalization and free trade caused manufacturing in the U.S. to decline, he said.

Ikenson said a few Republicans in Congress want to deny President Obama any success, but the bulk of opposition to TPA comes from Democrats, who fear that labor and environmental provisions in prospective trade deals like the Trans-Pacific Partnership and the Transatlantic Trade and Investment Partnership are not strong enough, among other complaints.

Critics see such provisions as means to circumvent domestic lawmaking and regulatory procedures and to give large multinational corporations the means to “run roughshod” over domestic law, Ikenson said.

To that end, the surest way to garner enough congressional support for trade agreements would be to jettison the investor-state dispute settlement system, he said. Investment abroad is a risky proposition, but multinational corporations are equipped to deal with such risks, he added.

Cutting out investor-state dispute settlement provisions would “address so many of the arguments, and certainly most of the rhetoric, that comes from the left,” Ikenson said.

From USTR newsletter, 1/31/14

**Statement by U.S. Trade Representative Michael Froman on the Bipartisan Congressional Trade Priorities Act of 2014**

January 9 - U.S. Trade Representative Michael Froman issued the following statement today regarding the introduction in Congress of the Bipartisan Congressional Trade Priorities Act of 2014:

**"I welcome the introduction of the Bipartisan Congressional Trade Priorities Act. We expect to have a robust conversation on the Hill about how trade agreements should be negotiated and the role of Congress in that process. We're eager to engage directly with Members of the Finance and Ways and Means Committees and with all of Congress to pass Trade Promotion Authority legislation that has broad, bipartisan support.**

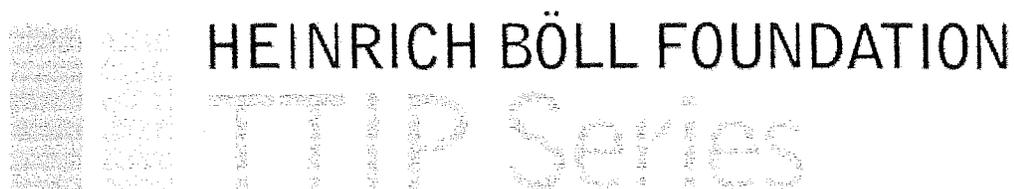
**"We need to open markets, support U.S. jobs, increase exports of products Made in America and ensure a level playing field for Americans to compete in the global economy. Trade Promotion Authority will help us accomplish that goal.**

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TTIP SERIES

## Investor-state dispute settlement under TTIP - a risk for environmental regulation?



February 5, 2014

Christiane Gerstetter and Nils Meyer-Ohlendorf

### Executive Summary

[CLICK HERE](#) to view the full report (pdf, 25 pages)

The Transatlantic Trade and Investment Partnership (TTIP) could include rules on investment protection, including so called investor– state dispute settlement (ISDS). ISDS is a system that allows private investors to sue a host state for the alleged violation of an international investment treaty concluded between that host state and the investor's country of origin. The EU Commission's negotiating mandate for TTIP and the US model bilateral investment treaty both indicate a preference for including ISDS in TTIP.

There are a number of clauses routinely contained in investment treaties that have the potential to restrict the right of governments to take environmental measures: the requirement of "fair and equal treatment" for investors, a prohibition on "(indirect) expropriation", and the so-called umbrella clause. All of them are often broad and vague in wording, and; the case law interpreting them is not consistent.

Although investment tribunals never invalidate environmental regulations, nor have any similar direct impact on national environmental policies, they have – in some cases – awarded considerable compensatory payments to investors for a violation of the above clauses. The inclusion of any of these norms in TTIP would not automatically prevent the US or the EU adopting environmental measures in the future, nor would they necessarily have to pay compensation to investors whenever doing so. However, the results of ISDS proceedings are unpredictable. Some arbitration tribunals have taken a restrictive approach to governments' regulatory freedom; others have deemed government regulation not to violate investment law. These uncertainties result in

considerable risks for environmental regulation which are exacerbated by the fact that investment-related provisions tend to be interpreted broadly in ISDS proceedings.

There are no strong arguments for including ISDS rules in TTIP. Both the US and the EU have highly evolved, efficient rule of law legal systems. There is no evidence that investors have ever lacked appropriate legal protection through these systems. There is no bilateral investment treaty between the US and any of the old EU Member States, and yet US and EU investors already make up for more than half of foreign direct investment in each others' economies. This demonstrates that investors seem to be satisfied with the rule of law on both sides of the Atlantic.

ISDS provides foreign investors with an additional judicial remedy that is not available to domestic competitors; this additional avenue of legal redress discriminates against domestic companies and has the potential to distort competition. Furthermore, the sheer size of foreign direct investment could lead to a considerable number of investment disputes. As a consequence, large numbers of disputes that normally would be adjudicated in domestic courts would be subject to international arbitration, bypassing domestic judges that have been elected or appointed by elected officials.

However, in the event that provisions on ISDS are nonetheless included in TTIP, this paper provides suggestions on how to formulate such provisions in order to mitigate the risk to environmental regulations.

## Inside U.S. Trade 2/6/14

### USTR Calls All-Day Briefing For Cleared Advisers On TPP For Next Week

Posted: February 6, 2014

In an apparent effort to defuse mounting criticism that the Obama administration is being too secretive about the Trans-Pacific Partnership (TPP) negotiations, the Office of the U.S. Trade Representative on short notice has called an all-day briefing for all cleared advisers on Feb. 11, according to sources familiar with a memo sent by USTR announcing the meeting.

The briefing to discuss TPP "landing zones" will begin at 8 a.m. and go until 6:30 p.m. at a location to be announced, according to sources familiar with the memo. The memo acknowledges that the briefing is on short notice, and apologizes if that means out-of-town advisers cannot attend, sources said.

The meeting would bring together all existing advisory committees for a joint session in the morning, when a long list of key TPP topics will be dealt with in short intervals. For example, the memo says the issue of state-owned enterprises will be addressed in a 15-minute segment, as will the complicated issue of rules of origin, sources said.

In the afternoon, the groups will meet separately, and will continue their briefings with USTR officials moving between these sessions, according to these sources.

The announcement comes after AFL-CIO President Richard Trumka rejected USTR's most recent claims to members of Congress that labor unions have been adequately consulted on the TPP. Trumka did so in a Feb. 4 letter to members of the House and Senate, taking issue with letters sent by USTR's congressional affairs office to various lawmakers, including Rep. John Carney (D-DE).

Assistant USTR for Congressional Affairs Hun Quach said in a Jan. 15 letter to Carney that she was responding to his question "on the Administration's efforts to ensure transparency in our trade agreements," according to a copy obtained by *Inside U.S. Trade*. She said she wanted to inform him that cleared advisers on advisory committees "provide advice to the President regarding proposals before text is finalized and tabled in trade negotiations."

The letter did not address the fact that labor advisers are only represented by one committee, the Labor Advisory Committee for Trade Negotiations and Trade Policy (LAC), and do not sit on any of the 16 industry advisory committees, a point that Trumka highlighted in his Feb. 4 letter. But the USTR letter does note that all advisory committees are provided with the "same access to U.S. proposals."

Criticism of administration secrecy around the TPP was also highlighted in an opinion piece in the Feb. 5 edition of the *The New York Times*, which cites incoming Finance Committee Chairman Ron Wyden (D-OR) as saying that there must be "fundamental

changes" to USTR's approach to transparency and congressional consultation if the president's trade agenda is to advance.

One source familiar with the memo said this briefing to cleared advisers gives USTR the ability to further deflect criticism over TPP secrecy by saying it has devoted an entire day to brief on every single issue under consideration in the TPP.

**The Trumka letter criticized the current advisory system for both substantive and procedural reasons.** His substantive complaints echo those of LAC chairman Tom Buffenbarger, the president of the International Association of Machinists & Aerospace Workers, who said last year that, because USTR is unwilling to share more than initial U.S. negotiating proposals, advisers are curtailed in providing useful advice on U.S. bargaining positions in trade agreements.

In a June 20 response to Buffenbarger, USTR said it values the views of the LAC and its members and have found them to be critical in developing U.S. negotiating positions.

"In that regard, we share with the LAC and other cleared advisors our negotiating proposals and have made available, as you mention, negotiators to discuss in detail the state of play of any aspect of an ongoing negotiation, including any information regarding the proposals of other governments that might affect our bargaining positions," USTR said.

"Nonetheless, we can always do better. In that regard, we welcome the opportunity for further engagement with the LAC members and liaisons on this issue, including the most effective ways to integrate the input of the LAC and labor representatives into the work of [Industry Trade Advisory Committees]," USTR said.

But Trumka's letter revives the charges that LAC members do not have access to the full negotiating texts, or to information regarding USTR priorities and choices. Therefore, they "cannot effectively influence the inevitable trade-offs in ways that would build the middle class and protect our democratic system," Trumka said.

He said this problem is compounded because advisers are curtailed in their ability to share information with union members or the larger public. Therefore, they cannot use the "traditional tools that civil society uses to offset the power of economic elites: education, organization, and mobilization of the public."

He also said the best illustration that the LAC has not been a "valuable tool" to create people-centered trade agreements is the substance of the deals that have been negotiated based on what Trumka calls a failed model of trade. That model has skewed the benefits of trade to economic elites and "exacerbated trade deficits, wage suppression, the dismantling of our manufacturing sector and income inequality."

Procedurally, Trumka noted that labor unions sit only on the LAC, but not the industry advisory committees. "Although in that capacity labor representatives have access to certain aspects of USTR negotiations, it is important to distinguish between 'access' and meaningful participation and influence," Trumka said in the letter.

The LAC has nominally the same access to initial U.S. negotiating proposals as the ITACs, but it meets less frequently than those committees, which meet an average of six times a year, Trumka said. Members of one ITAC have the opportunity to participate in multiple ITACs as well as in ad hoc working groups on such issues as government procurement, he said.

In contrast, the LAC meets two times a year and its members have not been invited to serve on ITACs related to their industries or sit on ad hoc working groups, Trumka said.  
-- *Jutta Hennig*

*Inside U.S. Trade - 02/07/2014, Vol. 32, No. 6*



POLITICO

**USTR cancels TPP briefing over presence of media**

2/10/14 12:42 PM EST

U.S. Trade Representative Michael Froman's office had planned to brief Vermont state lawmakers on the state of the Trans-Pacific Partnership negotiations last week.

But when the official from Froman's office discovered that two Vermont State House reporters would be listening in, the briefing was quickly called off, The Associated Press reported.

Reps. Mike Yantachka, Kathy Keenan and Jim McCullough told Rebecca Rosen, the director of intergovernmental affairs and public engagement for the U.S. trade representative's office, that they wouldn't eject reporters from the room despite USTR's insistence that no media members be present. "We don't have a closed-door policy here," Yantachka said, according to The Associated Press's account.

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Rosen then called off the conversation and said she'd follow up on whether her office would agree to the lawmakers' terms.

Vermont lawmakers have criticized U.S. trade negotiations over pacts such as the Trans-Pacific Partnership, arguing that they could undercut states' ability to regulate the environment, drug pricing, food labels and more. The state legislature approved a resolution last year urging the USTR to respect state sovereignty.

— *Eric Bradner*



## USTR TPP Briefing To Cleared Advisers Reveals Major Outstanding Issues

Posted: February 12, 2014

In a closed-door briefing yesterday (Feb. 11), the Office of the U.S. Trade Representative provided cleared advisers some new details on the Trans-Pacific Partnership (TPP) negotiations, but indicated that negotiators still face a large number of major outstanding issues, such as rules on intellectual property (IP), state-owned enterprises (SOE) and labor rights, according to informed sources.

One source said the sheer magnitude of outstanding issues as well as the fact that they encompass a whole host of sectors makes it difficult to see how TPP countries could conclude the talks at the Feb. 22-25 ministerial meeting in Singapore.

Other sources said that, in light of the information conveyed, it would be a stretch to imagine the TPP negotiations could be concluded by President Obama's trip to Asia in April. The White House announced on Feb. 12 that Obama will travel to Japan during that trip, where he will discuss TPP and other issues with Japanese Prime Minister Shinzo Abe.

Sources said they do not sense a lot of momentum going into the Singapore ministerial meeting. In particular, they noted that closed-door negotiations between the U.S. and Japan on market access for autos and agriculture which have taken place since the December ministerial do not appear to have yielded much progress.

But one source said USTR officials tried to convey a different message at the meeting: that there is a lot of momentum behind the negotiations and that they are moving toward closure. This source said USTR officials were adamant that they plan to make progress on a wide range of outstanding issues in Singapore, to the extent that the meeting felt like a public relations exercise designed to create momentum.

In opening remarks at the all-day meeting, USTR Michael Froman indicated that the U.S. will be working hard to bring the TPP talks to conclusion, sources said. Two sources said Froman appeared to convey the message that TPP countries are close to reaching a deal, but another source said he did not come away with the sense that success is around the corner.

This source said the briefing did not yield any new information about what would be the next steps for the TPP negotiations following the upcoming ministerial meeting.

But other sources said Froman is clearly pushing to conclude the negotiations in the near term because he knows that after Obama's April visit, there will be no real deadline for wrapping them up.

Striking a deal in the near term would require dropping a lot of key U.S. demands -- potentially on issues such as cross-border data flows -- and would require a careful calculation on what

industry priorities need to be met to have sufficient support for getting a deal approved by Congress, sources said.

These sources said they are convinced that Froman has a clear understanding of what a final TPP package must look like to reach the balance between scaling back U.S. demands and retaining sufficient support among the U.S. private sector.

Some key U.S. demands have already fallen by the wayside, one informed source said. For example, the Malaysian government has made clear to the U.S. that it will not drop its policy of extending preferences to ethnic Malays in such areas as government procurement. The U.S. has accepted that stance and is looking for offsetting concessions from Malaysia, according to this source.

One private-sector source following the TPP said that striking a deal is more complicated than the U.S. deciding to drop a demand. For example, this source said, even if the U.S. may agree to back off its demand that Japan open its agriculture market, that may not be acceptable to Australia. Without additional access to Japan's agriculture market, Australia may not be willing to make tough concessions on the TPP rules that the U.S. is advocating, such as free cross-border data flows.

One issue where the Australian government has dropped the outright opposition of its predecessor is the investor-state dispute settlement (ISDS) mechanism, sources said. But Australian negotiators have not yet spelled out what other concessions they would need to see to accept ISDS, they said. In addition, other TPP participants, including Mexico, oppose application of ISDS to the financial services sector.

Separately, one informed source said USTR has been very eager to engage members of Congress on TPP, with Froman meeting with members to discuss the negotiations. In the congressional debate, TPP has been lumped into the debate on whether Congress should extend fast-track negotiating authority to President Obama.

**At the Feb. 11 briefing, USTR officials did provide some additional details on the negotiations** for the TPP labor chapter, sources said. Specifically, one source said USTR indicated it is willing to incorporate some proposals put forth by Australia and Canada about consultations that would have to precede a dispute settlement case over labor obligations.

At the same time, USTR assured stakeholders that it would be able to achieve full dispute settlement in the labor chapter, including the right to impose trade sanctions in labor disputes, even though Canada has tabled an alternative proposal that would not allow trade sanctions, according to this source. This source said the Canadian proposal appears to have gained support from other TPP countries such as Australia and New Zealand, but USTR stressed at the meeting that it would be able to deliver full dispute settlement for the labor chapter.

Despite providing some additional details on the labor chapter at the briefing, one participant said USTR officials failed to mention a number of provisions in the labor text to which union representatives have raised objections.

In the area of SOEs, U.S. negotiators revealed they have made changes to the definition of an SOE in a way that reflects demands of other countries but still achieves the U.S. goal of

disciplining the commercial operations of SOEs to ensure these companies can fairly compete with private-sector firms. But some sources said that, despite the change, USTR negotiators made clear that a lot of issues remain open on SOEs even though there has been substantive engagement over the last six months.

One of those outstanding issues is whether the new SOE disciplines will apply to state-owned firms at all levels of government, or only to SOEs owned by the central government, as the U.S. has proposed, one source said. USTR officials made clear that some countries are still objecting to the U.S. position, but expressed confidence that the U.S. will ultimately prevail, according to this source.

**Froman's opening remarks to the cleared advisers were followed by rapid-fire briefings lasting 15 to 30 minutes each focusing on individual TPP issues.** Participants were not allowed to ask questions during those briefings, which lasted until 12:30 pm, sources said.

However, cleared advisers were allowed to ask questions and make comments during the afternoon session, which consisted of one-hour individual meetings of advisory committees that were attended by U.S. negotiators for specific TPP chapters.

These included a joint meeting of all Industry Trade Advisory Committees as well as a joint meeting of the Agricultural Policy Advisory Committee for Trade and all Agricultural Technical Advisory Committees. Also meeting were the Intergovernmental Policy Advisory Committee on Trade; Labor Advisory Committee; Trade Advisory Committee on Africa; and Trade and Environment Policy Advisory Committee, according to an agenda obtained by *Inside U.S. Trade*.

The issues covered during the morning briefings were labor; environment; electronic commerce; financial services; IP and transparency for drug reimbursement programs; SOEs; rules of origin; dispute settlement for sanitary and phytosanitary issues; market access for goods and agriculture; and investment, non-conforming measures and ISDS, according to the agenda.



# The Trans Pacific Partnership is in trouble on Capitol Hill. Here's why.

BY ED O'KEEFE

The Washington Post | The Fix (Blog)

February 19 at 2:55 pm

President Obama is meeting Wednesday with the leaders of Mexico and Canada and a major new trade pact with Asian countries is among several important topics of discussion.

The trade agreement, known as the Trans Pacific Partnership, has been in the works for nearly a decade and would more closely align the economies of the U.S., Canada, Mexico and nine other countries in South America and Asia. The deal would eliminate tariffs on goods and services and generally harmonize dozens of regulations that can often complicate doing business across borders. (Everything you need to know about the Trans Pacific Partnership, explained by The Post's Lydia DePillis, can be read here.)

**Figure 1. Trans-Pacific Partnership Countries**  
(2012)



(Image courtesy of the Congressional Research Service.)

The White House is eager to finish the talks with its would-be trading partners and has been pushing to earn the authority to bypass Congress and quickly approve the deal. But most Democratic lawmakers don't want to give Obama "fast track" trade authority to quickly negotiate and approve the deal.

The resistance could complicate things for Obama on two fronts. First, any sign of serious opposition in Washington will make countries involved in the talks nervous that the American president can't seal the deal back home. But second -- and more importantly for The Fix's purposes -- Obama has to balance his desire to get a deal with the political needs of congressional Democrats, dozens of whom run the risk of losing their seats in November.

Already, Senate Majority Leader Harry M. Reid (D-Nev.) and House Minority Leader Nancy Pelosi (D-Calif.) are opposed to moving forward with granting Obama fast-track authority.

"Everyone would be well-advised just to not push this right now," Reid said late last month. He's generally opposed to large global trade agreements.

Pelosi doesn't oppose the concept of fast-track, but said last week that she is against a bipartisan measure introduced by Sens. Max Baucus (D-Mont.), Orrin G. Hatch (R-Utah) and Rep. Dave Camp (R-Mich.) that would give Obama the authority.

Resistance from Reid and Pelosi usually would be enough to at least ease the White House push. But Obama and Vice President Biden have also been directly confronted on the issue in recent weeks by rank-and-file members. During a closed-door meeting at the White House, Obama took two questions on the subject, while Biden faced a grilling on the subject at the House Democratic policy retreat last week.

At the White House, Obama heard an earful from Reps. Marcy Kaptur (D-Ohio) and Alan Grayson (D-Fla.), two outspoken liberals with close ties to the labor movement and other liberal constituencies.

Kaptur said she had a simple request for Obama: Let Congress and the public see the details of the TPP before Congress is asked to give him fast track authority.

"He did not say yes," she said in a recent interview. "That means that we would be faced with a fast-track vote that would lock our ability to amend without even knowing what's in the agreement. I can't do that. Not when we have \$9 trillion of accumulated trade deficit, which is the reason for our budget deficit, because we're losing middle-class jobs in our country and we've outsourced millions of our jobs, a third of our manufacturing base is gone."

Grayson said he wanted to remind Obama that the U.S. faces hundreds of billions of dollars in trade deficits with other countries.

In response, Obama "didn't give me any sense that, any reason to believe that these free trade agreements that are being negotiated now are going to be any different than the ones we've negotiated in the past," Grayson said in a recent interview. "They've consistently, and almost to an unbelievable extent, exacerbated our trade problems. I told the president specifically this: That what's actually happening is that we're buying goods and services from foreigners and creating jobs in their countries and they are not buying our goods nor our services. What they are doing is buying our assets and driving us deeper and deeper into debt. So we lose twice, we lose because those jobs go overseas and because we go deeper and deeper into debt."

Despite the Democratic opposition, White House Press Secretary Jay Carney said Tuesday that "we're going to continue to press" for fast-track authority.

But if Obama pushes too hard, he risks upsetting rank-and-file Democrats and key liberal support groups in the labor and environmental communities that always have concerns with major international trade deals. Upsetting those groups might prompt them to sit on their hands or not spend as much money backing Democratic candidates in November.

But if Obama doesn't push hard enough for fast-track, he risks upending an historic trade deal that would help advance his administration's long-sought "pivot" to Asia and upending similar trade talks underway with European countries.

That's why for now, at least, the White House's push for fast-track trade authority has slowed to a crawl on Capitol Hill.

## EUROPEAN LAWMAKERS THREATEN TO SCUPPER CANADA TRADE DEAL – RTRS

Reuters

28-Aug-2014 15:30

- EU Parliament has to ratify trade treaty
- Greens fear it may dilute EU environmental law
- Far-right politicians concerned about sovereignty

By Julia Fioretti and **Barbara Lewis**

BRUSSELS, Aug 28 (Reuters) - EU lawmakers are threatening to block a multi-billion dollar trade pact between Canada and the European Union -- a blueprint for a much bigger EU-U.S. deal -- because it would allow firms to sue governments if they breach the treaty.

The agreement with Canada, a draft of which was seen by Reuters, could increase bilateral trade by one fifth to 26 billion euros (\$34 billion).

But European consumer and environmental groups say a mechanism in the accord would allow multinationals to bully the EU's 28 governments into doing their bidding regardless of environmental, labour and food laws and would set a bad precedent for the planned EU-U.S. trade pact.

The European Parliament must ratify both the Canada and the U.S. pacts. Since elections in May, the rise of nationalist, Eurosceptic parties in the legislature, many of them opposed to globalisation, have complicated the EU's free-trade ambitions.

"The Greens will fight hard to get a majority in the parliament against (the EU-Canada deal)," said Claude Turmes of the Green group, echoing concerns from others in the European Parliament, including the Socialist bloc.

Tiziana Beghin, an EU lawmaker from Italy's anti-establishment 5-Star Movement who sits on the parliament's influential trade committee, called the EU-Canada deal an "affront to democracy".

"Giving corporations the right to sue governments for loss of anticipated profit would be ridiculous if it were not so dangerous," she told Reuters.

According to the draft accord, the chapter on "Investor-State Dispute Settlement" (ISDS) allows companies to sue either an EU country or Canada in a special court if they think their trade interests have been damaged.

Some member states, including Germany, the EU's biggest economy, have also expressed opposition to the ISDS.

Canada and the European Commission deny accusations that the ISDS mechanism will give multinationals too much power. They say dispute settlement has been an important part of trade deals since the North American Free Trade Agreement 20 years ago.

Some in business consider it an insurance policy against the impact of laws on their profits or against expropriation.

NEGATIVE SIGNAL

In the European Parliament, it is not yet clear whether there is enough opposition to block the EU-Canada deal, but the very fact such threats are being made indicates the change in tone from the previous, more business-friendly parliament.

Together with the Socialists' 191 members, the political groups opposing the agreement could count on 341 votes, just 35 short of a majority.

Passing the accord is likely to depend on centrist parties forming a grand coalition and much will depend on how the Socialists, who say they oppose the dispute mechanism, vote.

In 2012 the EU Parliament flexed its muscles by rejecting an Anti-Counterfeiting Trade Agreement, which would have set global standards for enforcement of intellectual property rights.

Blocking the Canada trade deal would send a very negative signal on the chances of the even more ambitious EU-U.S. accord, which if approved would encompass almost half of the global economy and about a third of world trade.

"This issue is very important since the accord with Canada with the arbitration clause would foreshadow a deal with the United States," said French far-right leader Marine Le Pen.

Hostility to the dispute settlement panel has united those such as Le Pen, who see it as a threat to national sovereignty, and those worried about the implications for environmental law.

Dutch Green MEP Bas Eickhout said the draft deal would "open the backdoor" for firms to kill off environmental legislation.

The EU and Canada hope to sign the accord -- officially known as the Comprehensive Economic and Trade Agreement (CETA)-- at an Ottawa summit on Sept. 25-26, officials said. It must still be ratified by both the EU and Canadian parliaments.

(1 US dollar = 0.7588 euro)

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(Additional reporting by David Ljunggren in Ottawa; Editing by Gareth Jones)

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## Is This EU-US Trade Deal A 'Once-In-A-Generation' Opportunity?

Forbes 8/28/14

The Transatlantic Trade and Investment Partnership ("TTIP") might not have come up on the radar for most folk but perhaps it should. The silence is largely down to something of media blackout – with a few exceptions. Why this might be makes one wonder given that it could have wide-ranging ramifications and information is out there at the click of a mouse.

One of the few media outlets in the UK to pass comment, The Guardian, carried an article last November by environmental campaigner George Monbiot titled 'This transatlantic trade deal is a full-frontal assault on democracy.' He noted the silence coming out of Brussels on the issue.

In essence TTIP is a comprehensive free trade and investment treaty presently being negotiated – in secret – between the European Union (EU) and the United States (U.S.). The main objective is to remove regulatory barriers or differences, which limit or restrict the potential profits to be made by transnational corporations.

A panel of corporate lawyers will effectively be able to overrule national Parliaments and democratically elected Governments, through a mechanism called the '[Investor](#) -State Dispute Settlement' (ISDS). It is already being used by companies in various parts of the world including Canada and El Salvador to dampen regulations designed to safeguard citizens and protect the planet.

The barriers are considered by a number of campaigning organisations such as War on Want, a UK-based anti-poverty charity, to be some of our "most prized social standards and environmental regulations". These include labour rights, food safety rules,

regulations on the use of toxic chemicals, digital privacy laws and even new banking safeguards introduced to prevent a repeat of the 2008 financial crisis. The stakes could not be higher.

The intention to launch TTIP negotiations was first announced by President Barack Obama in his State of the Union address in February 2013, and the first round of negotiations took place between European Commission and U.S. officials in July 2013.

John Hilary, executive director of War on Want, who wrote a 42-page document titled ‘The Transatlantic Trade and Investment Partnership (TTIP): A Charter for deregulation, an attack on jobs, an end to democracy’ (Feb 2014) explains: “The aim is to rush through the talks as swiftly as possible with no details entering the public domain, in the hope that they can be concluded before the peoples of [Europe](#) and the U.S. find out the true scale of the TTIP threat.” The document is available in English, French, Spanish and other languages to download via their website.

So, what exactly is the threat? On top of the deregulation agenda behind TTIP, it is also seeking to create new markets by opening up public services and Government procurement contracts to competition from transnational corporations, thereby threatening – as some campaigners like Hilary argue – “to introduce a further wave of privatizations in key sectors, such as health and education.” For some corporates this may be seen as bonanza time.

Perhaps most concerning of all to them is that TTIP seeks to grant foreign investors a new right to sue sovereign states in front of ad hoc arbitration tribunals for loss of profits resulting from public policy decisions. This reinforces the view that multinational corporations will run rampant in pursuit of profit.

The ISDS mechanism, as Hilary puts it “elevates transnational capital to a status equivalent to the nation-state itself”, and threatens to

undermine the most basic principles of democracy in the EU and U.S. alike. Some have suggested it poses the greatest threat to democracy since World War Two.

Currently there is a growing body of concern among U.S. and EU citizens over the threats posed by TTIP. Civil society groups are now joining forces with academics, parliamentarians and others to prevent pro-business Government officials in basically signing away the key social and environmental standards. Over 100 groups across the EU, including the UK-based World Development Movement, have signed a document expressing their opposition to TTIP negotiations.

In the UK a series of protests were staged this July in towns and cities across the country against the proposed deal. Campaigners also launched a 'Citizens' Initiative' petition to the European Commission with the aim of getting a million signatures against the deal.

Elsewhere, Campact, a German grass roots campaigning group, also launched a petition calling for a stop to the TTIP negotiations. So far 625,000 have signed. One million signatures are needed to stipulate that the EU Parliament spends a day discussing this petition.

Teresa Villiers, a British MP and Secretary of State for Northern Ireland, responding in a standard letter to comments on TTIP from Phil Fletcher, a stalwart Green Party campaigner in London who stood in May's local elections in England (in her constituency), believes this partnership is "a once in a generation opportunity".

The argument put forward is that it would lead to significant benefits in terms of jobs and growth, with the potential to deliver £10 billion (c.US\$16bn) to the UK economy each year. However, a study by academics from Manchester and Ghent universities casts doubt over the figure and estimates that in reality the likely effect on growth would be a fraction of this amount.

Furthermore, while the European Commission has claimed the deal would bring people in the UK and the rest of Europe an extra £2 (c.\$3.2) per person per week by 2027, a European Commission study has forecast that one million people across the UK, Europe and the U.S. could lose their jobs through the deal. So, the jury is out.

Highlighting concerns the Slovak Government has already been sued under a legal system similar to that being proposed under TTIP for reversing health privatization policies.

On environmental regulations, Fletcher notes: “The EU has openly acknowledged that TTIP will further intensify pressure on the environment, and that it will add an extra 11 million metric tonnes of carbon dioxide (Co2) to the atmosphere, making it difficult for the EU to meet ITS emission reduction commitments under the Kyoto protocol.”

It does seem a tad strange that there has been no attempt by the UK Government to inform or consult the public about what Monbiot calls “this monstrous assault on democracy”, especially given the fierce debate about continued British membership of the EU. This is a debate that is likely to run.

Friday, August 29, 2014  
Inside US Trade

*TPP Meeting Preview*

## Low Expectations For Hanoi Round Cast Doubt On November TPP Result

Posted: August 29, 2014

**Editors Note:** Inside U.S Trade will have a reporter on the ground in Hanoi to cover the TPP informal round, and will be heading to Seoul afterward to deliver an update on Korea's TPP deliberations. Please continue to check [www.insidetrade.com](http://www.insidetrade.com) for updates.

At an informal round of talks taking place Sept. 1-10 in Hanoi, Trans-Pacific Partnership (TPP) negotiators are poised to confront some of the most contentious issues in the negotiations, including intellectual property (IP) protections for drugs and disciplines on state-owned enterprises (SOEs). But with no plans to actually resolve any of these tough issues in Hanoi, observers are questioning whether it is realistic to expect that the Obama administration will achieve its goal of reaching a substantial TPP outcome by November.

The talks on pharmaceutical IP and SOEs, for example, will focus on so-called "technical" work. In practical terms, this means the negotiators will be trying to further clarify and define the various options for resolving these issues, without actually pulling the trigger. Some of these decisions can be made by TPP chief negotiators, who will be in Hanoi, but most are likely to be left up to ministers.

On SOEs, the parties have come close to agreement on how to craft a definition for which entities will be covered, and are now focusing the bulk of their energy on negotiating country-specific exceptions to the disciplines. Countries where SOEs dominate the economy, like Vietnam, have made this phase of the talks arduous, and it will likely take ministerial-level talks to resolve it, sources say.

The talks on drug IP also involve a series of complex issues that will likely have to be resolved at the political level. TPP countries have generally coalesced around a U.S. proposal under which less-developed members would be able to temporarily provide a lower standard of drug IP protection than more developed members. But they are still at odds over the mechanism for transitioning between the two standards, as well as what will be the core obligations for both standards on issues like patent linkage and exclusivity periods for clinical trial data.

Both aspects are technically difficult, politically sensitive and hotly debated between the 12 TPP parties. The United States specifically has faced significant pushback on its demands and has already backed down from its initial position.

In the span of the 10-day informal round in Hanoi, the negotiating groups on IP and SOEs will meet almost every day, as will the group dealing with the painstaking rules of origin (ROO) chapter. The other negotiating groups meeting will be textiles, investment, environment, and legal issues, according to informed sources. In addition, negotiators will hold meetings on market access for goods, services and investment, but not government procurement.

But those are not the only issues on deck for Hanoi. Felipe Lopeandia, Chile's chief TPP negotiator, disclosed in an Aug. 21 briefing with stakeholders that one of the key objectives of the round will be to make progress on the final outstanding issues in the chapters on sanitary and phytosanitary (SPS) measures, labor rights, technical barriers to trade (TBT), and services, according to a Chilean government press release. His comments suggest that these four topics will be tackled by the chief negotiators, while lower-level officials will discuss the other issues.

Even if negotiators further clarify potential compromises in Hanoi, the next steps for the TPP negotiations are unclear. One informed source said TPP countries have not yet confirmed that they will hold a TPP ministerial meeting in October, as the U.S. has proposed, and probably will not make a decision on that until after the Hanoi informal round.

In addition, it is still unclear what type of outcome on TPP the U.S. is seeking for a November meeting of Asia-Pacific Economic Cooperation (APEC) leaders, this source said. Observers say it would be extremely difficult to reach a partial agreement of any kind due to the links between the different aspects of the negotiations. Every concession a party makes is conditioned on gains in another area, meaning that without the whole picture, a deal will continue to be elusive.

Meanwhile, officials from South Korea are slated to attend the informal round in Hanoi to keep an eye on how the TPP talks are unfolding. Korea has announced its interest in joining the TPP negotiations and held consultations with all current participants, some of them multiple times, but has still not formally sought entrance.

The U.S. has been abundantly clear in saying that it wants to conclude the deal with the current 12 participants before welcoming anyone else to the table, while at the same time saying that Korea's willingness to resolve bilateral issues will impact U.S. support for an eventual Korean TPP bid. Seoul, meanwhile, has continued to hold open that it should be able to join the talks while they are still ongoing if they drag on much longer.

**The linchpin of the whole TPP deal has long been perceived to be Japan's willingness -- or lack thereof -- to improve its market access offer for sensitive agricultural products.** In this discussion, the U.S. and Japan are the key players.

The two countries claimed they found a path forward on bilateral issues during President Obama's trip to Tokyo in April, when the U.S. dropped its demand that Japan eliminate tariffs on beef and pork. U.S. negotiators have since claimed that Japan is now engaging more seriously on agricultural market access with other TPP parties. They also claim this is unlocking some of the difficult issues in the rules negotiations.

There are indications this has happened to some degree since a May informal TPP round in Ho Chi Minh City, Vietnam, but not with any great speed. Sources say Japan has discussed agricultural market access for its sensitive areas with parties beside the U.S., but only in a general way. Talks on specific tariff lines appear to far away.

In light of this, Canada -- which has agricultural offensive interests and but also significant import sensitivities due to its supply management systems for dairy, poultry and eggs -- is not expected to come to Hanoi with any new flexibility, sources said. While U.S. officials have charged that Ottawa is hiding behind Tokyo on agricultural market access, other sources sympathetic to Canada take exception to that argument.

One source noted that all TPP parties, including the U.S., are holding off on making politically difficult concessions until the parameters of a market access deal with Japan become clearer. In that regard, Canada is no different, although its major sensitivity happens to be agriculture, this source argued.

**Amid all of this, a potential game-changer could be if the U.S. and Japan follow through with a July pledge to disclose to other TPP parties the details of their bilateral discussions on market access in October. That could generate momentum in the negotiations, although some observers say it would still be difficult to wrap up all outstanding issues before November.**

**Even some top-level political officials do not seem to think the talks will unfold quickly enough** for a deal to materialize by the end of the year. In early August, New Zealand Trade Minister Tim Groser became the second minister from a TPP country to predict that the negotiations will not be concluded in 2014.

Groser's comments echoed Australian Trade Minister Andrew Robb, who said in June he did not think the TPP talks would be finished this year and that a more likely timeline for their conclusion is the first half of 2015.

President Obama said following a June summit with New Zealand Prime Minister John Key that by the time of the November APEC meeting, "we should have something that we have consulted with Congress about, that the public can take a look at and we can make a forceful argument to go ahead and close the deal." Chilean President Michelle Bachelet said on July 1 that the U.S. is seeking a "draft" TPP deal by the APEC meeting.

Some observers say they feel a sense of déjà vu about the current dynamic. Around this time last year, U.S. Trade Representative Michael Froman announced that the TPP talks were in the "end game." In November 2013, he said the time is "now" for TPP parties to make the difficult political decisions needed to complete the deal.

In a conference call with reporters on Aug. 28 from Myanmar, where he attended meetings with economic ministers from Southeast Asia and other trading partners, Froman said the U.S. is looking at the Hanoi round "as an opportunity to make further progress on the outstanding issues and expect it to be very productive." He said he discussed the TPP negotiations in bilateral meetings with several TPP trade ministers in Myanmar, but did not stop in any TPP countries before returning home.

Since the 19th round of TPP negotiations in Aug. 2013, held in Brunei, TPP parties have stopped calling their gatherings "rounds" and have not had a formal role for stakeholders during negotiating meetings. But they have held a slew of meetings at different levels since.

These include a chief negotiators meeting in Washington in September 2013, an informal round in Salt Lake City in November 2013, and a December 2013 ministerial in Singapore. Another informal round and ministerial were held in Singapore in February, followed in May by a similar back-to-back round and ministerial in Ho Chi Minh City and Singapore, respectively. The last informal TPP round was held in July in Ottawa

Inside U.S. Trade - 09/05/2014

## American Envoy To Brussels Says EU Needs TTIP Benefits More Than U.S.

Posted: September 4, 2014

The new U.S. ambassador to Brussels this week said the European Union is more in need of the potential economic benefits of the Transatlantic Trade and Investment Partnership (TTIP) than the United States because of Europe's "continuing sluggish economic performance."

"Both sides of the Atlantic need faster growth and more and better jobs, but let's face it: Europe needs them even more," the ambassador, Anthony Gardner, said before a Sept. 3 meeting of the EU's International Trade Committee (INTA) in Brussels. "How is Europe going to provide its youth a future, its retirees a decent pension and pay for the social protections it wants without growth?"

At the same time, Gardner argued that the U.S. "remains fully committed to these negotiations and to an ambitious outcome." He rejected the notion that the upcoming midterm elections in November are impacting U.S. engagement, and said the administration's lack of Trade Promotion Authority (TPA) "is not an impediment to proceeding with negotiations now." He added that the administration is "confident that we will succeed in getting TPA."

Gardner insisted that a TTIP deal could be completed by the end of next year, but flatly rejected a proposal advanced by Italy's trade minister to break the initiative up into phases for earlier completion.

"[O]nly a comprehensive agreement would yield the significant results our leaders want and at the same time provide the necessary balance," he said. "I know that our friend [Italian Vice Minister of Trade] Carlo Calenda believes that an interim agreement should be considered, but we continue to believe that only a comprehensive agreement will work."

The ambassador's remarks -- his first before a European Parliament committee since taking the position in February -- come after more than a year of the TTIP negotiations during which both U.S. and EU observers have often questioned the U.S.'s seriousness about the initiative, and seen the EU as playing the role of the "demandeur."

Those sentiments were echoed during the hearing by Marietje Schaake, a Dutch member of the Group of the Alliance of Liberals and Democrats for Europe, the parliament's fourth-largest political party.

Schaake, who is also a member of a parliament group focusing on relations with the U.S., said the EU is not seeing the type of commitment and sense of urgency from the U.S. that is needed to complete the deal on "one tank of gas." She faulted both the Obama administration and the U.S. Congress for this.

"I think it is now time, especially on the American side, to step on the gas because in regard to some developments such as Trade Promotion Authority; we are not seeing the commitment and the sense of urgency we would like to see," Schaake said. "There's [a] significantly less ambitious appearance of members of Congress in meeting with us."

"I think we're at a crucial point with TTIP and with how this is going to take shape in moving on, where we need more commitment from the House of Representatives and the Senate, as representatives of our respective citizens and [businesses] to make TTIP work. I encourage you to send that message to Washington loudly and clearly," she said.

**The U.S. ambassador also dismissed as "peripheral" many of the worries about TTIP that have been raised** by EU civil society groups, including that it will introduce into Europe more genetically modified food and sanitizing washes for meat and poultry, but also more broadly threaten the ability of EU governments to regulate. Presenting TTIP as a strategic deal, Gardner sought to make the case that these issues should be seen within the broader geopolitical context the U.S. and EU now face. He went as far as to contrast fears raised in the EU about TTIP leading to imports of chlorine-washed chicken to the downing of the Malaysian Airlines flight over Ukrainian airspace, which killed 298 passengers and crewmembers.

"At a time when Russia is supplying troops and equipment to the separatists in the Ukraine and shares responsibility for the killing of European citizens in the skies above Ukraine, it would be appropriate to put peripheral issues such as chicken washed in chlorine into some perspective," Gardner said.

"To those who are skeptical about this agreement and who refuse to believe the assurances provided by both sides, I would simply say this: We are still in a relatively early stage of the negotiations. Do not prejudge the results. Wait until we have advanced texts," he added.

The ambassador also downplayed criticisms that the value of the TTIP deal might be overstated. In response to a question by Yannick Jadot, a French member of the Green party, who suggested the estimates have been exaggerated, Gardner said this issue is a moot point.

"You mention that the projections for growth for TTIP might be too ambitious," Gardner said. "Maybe they are, maybe they aren't. But my answer to you is: So what? My answer is Europe needs growth. It needs jobs ... Are we really in a position to say 0.5 percent [gross domestic product] growth isn't good enough or it will take too much time for us to reach that level? I don't think we have the luxury to make that kind of argument."

In what appeared to be an allusion to China and other major economies, Gardner warned that if TTIP is not concluded, those economies will be the ones setting global standards rather than the U.S. and EU. Gardner said those standards would be unpalatable for the EU and U.S. because other countries do not have the same shared values as the EU and U.S.

"If we fail [to complete TTIP], other countries who do not share our values and whose weight in the international trading system is growing fast will set the agenda themselves," Gardner said.

Gardner also set to dispel what he deemed to be "myths" about TTIP, including that the U.S. government procurement market is more closed than the EU market. He argued that the openness of the EU and U.S. public procurement markets are "roughly equal."

He labeled as "counterproductive" demands for the U.S. to repeal the Buy American Act, which requires a preference for U.S.-made goods in federal government purchases. Instead, he called on the EU to present a "specific list of concerns and demands" on procurement so that the U.S. can sit down and determine whether it can respond to them.

The EU has sought more access to U.S. federal and sub-federal procurement under TTIP. Granting additional access for goods procurement at the federal level would require USTR to waive the Buy American Act, which it already has the legal authority to do.

Giving EU companies additional access to state-level procurement would require the consent of the states themselves. Gardner acknowledged this hurdle, pointing out that the federal government cannot mandate how U.S. states spend their tax dollars.

He said the federal government is willing to engage with these states to see if they are willing to expand their international procurement commitments, but appeared to put the onus on the EU to convince state governments to do so. "I would suggest the best way to convince a governor or a state legislator they should participate in these negotiations is to lay out to them the benefits and the opportunities their states would gain," he said.

**Many of the MEPs raised the issue of transparency in the TTIP negotiations, but Gardner was adamant that the U.S. has provided all of the transparency it can.**

"It is rather difficult to convince us to provide you more access to negotiating texts than we provide our own members of Congress," Gardner said.

Marine Le Pen, a French MEP who is a euroskeptic, suggested that it is easier to visit a prisoner in jail than to view TTIP texts. He asked Gardner if members of Congress were satisfied with the level of transparency of the negotiations.

"Yes, they are happy with the transparency we give them," Gardner said. "They have access and their staff members do have access to our negotiating texts. We simply can't do more, and I'm not sure how to take forward, how to be more responsive to the clear concerns that have been expressed by this body."

Despite Gardner's comments, transparency in trade negotiations has remained a contentious political issue in Congress. EU Trade Commissioner Karel De Gucht, other officials and civil society groups have previously criticized the U.S.'s reading room procedure and the overall access to TTIP negotiating documents (*Inside U.S. Trade*, July 11).

*Inside U.S. Trade - 09/05/2014, Vol. 32, No. 35*

## New Trade Deal—TISA—Could Undermine Safety, Environmental, Workers’ Rights Regs

0 COMMENTS

09/05/2014

[Ryan Thornton](#)

The United States is currently negotiating a new International Services Agreement called the Trade in Services Agreement, or TISA. At the start of 2012, a number of World Trade Organization (WTO) member states, including the European Union, formed a group called the “Really Good Friends of Services” or RGF (and yes, that is really what they named themselves), with the purpose of drafting a trade agreement that would further liberalize trade and investment in services and expand regulatory disciplines on services sectors.

However, like past services agreements (such as the [GATS](#)), the TISA is not about tariffs. Rather, a large part of this agreement will be about removing what are called “regulatory barriers to trade,” which is another way of saying that this agreement could essentially change the regulation of many public and commercial services. Instead of benefiting the public interest, this agreement seems positioned to serve the interests of private, for-profit corporations.

The term “services” refers to a wide range of economic activities such as construction, medicine, education, retail, e-commerce, telecommunications and financial services, among others. Many workers in these sectors rely on unions to represent them and advocate for things like fair wages and job safety. With growth in the services sector continuing at unprecedented levels, this category has become an increasingly important priority in global trade flows, and the direction of trade obligations in this area is critical. The group of countries currently negotiating TISA accounted for **[nearly 70% of world trade in services in 2012](#)**.

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Although increasing services trade flows can create economic advantages, it must be done right if it is going to benefit working families and not just global corporations. Too often trade deals are simply aimed at **[deregulation](#)** and don’t give adequate thought to why regulations are necessary in the first place. AFL-CIO Trade Policy Specialist Celeste Drake gave a **[presentation](#)** in 2013 at the annual WTO public forum about how TISA, if it is simply a deregulation tool, could put immigration reform and public transit programs at risk.

In recent decades, **the United States has negotiated trade agreements** that largely benefited corporate power at the expense of working people. The guiding question for new trade agreements that work for workers must be: will these trade rules promote decent work and improve standards of living? Too often in past trade agreements that answer has been no.

It is imperative that governments retain their ability to regulate in the public interest on important economic and social issues like environmental protection, public health, financial stability and protections for workers and consumers.

The TISA negotiations largely have been kept secret, and apart from **occasional leaked documents**, little is known about the specific points in the agreement. The TISA negotiations should be open to the public and based on well-researched impact data. We cannot afford an agreement that hurts working people around the world and contributes to growing income inequality.

**Public Services International** (PSI), the global union federation for public-sector workers, is leading the way in keeping tabs on this agreement and researching its potential impacts. You can get additional information about the TISA from PSI's **website**. PSI is hosting a **Global Trade Summit** in Washington, D.C., on Sept. 16, 2014, to discuss the impacts of trade on public servants, and the AFL-CIO is participating. Check back here for more information after the summit.

# Nomination of Cecilia Malmstrom as E.U. Trade Envoy Signals Interest in U.S. Talks

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*By DAVID JOLLY*

**SEPTEMBER 10, 2014**

New York Times

PARIS — The selection of Cecilia Malmstrom on Wednesday to be Europe’s new trade chief suggests that Jean-Claude Juncker, the president-elect of the European Commission, is eager to restart stalled talks with the United States on the creation of a trade partnership.

Ms. Malmstrom, a member of the pro-free market Swedish Liberal Party, is taking over the trade portfolio from Karel De Gucht, a Belgian, with orders to move on negotiations with Washington to create what would be one the world’s largest trade areas.

In a “mission letter” that was posted on the commission’s website, Mr. Juncker called on Ms. Malmstrom to focus on working toward “a reasonable and balanced” trans-Atlantic trade and investment partnership with the United States, one “which neither threatens Europe’s safety, health, social and data protection standards, nor jeopardizes our cultural diversity.”

The aim, he wrote, “must be to conclude the negotiations on a reciprocal and mutually beneficial basis.”

US Trade Today  
9/12/14

### **Vietnamese Delegation Heading To Washington Next Week To Talk TPP**

HANOI — A high-level Vietnamese government delegation is planning to travel to Washington next week to discuss the country's priorities in the Trans-Pacific Partnership (TPP) and other issues in meetings with U.S. officials, lawmakers, and business groups, according to sources briefed on the details of the trip.

The delegation will be led by Vietnamese Deputy Prime Minister Vu Van Ninh and Vietnam's chief TPP negotiator, Vice Minister of Industry and Trade Tran Quoc Khanh, sources said. During his visit, Vu will meet with U.S. Trade Representative Michael Froman to advance work on TPP, according to a Sept. 10 press release from USTR.

In addition, the two Vietnamese officials are expected to make remarks at the U.S. Chamber of Commerce on Sept. 15 in an event co-hosted by the U.S.-ASEAN Business Council.

The goals of the delegation's trip are to promote U.S.-Vietnam trade and economic relations more broadly, and to focus on a few key issues, including TPP.

**One source familiar with the trip said the delegation is expected to stress the importance of Vietnam gaining additional market access for apparel and footwear under TPP, and securing a rule of origin on apparel that allows it to take advantage of that access.** These outcomes are especially important for Vietnam in light of the commitments on labor, state-owned enterprises, and other issues that it is being asked to take on by the U.S., this source said.

Sources said there are no signs here that the U.S. is close to yielding in the near term on the rule of origin issue for apparel, in light of its own domestic sensitivities. Many sources speculate this has led Vietnam to avoid engaging seriously on issues on which it is sensitive, such as labor rights.

In a related development, Vietnam has put forward a formidable list of demands to exempt many of its SOEs from new rules that the United States hopes will counteract the competition-distorting effects of the government assistance such firms enjoy (see related story).

The exact dates of the Vietnamese delegation's trip, and who the delegation will meet with in the U.S. capital, were not clear. But sources speculated that the delegation is likely to meet with members or staff of the House Ways & Means and Senate Finance Committees.

<http://trade.ec.europa.eu/doclib/press/index.cfm?id=1155>

[Goods and services](#) Brussels, 19 September 2014

## **EU chairs next round of plurilateral talks on services**

The next round of plurilateral negotiations for the Trade in Services Agreement (TiSA) will start on Sunday 21 September in Geneva.

As the chair of the five days gathering, the EU is keen to bring a new dynamics to the services discussion. In this round, the analysis of the offers on market access that are on the table will be linked to the discussions on regulatory texts in specific services sectors. At the end of the round, the participants will try to draw conclusions on the relation between schedules and disciplines in a broader, horizontal discussion.

This round will also focus on four key regulatory disciplines which have been chosen for longer and detailed discussion: financial services, telecommunication, domestic regulation & transparency and mode 4. The group will also briefly exchange views on all modes of transport, professional services, competitive delivery services and distribution.

What is more, during the week-long negotiations, three new proposals will be presented. The EU will make a proposal on government procurement in services with the aim of setting an end to discrimination in this area. The EU envisages the elimination of all differences in treatment between domestically owned and foreign owned (but domestically established) companies in the process of providing services to a public authority. Other participants will make proposals on environmental services and health related services.

### **Background**

Since the talks were launched in March last year, 21 of the 23 participants have tabled their opening bids. Only Pakistan and Paraguay have not yet listed which of their services markets they are prepared to open up and to what degree.

Although the negotiations do not fall under the remit of the WTO, the EU makes efforts to ensure that the TiSA is compatible with the General Agreement on Trade in Services (GATS). Ensuring that the agreement is GATS compatible will not only make it open to other WTO members who wish to join later, but also make it easier to integrate it into the WTO. Therefore the round has been deliberately scheduled to be back-to-back with regular meetings of the WTO and of the General Agreement on Trade in Services (GATS). The aim is to increase synergies with and ensure participation of capital-based officials.

<http://mobile.nytimes.com/2014/09/30/business/international/cecilia-malmstrom-eu-trade-nominee-points-to-toxic-element-in-us-talks.html?referrer=>

## Cecilia Malmstrom, E.U. Trade Nominee, Points to 'Toxic Element' in U.S. Talks

BRUSSELS — The nominee to be the European Union's next trade commissioner said on Monday that a crucial provision sought by the United States in current trans-Atlantic trade talks was a "toxic element" that should be modified or eliminated.

The nominee, Cecilia Malmstrom, told a packed hearing at the European Parliament in Brussels that a proposed trade-pact measure that would give companies the right to sue countries was a "nuclear weapon" that might have to be abandoned.

[Ms. Malmstrom](#), a 46-year-old Swede who has served as the European Union's commissioner for home affairs for the past five years, also called for throwing the trade negotiations open to fuller public scrutiny to quell fears in Europe that cherished social and environmental safeguards might be compromised in any [pact with the United States](#).

Her remarks indicated that if Ms. Malmstrom was approved as the next trade commissioner, the negotiations, which have [made little apparent headway](#) since they began last year, would have no easier path.

"I have no illusions that T.T.I.P. is not going to be very difficult," she said, referring to the Transatlantic Trade and Investment Partnership, as the pact would be called.

"There is a lot of skepticism," Ms. Malmstrom said, adding that there should be a "new start" in the way that European negotiators approach the talks in order to gain public trust.

She has been nominated to succeed Karel De Gucht. If confirmed as trade commissioner, Ms. Malmstrom would be taking on the role amid efforts by Russia to stop Ukraine from being drawn toward the West through a trade agreement with the European Union. Viktor F. Yanukovich was ousted in February as Ukraine's president after he refused to sign the deal last autumn.

The so-called association agreement was signed in June by Ukraine's new government. But fierce opposition from Russia prompted Ukraine and the European Union this month to postpone putting much of the accord into effect until 2016.

"I will not, if I am confirmed, and the commission will not, allow Russia to amend the agreement," Ms. Malmstrom said.

Her testimony marked the start of more than a week of hearings at the European Parliament, where lawmakers will question nominees for the top jobs at the European Commission, the executive arm of the European Union.

The Parliament is expected to decide on Oct. 22 whether to accept, or reject, the entire slate of nominees in a single up-or-down vote.

The trans-Atlantic talks with the United States were announced by President Obama in February 2013 and the negotiations entered their seventh round this week in Washington. But negotiators say the two sides remain far apart in important areas.

Resistance has developed partly as a result of widespread concerns in Europe, among labor unions and environmentalists and officials of some governments, that the United States could win the power to override protections in areas like environmental protection, food safety and publicly funded health care.

Those concerns have focused in particular on the right-to-sue provision — formally known as investor-to-state dispute settlement — which is an increasingly common component of trade agreements around the world. The provision is meant to ensure that governments comply with their treaty obligations by allowing companies to bring lawsuits directly against individual countries.

Even if a trade agreement is reached with the United States, it could be vetoed by the Parliament, which in May elections gained a significant number of members from populist and protest parties skeptical about globalization and trade.

“It’s going to be difficult to get support for T.T.I.P. in the Parliament — you need to tell this to your American friends,” said Elmar Brok, a German lawmaker who supports the deal.

**From:** FN-USTR-IAPE <[IAPE@ustr.eop.gov](mailto:IAPE@ustr.eop.gov)>  
**Date:** October 1, 2014 at 11:51:06 AM EDT  
**To:** Undisclosed recipients;  
**Subject:** Secured Advisors TPP Briefing Schedule

## **Office of the United States Trade Representative**

**Executive Office of the President | [www.ustr.gov](http://www.ustr.gov)**

Office of Intergovernmental Affairs & Public Engagement | [contactustr@ustr.eop.gov](mailto:contactustr@ustr.eop.gov)

Attached is the draft schedule for the briefing that USTR will host for cleared advisors and liaisons in Washington, DC on Thursday, October 9<sup>th</sup>. Please note, the agenda is not final and there may be slight changes made over the next couple of days. We will try not to make substantial changes given the impact that would have on your schedules.

Our lead negotiators will provide updates on their respective chapters to all advisors. At the end of the day, we will convene break-out sessions with each Committee. We are requesting each Committee Chair submit a list of the specific issues that your respective Committee would like to discuss during the break-out session to Julia Friedman at [jfriedman@ustr.eop.gov](mailto:jfriedman@ustr.eop.gov) by COB Monday, October 6<sup>th</sup>. We will use the lists submitted by the Committee Chairs to assign negotiators to each of the break-outs.

If you have any questions, please feel free to reach out to Julia at any time. Thank you for your patience.

## **Office of the United States Trade Representative**

**Executive Office of the President | [www.ustr.gov](http://www.ustr.gov)**

Office of Intergovernmental Affairs & Public Engagement | [contactustr@ustr.eop.gov](mailto:contactustr@ustr.eop.gov)

### **Cleared Advisors Briefing on TPP**

*Thursday, October 9, 2014*

*U.S. Department of Commerce*

*HCHB Auditorium (Main Entrance 14th Street, NW)*

### **DRAFT AGENDA**

9:00-9:15 AM Welcome

9:15-9:45 AM State-Owned Enterprises

9:45-10:00 AM Customs/Trade Facilitation

10:00-10:30 AM Rules of Origin

10:30-10:45 AM E-Commerce

10:45-11:15 AM Financial Services

11:15-11:45 AM Cross Border Services and Non-Conforming Measures

11:45 -12:15 PM Investment and Investor-State Dispute Settlement

***Lunch***

1:00-1:15 PM Technical Barriers to Trade

1:15-1:35 PM Sanitary and Phytosanitary Measures

1:35-1:55 PM Market Access (Agriculture)

1:55-2:15 PM Market Access (Industrial Goods)

2:15-2:35 PM Market Access (Textiles)

2:35-3:05 PM Environment

3:05-3:20 PM Labor

3:20-3:50 PM Intellectual Property

***Individual Committee Meetings***

4:00-5:30 PM ITACs (Auditorium)

4:00-5:30 PM APAC & ATACs (Room 1414)

4:00-5:30 PM IGPAC (Green Room)

4:00-5:30 PM LAC liaisons (Room 1411)

4:00-5:30 PM ACTPN liaisons (Room 1410)

(Washington Post)

The trade clause that overrules governments

By [Harold Meyerson](#) Opinion writer October 1 at 7:37 PM

One of the public policy paradoxes of the past quarter-century is why the center-left governments of advanced economies have supported trade policies that undermine the very environmental and labor protections they fight for at home. Foremost among these self-subverting policies have been the [Investor-State Dispute Settlement \(ISDS\)](#) provisions included in every significant trade deal the United States has signed since Ronald Reagan's presidency. Under ISDS, foreign investors can sue a nation with which their own country has such treaty arrangements over any rules, regulations or changes in policy that they say harm their financial interests.

These suits aren't heard in the courts, however. If a U.S. company wants to sue, say, California or the Environmental Protection Agency, it must pursue its claim in a California or federal court. Under ISDS, however, a foreign-owned company suing California or the EPA gets to plead its case to an extra-governmental tribunal of three extra-governmental judges engaged just for that case — and the judges' ruling can't be appealed to a higher court. Under ISDS, there are no higher courts.

The mockery that the ISDS procedure can make of a nation's laws can be illustrated by a series of cases. In Germany in 2009, the Swedish energy company Vattenfall, seeking to build a coal-fired power plant near Hamburg, used ISDS [to sue the government](#) for conditioning its approval of the plant on Vattenfall taking measures to protect the Elbe River from its waste products. To avoid paying penalties to the company under ISDS (the company had asked for \$1.9 billion in damages), the state eventually [lifted its conditions](#).

Three years later, Vattenfall sued Germany for its post-Fukushima decision to phase out nuclear power plants; [the case is advancing](#) through the ISDS process. German companies that owned nuclear power plants had no such recourse.

After Australia passed a law requiring tobacco products to be sold in packaging featuring prominent health warnings, a Philip Morris subsidiary [sued the government](#) in Australian court and lost.

It also sued the government through the ISDS, where the case is still pending. The health ministry in next-door New Zealand [cited the prospect](#) of a Philip Morris victory in ISDS as the reason it was holding up such warnings on cigarette packages in its own country.

ISDS provisions began popping up in trade deals during the Reagan and first Bush administrations. The mystery is why they continued to be included in trade deals, such as NAFTA, enacted under Democratic administrations in the United States and social democratic governments in Europe and elsewhere. While beloved by Wall Street, they have drawn the increasing ire of environmentalists and labor advocates — two of the center-left's key constituencies.

Now, at long last, one of those center-left governments has come to its senses. In a speech last week to the Bundestag, German Economy Minister Sigmar Gabriel — a leader of the Social

Democrats in Chancellor Angela Merkel's coalition government — [announced](#) the government's opposition to including the ISDS procedure in a pending trade agreement with Canada and, by extension, in the proposed Transatlantic Trade and Investment Partnership between the European Union and the United States. There would be no transatlantic trade deal, said Gabriel, unless negotiators scrapped the ISDS provision and the special treatment for foreign investors that it affords.

The German government's decision was likely shaped by its experience with the ISDS in the Vattenfall cases, but its position has broad European support. In March, E.U. Trade Commissioner Karel de Gucht let it be known that the European Union had proposed dropping the ISDS from the transatlantic agreement, but the United States objected. The president-elect of the European Commission, Jean-Claude Juncker, [has said](#) that he won't "accept that the jurisdiction of courts in the EU Member States is limited by special regimes for investor disputes."

Which raises the question of why the president of the United States thinks the jurisdiction of U.S. and European courts should be subordinated to those special ISDS courts. An E.U.-U.S. treaty with an ISDS clause invites a massive end-run around national regulations: Public Citizen's Global Trade Watch [has counted](#) 24,200 U.S. subsidiaries of E.U.-based corporations that could avail themselves of ISDS under the treaty, and 51,400 E.U. subsidiaries of U.S.-based companies that could do the same.

The Obama administration's insistence on ISDS may please Wall Street, but it threatens to undermine some of the president's landmark achievements in curbing pollution and fighting global warming, not to mention his commitment to a single standard of justice. It's not worthy of the president, and he should join Europe in scrapping it.

*Read more from [Harold Meyerson's archive](#) or [follow him on Twitter](#).*

[http://www.washingtonpost.com/opinions/harold-meyerson-allowing-foreign-firms-to-sue-nations-hurts-trade-deals/2014/10/01/4b3725b0-4964-11e4-891d-713f052086a0\\_story.html](http://www.washingtonpost.com/opinions/harold-meyerson-allowing-foreign-firms-to-sue-nations-hurts-trade-deals/2014/10/01/4b3725b0-4964-11e4-891d-713f052086a0_story.html)

[http://www.bna.com/?utm\\_source=google&utm\\_medium=cpc&utm\\_campaign=bbna\\_home&gclid=Cj0KEQjwxZieBRDegZuj9rzLt\\_ABEiQASqRd-jrh3LQj9-RE91LOKe7Sd0e-2tEs9QByt15Md12\\_jz0aAsbt8P8HAQ](http://www.bna.com/?utm_source=google&utm_medium=cpc&utm_campaign=bbna_home&gclid=Cj0KEQjwxZieBRDegZuj9rzLt_ABEiQASqRd-jrh3LQj9-RE91LOKe7Sd0e-2tEs9QByt15Md12_jz0aAsbt8P8HAQ)

## Revised WTO Government Procurement Agreement to Enter Into Force April 6

*By Daniel Pruzin*

March 12 — Revisions to the World Trade Organization's Government Procurement Agreement (GPA) adopted in December 2011 will enter into force on April 6, the WTO announced.

On March 7, Israel became the 10th party to the GPA to ratify a protocol amending the agreement, thus reaching the minimum needed to ensure entry into force, the WTO said in a March 12 statement. Under the terms of the protocol, the amendments take effect 30 days after two-thirds of the parties to the GPA have notified their acceptance.

The U.S., the European Union (on behalf of its 28 member states), Liechtenstein, Norway, Canada, Taiwan, Hong Kong, Singapore and Iceland earlier notified their acceptance. Other parties to the GPA are Armenia, Aruba, Japan, South Korea and Switzerland.

***The revised GPA “will open markets and promote good governance in the participating Member economies,” WTO Director-General Roberto Azevedo said.***

“This is a very welcome achievement,” WTO Director-General Roberto Azevedo said in prepared remarks. The revised GPA “will open markets and promote good governance in the participating Member economies.”

“The fact this has been achieved so quickly shows the importance that the Parties attach to the GPA and is further evidence, after the successful Bali Package, that the WTO is back in business,” Azevedo continued. “The modernized text of the revised GPA and the expanded commitment to market access should prompt other WTO Members to consider the potential advantages of joining.”

Adopted in 1994, the GPA establishes rules guaranteeing fair conditions for international competition for government procurement contracts at the central and sub-central levels and prohibiting discriminatory treatment among local and foreign suppliers, as well as between foreign suppliers from different GPA countries. The GPA is a plurilateral agreement, meaning the market access concessions within it are only granted to suppliers in those countries that have acceded to the agreement.

### New Provisions

The revisions adopted in December 2011 include new and improved market access commitments and provisions granting special and differential treatment for acceding developing countries.

GPA ministers said at the time that the changes would bring \$80 billion to \$100 billion annually in new market access opportunities, promote good governance and deter corruption.

As part of the revised deal, the U.S. will subject 12 additional central government agencies to GPA disciplines, including the Social Security Administration and the Transportation Security Administration. Procurement by these agencies will be subject to GPA requirements if a procurement contract has a value of 130,000 SDR (\$201,000) for goods and services procurement and 5 million SDR (\$7.7 million) for construction contracts, the same thresholds that apply to other covered central government entities.

Thirteen U.S. states—Alabama, Alaska, Georgia, Indiana, Nevada, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, South Carolina, Virginia and West Virginia—are currently exempted from coverage under the U.S. schedule of GPA commitments.

WTO members currently negotiating accession to the GPA are Albania, China, Georgia, Jordan, Kyrgyzstan, Moldova, Montenegro, New Zealand, Oman and Ukraine.

To contact the reporter on this story: Daniel Pruzin in Geneva at [correspondents@bna.com](mailto:correspondents@bna.com)  
To contact the editor responsible for this story: Heather Rothman at [hrothman@bna.com](mailto:hrothman@bna.com)



March 18, 2014

**Protecting Public Health in the TPP Agreement**  
Results from a national survey of likely voters

To: Interested Parties

From: Stan Greenberg and Missy Egelsky, Greenberg Quinlan Rosner  
Glen Bolger and Jim Hobart, Public Opinion Strategies

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A new national survey conducted for the American Cancer Society Cancer Action Network<sup>1</sup> shows that voters want government to make protecting public health a top priority, including in negotiations over free trade agreements like the Trans Pacific Partnership (TPP).

General support exists for the United States entering into trade agreements with other countries, including 6-out-of-10 voters who favor the TPP. Yet concerns over negative health impacts trump the positive economic benefits of any free trade agreements, and the public strongly opposes the passage of any agreement that eschews public health considerations.

This emphasis on public health translates into a strong desire for government action on tobacco specifically. Voters revile the tobacco industry and stand firmly behind actions aimed at reducing smoking and tobacco use. A broad spectrum of voters side with public health advocates and support inclusion of a provision to protect countries' right to regulate tobacco as part of the TPP, and there is a key group of activists who are willing to be vocal in their support for efforts to include protections for public health in the TPP.

**Key findings:**

- **American voters place huge importance on government working to protect public health and safety.** Understanding the importance of protecting public health and safety is nearly universal, as 89 percent of voters say it is a very

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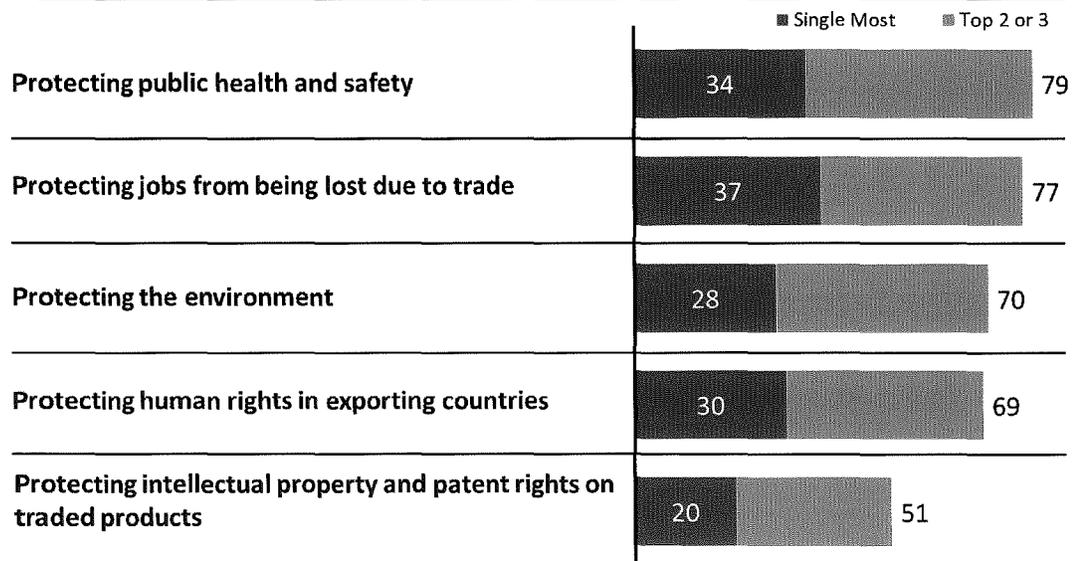
<sup>1</sup> These findings are based on a national survey written and conducted by Greenberg Quinlan Rosner and Public Opinion Strategies. The survey of 1,001 likely 2014 voters nationwide was conducted from January 30 – February 6, 2014. Unless otherwise noted, overall margin of error= +/-3.18 percentage points at 95% confidence

important (66 percent) or somewhat important (23 percent) priority for government.

- When it comes to negotiating trade agreements, the public views addressing public health issues as equally important as protecting jobs. Seventy-eight percent of voters rate protecting public health and safety among the top 3 priority issues in negotiating trade agreements; 77 percent rate protecting jobs in the top tier of priorities.

**Figure 1: Priorities in Trade Agreements**

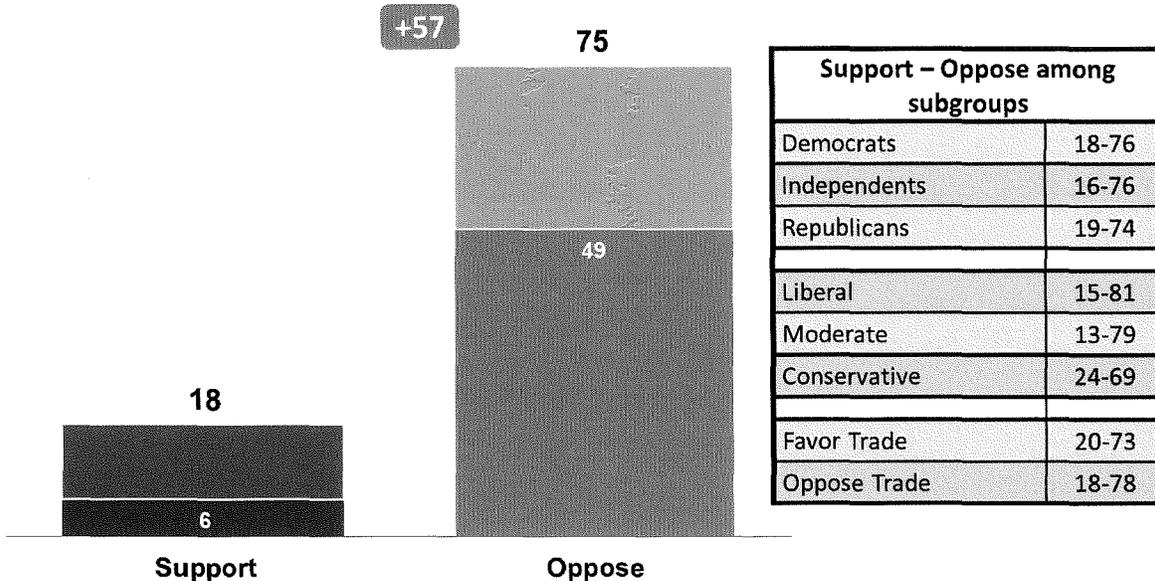
*As you may know, trade agreements encourage trade by reducing or eliminating tariffs – the fees that governments charge each other to import goods. The agreements often address a wide range of issues including jobs, public health, and the environment. Please tell me whether you think that issue should be the SINGLE most important priority in negotiations on trade agreements, one of the TOP TWO OR THREE priorities, in the MIDDLE, or TOWARD THE BOTTOM of the list of priorities?*



- **While voters support trade agreements—including the TPP—they oppose proposals that provide economic benefits at the expense of public health.** After a brief description of TPP, 60 percent of voters favor the proposal, while just 25 percent oppose and 15 percent are undecided. However, voters are simply not willing to support agreements that create negative impacts on public health, even if those agreements bring positive economic results for the United States and other countries. Three quarters of voters would oppose a trade agreement under those circumstances, a result that is consistent across partisan identification and ideological boundaries, as well as among those who favor trade agreements.

**Figure 2: Opposition to Trade Agreements Based on Health Impacts**

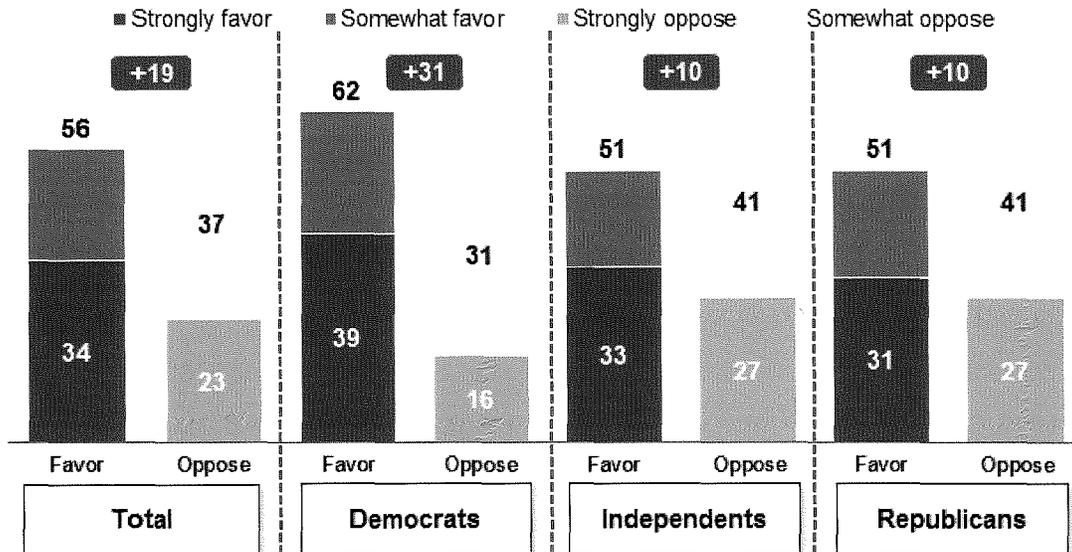
*As you may know, the U.S. Congress votes to approve any final trade agreements. If there was a trade agreement that would provide positive economic benefits to the U.S. and other countries, but might have negative impacts on people's health, would you want the U.S. Congress to support or oppose that agreement?*



- Voters express overwhelming animosity toward tobacco companies.** Three quarters of voters give tobacco companies negative ratings, compared to just 6 percent who give tobacco companies positive ratings. This rancor crosses partisan lines, as tobacco companies receive negative ratings from more than two thirds of Democrats, Independents, and Republicans alike. Even current smokers recognize tobacco companies as bad actors; they rate tobacco companies as more negative than positive by a nearly 2-1 margin (50 – 27 percent negative to positive).
- A strong majority of voters support including a provision to protect countries' rights to regulate tobacco as part of the TPP.** By a significant 56 – 37 percent margin, voters favor including language that limits the tobacco industry's ability to challenge laws regulating tobacco in countries. Intensity of support for the provision (34 percent) strongly outweighs strong opposition (23 percent). Majorities of Democrats, Independents, and Republicans support the provision; support also crosses gender, ethnic, and age lines. Even a plurality (48 percent) of current smokers believes that the TPP agreement should include the provision to protect each country's right to regulate tobacco.

**Figure 3: Support for TPP Anti-tobacco Provision Crosses Party Lines**

Now, I want to give you some more information on a proposal that has been made during negotiations on the TPP trade agreement. Public health advocates in the United States and in other countries want to make sure countries can reduce smoking and improve public health by passing laws that regulate the tobacco industry. The advocates support adding a provision to the trade agreement that protects the ability of the U.S. and other countries to pass laws to restrict tobacco advertising or require warning labels on cigarette packs. Without the provision, tobacco companies could take countries, including the U.S., to court to overturn those laws as violations of free trade. This is already happening in some parts of the world. From what you know, would you favor or oppose including this provision in the TPP trade agreement?

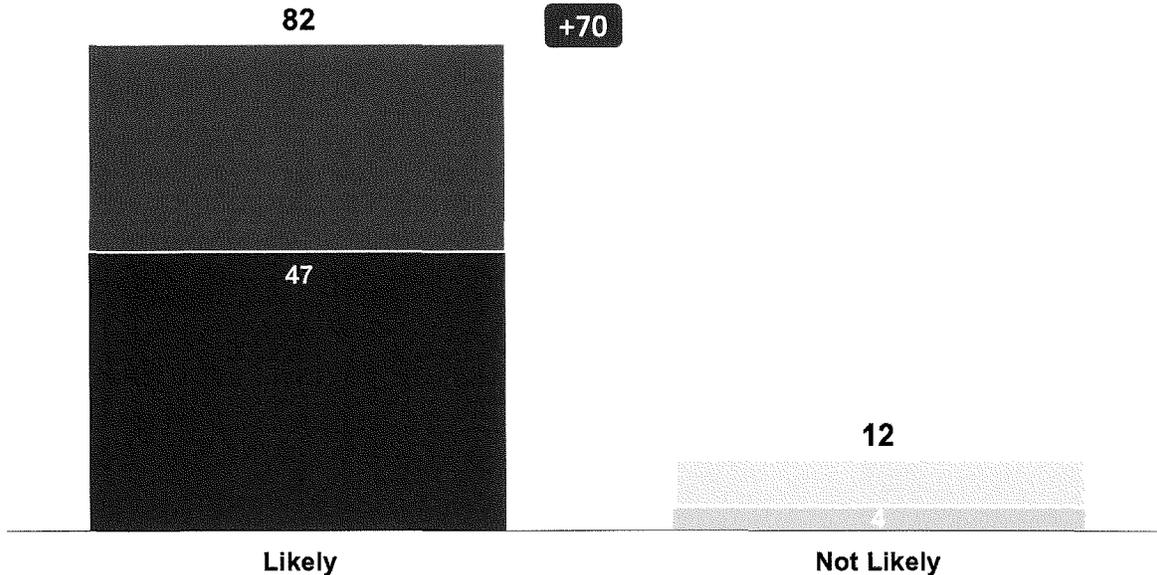


- **Activists<sup>2</sup> show a strong willingness to get involved and take action in support of the tobacco provision.** Overall, 82 percent of activists are likely to contact a lawmaker about the tobacco provision, including nearly half (47 percent) that say they are very likely, which is more than twice those who say they are not likely. Dads, very liberal activists, and unmarried men are the most likely to take action, but there is also substantial willingness among more educated and older male activists.

<sup>2</sup> These findings are based on a national online survey written and conducted by Public Opinion Strategies and Greenberg Quinlan Rosner. The survey of 600 activists, defined as anyone who took part in a grassroots effort in conjunction with the American Cancer Society, was conducted from February 5 – 10, 2014.

**Figure 4: Activists Very Likely to Take Action**

*And, how likely would you be to take some type of action, such as calling or emailing a lawmaker or signing a petition, that would demonstrate your support for this provision?*



- **Members of Congress who vote for the TPP without the tobacco provision could face electoral blowback with activists.** Activists were asked if they were more or less likely to vote for a member of Congress who voted for the TPP *without* the provision. By a significant 66 – 19 percent margin, activists were less likely to vote for a member of Congress.

American voters express strong convictions on the need for government to take action to protect public health. They support making protecting public health—and particularly actions to stand up to the tobacco industry—a top priority in negotiating trade agreements like the TPP. Furthermore, activists not only express support for the provision, but demonstrate a willingness to take action in order to see it included.

16 APRIL 2014

## Grand majority of Parliament votes in favour of a regulation on investor-state lawsuits - Greens sharply criticise the result

Greens are against the inclusion of ISDS in trade agreements, as the EU is currently planning in the agreements with Singapore, Canada and the United States

SKA KELLER, MEP, EUROPEAN GREEN/EFA GROUP

Investor-state dispute settlement (ISDS) has come into the focus of critics since the start of negotiations on a free trade agreement with the US (TTIP). ISDS means that foreign investors can sue the states hosting their investments in front of international courts when they see their rights and profit expectations violated. Often it is environmental or social legislation of a state which investors claim to be in violation of their investment expectations. Currently, for example, Vattenfall is suing the German federal government for 3 billion euros because of the German nuclear phase-out. Since Lisbon, the EU has gained the competence on investment policy, and thus also on ISDS policy. This Regulation establishes rules on whether EU or Member States act as a defendant in ISDS proceedings and who pays in the case of successful investor claims.

Greens are against the inclusion of ISDS in trade agreements, as the EU is currently planning in the agreements with Singapore, Canada and the United States. We also demand a revision of the myriad of bilateral investment agreements between Member States and third countries which in many cases contain ISDS. However, we were defeated in the INTA Trade Committee on our proposal that the ECJ be assigned the function of a filter to decide on the admissibility of a claim before it can be taken up by an international arbitration tribunal. However, in the legally non-binding considerations of the Regulation, we were able to establish that foreign investors as a rule should not have any greater rights than domestic investors, which would indeed mean that ISDS is ruled out. This is a strong criticism of ISDS but unfortunately will not have any legal consequences.

Moreover, in the negotiations for this regulation the position of the Member States has largely prevailed. Greens think that the outcome violates the Lisbon Treaty and the competence of the Union with regard to investment policy. Member States will have ample discretion to defend themselves and settle cases, even if the reason for the claim is an EU regulation. Moreover, ISDS creates case law which will prejudice the future of the EU investment policy. Therefore, before the voting took place, Ska Keller as the Green shadow on the regulation asked to postpone the vote, seconding a similar request put forward by the GUE Group.

Already several EU Member States have been sued under the financial crisis of international investors. The new Directive does not go to these problems but complicates the responsibilities even further. After pressure from us Greens and the public, the Commission has [launched a consultation on ISDS](#) in the TTIP. We sharply criticize that the Commission and the Council have pressed on adopting regulation on ISDS now without at least waiting until the end of the consultation.

For all these reasons, Greens voted against the Zalewski Report.

# TISA

**VERSUS**

# Public Services



PSI

By Scott Sinclair and Hadrian Mertins-Kirkwood

March against the GATS

**Written by Scott Sinclair,  
Canadian Centre for Policy Alternatives,  
and  
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Institute of Political Economy, Carleton University**

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[www.world-psi.org](http://www.world-psi.org)**

## Foreword

Treating public services as commodities for trade creates a fundamental misconception of public services. The Trade in Services Agreement (TISA), currently being negotiated in secret and outside of World Trade Organization rules, is a deliberate attempt to privilege the profits of the richest corporations and countries in the world over those who have the greatest needs.

Public services are designed to provide vital social and economic necessities – such as health care and education – affordably, universally and on the basis of need. Public services exist because markets will not produce these outcomes. Further, public services are fundamental to ensure fair competition for business, and effective regulation to avoid environmental, social and economic disasters – such as the global financial crisis and global warming. Trade agreements consciously promote commercialisation and define goods and services in terms of their ability to be exploited for profit by global corporations. Even the most ardent supporters of trade agreements admit that there are winners and losers in this rigged game.

The winners are usually powerful countries who are able to assert their power, multinational corporations who are best placed to exploit new access to markets, and wealthy consumers who can afford expensive foreign imports. The losers tend to be workers who face job losses and downward pressure on wages, users of public services and local small businesses which cannot compete with multinational corporations.

The TISA is among the alarming new wave of trade and investment agreements founded on legally-binding powers that institutionalise the rights of investors and prohibit government actions in a wide range of areas only incidentally related to trade.

The TISA will prevent governments from returning public services to public hands when privatisations fail, restrict domestic regulations on worker safety, limit environmental regulations and consumer protections and regulatory authority in areas such as licensing of health care facilities, power plants, waste disposal and university and school accreditation.

This agreement will treat migrant workers as commodities and limit the ability of governments to ensure their rights. Labour standards should be set by the tripartite International Labour Organization (ILO) and not be covered by trade agreements.

Incredibly, in the aftermath of the global financial crisis, the TISA also seeks to further deregulate financial markets. We know that large corporate interests are heavily involved in the TISA negotiations.

We know that that the last time such a comprehensive services agreement (GATS) was negotiated – global public protest ignited. And we know that great efforts are currently being made to keep the TISA negotiations secret.

With such high stakes for people and our planet, this is a scandal. Who in a democratic country will accept their government secretly agreeing to laws that so fundamentally shift power and wealth, bind future governments and restrict their nation's ability to provide for citizens?

The Trades in Services Agreement negotiating texts must be released for public scrutiny and decision-making. The TISA must not cover any public services or restrict any government's ability to regulate in the public interest. There should be no trade in public services.



Rosa Pavanelli  
General Secretary  
Public Services International

## 2

## Introduction

Governments around the globe are currently engaged in the biggest flurry of trade and investment treaty negotiations since the “roaring nineties,” when the belief in the virtues of liberalized market forces was at its peak. The shock of the 2008 global financial crisis appears to have been forgotten. Official enthusiasm for more intrusive, “21<sup>st</sup> century”

treaties is at a level not seen since the creation of the World Trade Organization (WTO) and the North American Free Trade Agreement (NAFTA) in the mid-1990s.

There is a virtual alphabet soup of new trade and investment agreements under negotiation – the TPP, TTIP, CETA, PA, TISA and more. Despite the bewildering array of acronyms, all of these negotiations tend to pursue a similar, corporate-driven agenda. Each agreement becomes the floor for the next, in a state of perpetual negotiation and re-negotiation. Hard-won exceptions to protect public services or insulate financial services regulations from investor-state challenge, for example, become targets for elimination in the next set of talks. Moreover, this frenzy of negotiating activity remains cloaked in a veil of secrecy.

The negotiating dynamic is fundamentally skewed towards corporate interests. Public interest advocates seeking to exempt essential sectors or key public policies from these treaties must win every time, while the corporate lobbyists targeting these policies need win only once. With the stroke of a pen, a single neo-liberal government can essentially lock all future governments into a policy strait-jacket.

Official platitudes about “expanding trade” and “growing the economy” only mask the reality that these types of agreements are increasingly about far more than trade.

Current treaties have developed into constitutional-style documents that tie governments’ hands in many areas only loosely related to trade. These include patent protection for drugs, local government purchasing, foreign investor rights, public services and public interest regulation, which can have consequences in areas such as labour, the environment and Internet freedom.



**Each agreement becomes the floor for the next, in a state of perpetual negotiation and re-negotiation. Hard-won exceptions to protect public services or insulate financial services regulations from investor-state challenge, for example, become targets...in the next set of talks.**

*Free Trade of the Americas Agreement protest in U.S.  
Photo: flux*

Trade negotiators continue to insist that nothing in such treaties *forces* governments to privatize, yet there is little doubt that the latest generation of trade and investment agreements limits many key options for progressive governance.

The negative impacts on public services include: confining public services within existing boundaries by raising the costs of expanding existing public services or creating new ones; increasing the bargaining power of corporations to block initiatives when new public services are proposed or implemented; and locking in future privatization by making it legally irreversible.<sup>1</sup>

## Countries involved in the TISA negotiations

The newest addition to the mix of trade and investment treaties is the Trade in Services Agreement (TISA). It is being negotiated by a self-selected club of mostly developed countries along with a small but rising number of developing nations. Currently, the talks include 23 governments representing 50 countries. The current negotiating parties are Australia, Canada, Chile, Chinese Taipei (Taiwan), Colombia, Costa Rica, Hong Kong, Iceland, Israel, Japan, Liechtenstein, Mexico, New Zealand, Norway, Pakistan, Panama, Paraguay, Peru, South Korea, Switzerland, Turkey, the United States, and the European Union, representing its 28 member states.

These countries are responsible for more than two thirds of the global trade in services, but over 90% of this share is comprised of services trade by developed countries (that is, members of the Organization for Economic Cooperation and Development).<sup>2</sup> Talks on the TISA began in 2012, with a soft deadline of 2014 for completion. The participants, who have been the strongest proponents of services liberalization in the WTO's Doha Round services negotiations, call themselves the "Really Good Friends of Services". Through the TISA process, this "coalition of the willing" hopes to side-step the stalled Doha services negotiations and complete their unfinished agenda of trade-in-services liberalisation.



*Korean farmers protest WTO.  
Photo: free range jace*

Early in the new millennium, campaigns to stop the GATS expansion mobilized public and political pressure to counter excessive demands for the liberalization of public services. Today, however, the secretive negotiation of a new, aggressive successor to the GATS poses an even more serious threat to public services.

TISA Negotiators are mandated to achieve "highly ambitious" liberalization of trade in services. Most of the nations involved have already undertaken far-reaching services liberalization and are already bound by a dense web of services liberalization agreements (see Table 1). Chile, for example, has agreements covering trade in services with 17 of the 22 other TISA parties.

Pushing this agenda even further, as the TISA mandate dictates, would involve truly radical liberalization, exerting strong pressure on the few remaining excluded sectors and surviving exemptions for key programs and policies. Most observers, however, agree that the real intent of the TISA is not just radically deeper liberalization among the current participants. Ultimately, the goal is to broaden participation by including the key emerging economies – China, Brazil, India and South Africa – and smaller developing countries under the agreement.

In a significant development, China has asked to join the talks.<sup>3</sup> At this point, it is difficult to predict whether China's participation might dampen or heighten the ambition of the TISA. The U.S. is reluctant to admit China unless it commits to a "very high level of ambition."<sup>4</sup> China's position on services in two ongoing negotiations – to expand the WTO Information Technology Agreement (ITA) and to join the WTO Agreement on

## Treaties and public service exemptions

There is an inherent tension between public services and agreements governing trade in services. Public services strive to meet basic social needs affordably, universally and on a not-for-profit basis. Public services are usually accompanied by regulation that consciously limits commercialization and chooses not to treat basic services as pure commodities. Trade agreements, by contrast, deliberately promote commercialization and redefine services in terms of their potential for exploitation by global firms and international service providers.

**There is an inherent tension between public services and agreements governing trade in services. Public services strive to meet basic social needs affordably, universally and on a not-for-profit basis. Public services are usually accompanied by regulation that consciously limits commercialization...**

In most instances, trade treaties do not force governments to privatize. But they do facilitate privatization and commercialization in several ways. The first is by raising the costs of expanding existing services or creating new ones. Current trade treaties codify, by various means, the deeply regressive concept that foreign commercial service exporters and investors must be 'compensated' when a country creates new public services or expands existing ones.

While governments retain the formal right to expand or create public services, the treaties make doing so far more difficult and expensive. These treaties also increase the bargaining leverage of private economic interests, specifically foreign investors and commercial service providers, who can threaten trade law actions when new public services are proposed or implemented. Finally, by making it difficult for future governments to change course and reverse privatizations, even failed ones, privatization is locked in.

The basic TISA text reproduces GATS Article I:3, which excludes services "provided in the exercise of governmental authority" from the scope of the agreement. If it were left to governments to define what services they considered to be in the exercise of governmental authority, Article I:3 could have been a broad exclusion that preserved governments' flexibility to protect public services. Unfortunately, services provided in the exercise of governmental authority are narrowly defined as "any service which is supplied neither on a commercial basis nor in competition with one or more service suppliers." This provides little or no effective protection for public services.

In practice, public services are delivered to the population through a mixed system that is wholly or partly funded, and tightly regulated, by governments at the central, regional and local levels. Public services – such as healthcare,

Government Procurement – have been loudly condemned by the U.S. government and business groups as inadequate. Yet, to date, China has "categorically rejected" demands from the U.S. that it meet certain preconditions, such as an improved offer in the ITA talks, before being allowed to join the TISA talks.<sup>5</sup>

If admitted to the TISA talks, China's interests can be expected to clash with those of the U.S. and the EU in service sectors where it is highly competitive, such as maritime transport and construction services. Recently, as part of its latest five-year plan, China

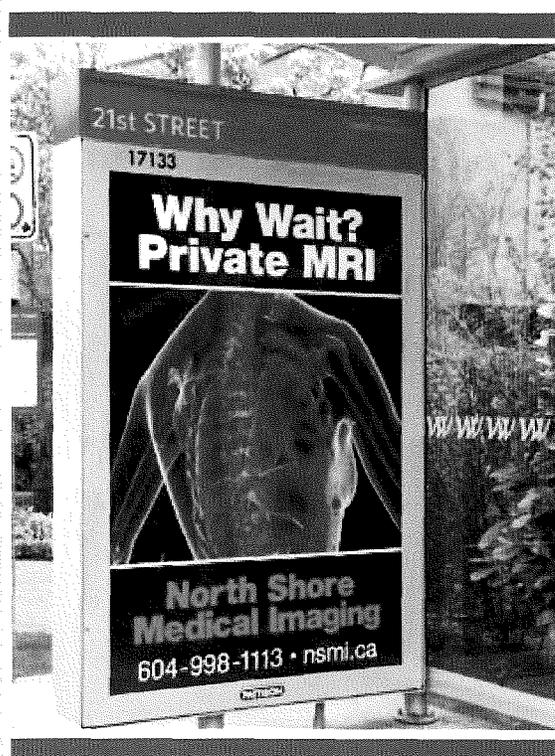
social services, education, waste, water and postal service systems – can be a complex, continually shifting mix of governmental and private funding. Even within the same sector, these systems can involve a mixing, or co-existence, of governmental, private not-for-profit and private for-profit delivery. The scope of these public services and the mix varies greatly within each country. An effective exclusion for these services needs to safeguard governments' ability to deliver public services through the mix that they deem appropriate, to shift this mix as required, and to closely regulate all aspects of these mixed systems to ensure that the needs of their citizens are met.

Because the governmental authority provision does not adequately safeguard public services, governments have had to rely on other means to insulate public services from the commercializing pressures of the GATS. One course of action is to make no commitments in a sector.<sup>8</sup> Unfortunately, the TISA's "top-down" approach to national treatment is designed to limit this flexibility.<sup>9</sup>

Another approach is for governments to take horizontal limitations (that is, exemptions) against specific obligations.<sup>10</sup> An example is the EU's public utilities exception, which provides that "services considered public utilities at a national or local level may be subject to public monopolies or to exclusive rights granted to private operators."<sup>11</sup> Such exceptions can be effective at protecting existing public service models within particular countries, but are not flexible enough to accommodate the dynamic nature of public services.<sup>12</sup> In any event, these country-specific limitations, which dilute the avowed ambition of the TISA, will be targeted for elimination or erosion by other TISA participants.

A final option is for a government to withdraw commitments, although compensation must then be negotiated with other WTO member governments. This provision, GATS Article XXI, allows governments some flexibility to correct past mistakes and expand public services in a GATS-consistent manner. Indeed, both the EU and the U.S. have invoked this article to modify their GATS schedules. However, the option of withdrawing commitments conflicts with the TISA's ratchet and standstill obligations.<sup>13</sup> Accordingly, there will almost certainly be no such provision included in the TISA.

**In short, the already formidable challenges in safeguarding public services under the GATS will be greatly exacerbated by the TISA.**



*Trade treaties help to privatize public health services.  
Photo: flux*

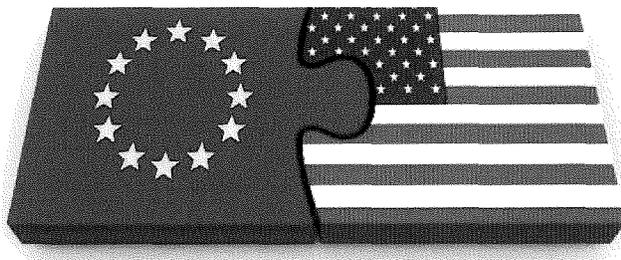
expressed a new interest in deeper services liberalization and increased services exports. China's key sectoral priorities include: "financial services; shipping and logistics; commercial trade; professional services such as law and engineering; culture and entertainment; and social services including education and healthcare."<sup>6</sup> The Chinese government's newfound enthusiasm for services liberalization could well intensify the pressure for TISA to reduce policy flexibility for public services and public interest regulation, particularly in priority sectors such as health care and education.<sup>7</sup>

## 6

### Why are negotiations held outside the WTO?

While the TISA negotiations are taking place in Geneva, home of the WTO, they are being conducted entirely outside the framework of the WTO. The TISA is clearly being driven by developed countries and multinational services corporations frustrated with the WTO's Doha Development Agenda, launched in 2001.

**...the TISA group of countries, headed by the U.S. and the EU, has broken away to focus exclusively on achieving their key offensive interests in services.**



Despite gaining agreement on a limited package of reforms at the ninth WTO ministerial meeting in Bali in December 2013, the Doha Round negotiations remain stalled. This impasse has more to do with the inflexibility of the U.S. and the EU on agricultural and development issues than with developing countries' resistance to deeper services liberalization.<sup>14</sup>

Nonetheless, the TISA group of countries, headed by the U.S. and the EU, has broken away to focus exclusively on achieving their key offensive interests in services. This decision "to take their ball and go home" signals that, despite official assurances to the contrary, rich countries are fully prepared to turn their backs on the Doha Round if they don't get their way. The TISA negotiating sessions are not open to all WTO members – even

as observers – while the negotiating texts are kept secret. U.S. negotiating proposals, for example, are stamped classified for "five years from entry into force of the TISA agreement or, if no agreement enters into force, five years from the close of the negotiations."<sup>15</sup>

It is hard to imagine why developing countries that have been so undiplomatically excluded from the TISA negotiating process would willingly accept its results. Developed countries' high-stakes pressure tactics also call into question the future viability of the WTO as a negotiating forum.

### Can TISA be integrated into the WTO system?

Negotiations among smaller groups of like-minded WTO member governments are fairly common practice within the WTO framework. For example, the 1996 Information Technology Agreement, which requires participants to eliminate their tariffs on a specific list of information technology and telecommunications products,<sup>16</sup> did not require the participation or approval of all WTO members because members are free to cut tariffs as they wish.

But ultimately, the outcome of such a plurilateral negotiating process can only be WTO-consistent if the results are extended to all WTO members, including non-participants, on a most favoured nation (MFN) treatment basis. In essence, MFN treatment means that if you favour products from any country, you must favour those from all member countries. Hence, the tariff reductions taken under the ITA were applied on an MFN basis, meaning tariffs were eliminated on products from all WTO member governments, including non-participants.

The TISA negotiations are fundamentally different from previous plurilateral negotiations in the WTO context because key participants, particularly the U.S., are unwilling to automatically extend the results to all other WTO members on an MFN basis. Instead, the whole point of the TISA is to pressure major developing countries into joining the

agreement on terms dictated by the Really Good Friends group.

Under WTO rules, there are only two legitimate options for refusing to extend the results of a plurilateral negotiation to all members on an MFN basis. The first is to conclude a "Plurilateral Trade Agreement" within the meaning of Article II:3 of the WTO Agreement. An example of this is the WTO Agreement on Government Procurement which, while not compulsory, is open to all WTO member governments. Adding any such agreement to the WTO, however, would require the unanimous consent of all WTO member governments. Given the continued objections to TISA by South Africa, India and other key WTO member governments, this option is not politically feasible.<sup>17</sup>

The second option is to classify the TISA as an economic integration agreement or Preferential Trade Agreement under the terms of Article V of the General Agreement on Trades and Services (GATS). Before this could happen, the WTO would have to be notified and the agreement would be subject to review by the WTO Committee on Regional Trade Agreements. A number of conditions must be met for an agreement to qualify, including that it have "substantial sectoral coverage." This coverage is defined in terms of the number of services sectors, volume of trade affected and modes of supply.<sup>18</sup> GATS Article V further stipulates that within this broad sectoral coverage, the agreement must "provide for the elimination of substantially all discrimination" through the "elimination of existing discriminatory measures" and/or the "prohibition of new or more discriminatory measures."<sup>19</sup>

Due to the rancour surrounding the breakaway TISA talks, this option can also be expected to face a rough ride in the obligatory WTO review process. In the past, the WTO has received notification of many Economic Integration Agreements covering services with little fanfare. The TISA would differ in that it only covers services, and is not part of a wider economic integration pact.<sup>20</sup>

Even if the TISA passes such a review, its legality could ultimately be decided by the WTO Dispute Settlement Body. This could occur if a WTO member government that was not party to the TISA insisted that its services and service providers were entitled, on an MFN basis, to the same treatment as TISA participants.

Dispute settlement is another area of potential dissonance between the TISA and the WTO. As a stand-alone agreement, the TISA would require a separate settlement mechanism and bureaucracy. This creates the messy prospect of TISA interpretations of GATS provisions that diverge from those of the WTO Dispute Settlement Body.<sup>21</sup>

Some analysts have also noted that the TISA's enforcement mechanism could be rather weak, since retaliation would be limited to those services covered by the TISA, in contrast to the WTO process which allows cross-retaliation - that is, the withdrawal of benefits in other sectors.<sup>22</sup> Certain TISA participants, including the U.S., Canada, and potentially the EU, already provide for investor-state dispute settlement in matters related to commercial presence in services. While there is no indication that TISA negotiators are actively considering this option, it would undoubtedly be attractive to elements of the corporate community. Such a step would, however, end any pretense of TISA compatibility with the WTO.

The European Commission, a strong proponent of TISA, officially maintains that the TISA can be fully compatible with WTO rights and obligations and, ultimately, multilateralized.<sup>23</sup> But it has also stated that: "It is not desirable that all those countries would reap the benefits of the possible future agreement without in turn having to contribute to it and to be bound by its rules. Therefore, the automatic multilateralisation of the agreement based on the MFN principle should be temporarily pushed back as long as there is no critical mass of WTO members joining the agreement."<sup>24</sup> This



ambiguous stance puts European member governments and citizens on the horns of an uncomfortable dilemma. One possibility is that the Commission is being deliberately disingenuous and tacitly accepts that the TISA will not be multilateralized within the WTO. The other is that the Commission believes the agreement will meet the stringent criteria of Article V and intends to pressure EU member states to eliminate “substantially all” of their current policy space reservations and protected non-conforming regulations governing services.<sup>25</sup>

Clearly, there are grave legal uncertainties surrounding the TISA and its relationship to the WTO. These obstacles raise serious doubts about the claims by the European Commission and some other TISA participants that their goal is to multilateralize the TISA and ultimately to incorporate the agreement into the WTO system.

## Whose idea was the TISA?

Given the potential adverse repercussions for the Doha Round and even the WTO



itself, why would TISA participants engage in such a high-stakes gamble? The most straightforward answer is that key TISA governments, led by the U.S., are responding to strong corporate pressure.

The TISA appears to have been the brainchild of the U.S. Coalition of Service Industries (CSI),<sup>26</sup> specifically its past president Robert Vastine. After his appointment as CSI President in 1996, Vastine became actively involved in services negotiations. The CSI initially endorsed the Doha Round and seemed to be optimistic in the early stages of negotiations, but when the target deadline passed in 2005, the CSI became increasingly frustrated. Vastine personally lobbied developing countries for concessions in 2005 and continued to try and salvage an agreement until at least 2009.

By 2010, however, it was clear that the WTO services negotiations were stalled. In mid-2011, Vastine declared that the Doha Round “holds no promise” and recommended that it be abandoned.<sup>27</sup> Vastine was also one of the first to suggest, as early as 2009, that plurilateral negotiations on services should be conducted outside the framework of the WTO.<sup>28</sup> Working through the Global Services Coalition (GSC), a multinational services lobby group, the CSI then garnered the support of other corporate lobbyists for the TISA initiative.<sup>29</sup>

The TISA is a political project for this corporate lobby group. The GSC has openly boasted that the TISA was conceived “to allay business frustration over stalled Doha Round outcomes on services.”<sup>30</sup> Rather than moderate their demands for radical services liberalization in response to legitimate concerns, the GSC is pushing the WTO and the Doha Round to the brink. The group also appears to be largely indifferent to whether or how the TISA fits into the WTO or the existing multilateral system.

Instead, the strategy is to attain a sufficient critical mass of participants in the TISA so that multilateralization becomes a *fait accompli*. Indeed, the CSI’s preferred outcome is *not* to extend the results of the TISA on an MFN basis, but to secure a highly ambitious agreement among like-minded core participants. In this regard, the TISA would “form a template for the next generation of multilateral rules and levels of market access.”<sup>31</sup>

Developing and emerging market economies would then be targeted one-by-one to join the agreement as political conditions permit – that is, when neo-liberal or more compliant governments are in power. Sadly, such a crude strategy could actually succeed.

## What is on the table?

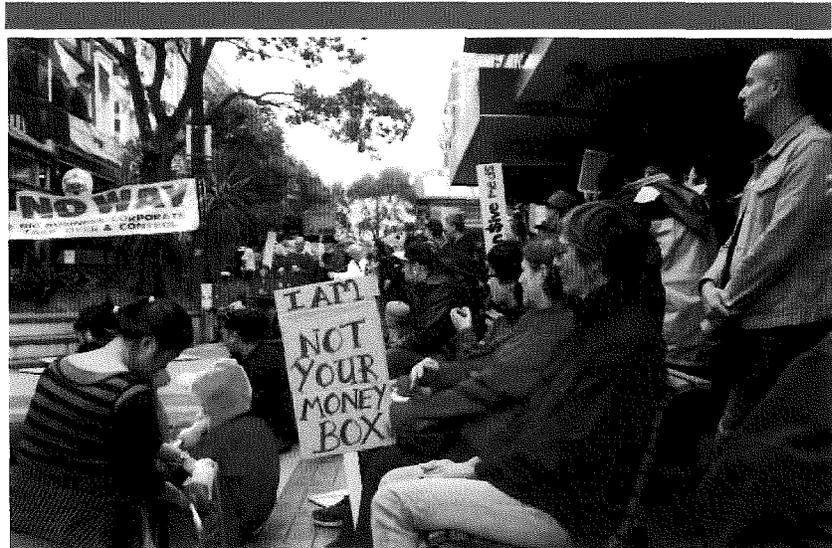
Unlike other trade and investment agreements, the TISA is focused exclusively on trade in services. Yet “trade in services” is a very broad category. The TISA, like the GATS, would apply to every possible means of providing a service internationally. This includes *cross-border services* (GATS Mode 1), such as telemedicine, distance education or internet gambling; *consumption abroad* (GATS Mode 2) in areas such as tourism or medical tourism; *foreign direct investment* (GATS Mode 3), such as a bank setting up a branch in another country or a multinational corporation providing municipal water or energy services; and the *temporary movement of persons* (GATS Mode 4), such as when nurses, housekeepers or corporate executives travel abroad on a temporary basis to provide services.

As part of the TISA mandate, each participant must match or exceed the highest level of services commitments that it has made in any services trade and investment agreement that it has signed. This “best FTA” approach is meant to ensure that the *starting point* of TISA negotiations (each government’s initial offer) reflects the furthest extent of concessions in any previous agreement.

But such commitments are only the floor. Countries are expected to go further, not only by making deeper commitments but also by agreeing to new restrictions and obligations that go well beyond the GATS. Michael Punke, U.S. Ambassador to the WTO, has called for a “highest common denominator” approach, suggesting that commitments for all TISA parties should be brought up to the highest degree of commitment of any other party.<sup>32</sup>

Negotiators are reportedly agreed on a core part of the TISA text that conforms fairly closely to the GATS. One major difference, however, is that the TISA adopts a “negative list” approach to national treatment. The national treatment rule requires that governments give *foreigners* the best treatment given to *like domestic* investments, or services. Even measures that are formally non-discriminatory can violate these non-discrimination rules if they, in fact, adversely affect the “equality of competitive opportunities” of foreign investors or service providers.

Under the TISA, national treatment obligations would automatically apply to all measures and sectors unless these are explicitly excluded. This means that, for example, the French or Paraguayan health care sector would be covered by national treatment unless those countries successfully negotiated a country-specific exemption to exclude it. For example, under the TISA, like the GATS, national treatment would apply to subsidies, meaning that any financial support for public services would have to be



**...under the TISA, like the GATS, national treatment would apply to subsidies, meaning that any financial support for public services would have to be explicitly exempted, or be made equally available to private, for-profit services suppliers.**

WTO protest  
against banks,  
Geneva.  
Photo: PSI

## Remunicipalization

The neo-liberal turn in many countries during the 1980s and 1990s brought about the widespread privatization of important public services. Struggling municipalities, in particular, were attracted to promised savings from privatizing energy utilities, transit, waste management, healthcare and other areas of public responsibility. More recently, however, negative experience with profit-driven service delivery models has led many communities to re-evaluate the privatization approach.<sup>38</sup>



Public municipal  
water campaign,  
Germany.  
Photo:  
Multinational  
Observer

One of the most popular and powerful responses has been the emerging trend of remunicipalization, referring to the process of transferring a privatized public service back to the public sector. These reversals typically occur at the municipal level, although, in principle, remunicipalization can also occur at the regional or national level. Almost any public service can be remunicipalized.

Remunicipalization is already taking place in communities on every continent and in a wide

variety of circumstances. Demonstrating the breadth of this trend, a recently published book on water remunicipalization discusses cases in Argentina, Canada, France, Tanzania and Malaysia.<sup>39</sup>

In the first four countries, the cases involved municipal governments, while in Malaysia it was the federal government itself. In each case, there was an increasing frustration with “broken promises, service cut-offs to the poor, [and a] lack of integrated planning”<sup>40</sup> by private water companies and the governmental response was to initiate a public takeover of the service. Although water remunicipalization has its challenges and each case is different, the authors ultimately conclude that “remunicipalisation is a credible, realistic and attractive option for citizens and policy makers dissatisfied with privatization.”<sup>41</sup>

The German energy sector is another notable example. Since 2007, hundreds of German municipalities have remunicipalized private electricity providers or have created new public energy utilities, and a further two thirds of German towns and cities are considering similar action.<sup>42</sup> Dissatisfaction with private electricity

explicitly exempted, or be made equally available to private, for-profit services suppliers. This “list it or lose it” approach greatly increases the risk to public services and other public interest regulations now and in the future. Any public policy that a government neglects to protect, even inadvertently, is exposed to challenge and any country-specific exemption becomes a target for elimination in subsequent negotiations.

providers in the country is due mainly to a poor record in shifting to renewable energy. There is little market incentive to pursue green energy options, so the municipalities are taking the transition to renewables into their own hands. Local governments have also found that monopolistic or oligopolistic private energy companies tend to inflate energy prices, whereas remunicipalization brings prices down. Finland, Hungary and the United Kingdom are also engaged in remunicipalization projects. Other sectors involved in these projects include public transit, waste management, cleaning and housing.<sup>43</sup>

Remunicipalization is significant because it demonstrates that past decisions are not irreversible. Decisions about how best to deliver a public service vary according to circumstances. The ability to respond to new information, changing conditions or shifting public opinion is an essential freedom for democratic governments concerned with how best to serve the public interest.

The TISA would limit and may even prohibit remunicipalization because it would prevent governments from creating or reestablishing public monopolies or similarly “uncompetitive” forms of service delivery. Trade treaties such as the TISA are extremely broad in scope. They don’t simply ensure non-discriminatory treatment for foreign services and service providers, they restrict or even prohibit certain types of non-discriminatory government regulatory measures.

Like GATS Article XVI, the TISA would prohibit public monopolies and exclusive service suppliers in fully committed sectors, even on a regional or local level. Of particular concern for remunicipalization projects are the proposed “standstill” and “ratchet” provisions in TISA. The standstill clause would lock in current levels of services liberalization in each country, effectively banning any moves from a market-based to a state-based provision of public services. This clause would not in itself prohibit public monopolies; however, it would prohibit the creation of public monopolies in sectors that are currently open to private sector competition.

Similarly, the ratchet clause would automatically lock in any future actions taken to liberalize services in a given country. Again, this clause would not in itself prohibit public monopolies. However, if a government did decide to privatize a public service, that government would be unable to return to a public model at a later date. The standstill and ratchet provisions preclude remunicipalization by definition.

Remunicipalization would only be feasible under TISA if it occurs in sectors that have been explicitly carved out of the agreement. The crucial point is not that remunicipalization is always appropriate, but rather that the authority to establish new public services and to bring privatized services back in to the public sector are fundamental democratic freedoms. The remunicipalization trend demonstrates the importance of preserving this policy flexibility, which is put at risk by over-reaching new agreements such as the TISA.

Governments had a deadline of November 30, 2013 to present their initial offers. By mid-February 2014, almost all participants had done so.<sup>33</sup> These opening offers then become the basis for further give-and-take negotiations to deepen coverage. But in addition to the basic text and the request-offer negotiations, TISA negotiators are also busy in many other areas.

## Beyond the GATS

TISA negotiators are working on GATS-plus rules and restrictions that could push trade treaty restrictions into new, uncharted territory. While the precise contents of these “new and enhanced disciplines” remain closely guarded secrets, the most important ones are outlined below:

### Standstill and ratchet provisions

Among the TISA’s most threatening characteristics are its obligatory standstill and ratchet provisions. The standstill obligation would freeze existing levels of liberalization across the board, although some parties will undoubtedly try to negotiate limited exemptions in sensitive sectors. The TISA’s ratchet clause requires that “any changes or amendments to a domestic services-related measure that currently does not conform to the agreement’s obligations (market access<sup>34</sup>, national treatment, most favored nation treatment) be made in the direction of greater conformity with the agreement, not less.”<sup>35</sup> This ratchet provision, which has reportedly already been agreed to, would expressly lock in future liberalization, which could then never be reversed.<sup>36</sup>

Suppose, for example, that a TISA government implemented, even on a temporary or trial basis, a system of private insurance for health services previously covered under a public health insurance system, at either the national or sub-national level. In the absence of a reservation that explicitly exempts the country’s health insurance

**In the absence of a reservation that explicitly exempts the country’s health insurance sector, that government – or any future government – would not be able to bring those services back under the public insurance system without violating the TISA. Similar conflicts have already arisen under bilateral investment treaties...**

sector, that government – or any future government – would not be able to bring those services back under the public insurance system without violating the TISA. Similar conflicts have already arisen under bilateral investment treaties, where foreign private insurers have challenged the reversal of health insurance privatization and liberalization in Slovakia and Poland.<sup>37</sup>

In addition, the TISA will obligate governments to automatically cover all “new services,” meaning those that do not even exist yet. Under such far-reaching

rules, current neo-liberal governments can lock in a privatization scheme for all future generations. These are precisely the types of constitutional-style restrictions that must be avoided if democratic authority over public services is to be safeguarded.

### Domestic regulation

One of the key pieces of unfinished business under the GATS concerns domestic regulation. The GATS Article VI:4 called for further negotiations to ensure that “qualification requirements and procedures, technical standards and licensing requirements” do not constitute “unnecessary” barriers to trade in services. With the WTO process stagnated, TISA participants intend to come up with their own domestic regulation text.

Multinational service corporations have long complained of regulatory obstacles that keep them from operating freely in foreign services markets. Binding domestic regulation rules in the TISA would provide corporations with a means to challenge new or costly regulations, even those that treat domestic and foreign services and service providers even-handedly. The proposed restrictions on domestic regulatory authority

would expressly apply to *non-discriminatory* government measures affecting services. In other words, the new “disciplines” would restrict domestic laws and regulations – such as worker safety requirements, environmental regulations, consumer protection rules and universal service obligations – even when these regulations treat foreign services or services suppliers no differently than their domestic counterparts.

The types of measures to which these proposed new restrictions on regulatory authority would apply have been defined very broadly in the GATS and the TISA. *Qualification requirements and procedures* encompass both the educational credentials and professional/trade certification required to provide a specified service and the ways that the qualification of a service provider is assessed. *Technical standards* include the regulations affecting “technical characteristics of the service itself” and also “the rules according to which the service must be performed.”<sup>44</sup> *Licensing requirements* apply not only to professional licensing but to any requirements related to government permission to companies to provide a service in a market. It would therefore extend to, for example, the licensing of health facilities and laboratories, university and school accreditation, broadcast licenses, waste disposal facilities, power plants and more. Indeed, these very broad definitions would leave few aspects of services regulations unaffected by the proposed restrictions.

WTO member governments have been working to finalize such disciplines within the GATS context for many years. Key participants, notably Brazil and the U.S., have taken a cautious approach and have managed to water down some of the most dangerous elements of the GATS domestic regulation text. One of these was a “necessity test” that would have required regulations, in the judgement of dispute panels, to be no more burdensome than necessary to achieve their intended objective. The latest WTO draft does, however, still include requirements that domestic regulations be “pre-established”, “transparent”, “objective”, “relevant”, and “not a disguised restriction on trade.” Depending on the interpretation of these key terms, the WTO template could interfere with regulatory authority over services. Simply transferring these draft disciplines into the TISA would be harmful to public interest regulation.<sup>45</sup>

It is highly probable, however, that the TISA will contain restrictions on domestic regulation that are even more intrusive than those under discussion in the GATS process. A core group of TISA countries including Chile, Hong Kong, Mexico, New Zealand, South Korea and Switzerland continue to push for the TISA to apply a necessity test to regulations affecting services. The U.S. is reportedly opposing the application of a free-standing necessity test in the CETA, and is advocating that the TISA’s domestic regulation restrictions apply only to central governments, exempting state and local regulation.<sup>46</sup> But the current U.S. position is driven mainly by the concerns of its regulatory departments and state governments. It is far from clear that U.S. negotiators will maintain their current position, especially since corporate pressure to handcuff regulatory authority will intensify as negotiations proceed.

Trade negotiators and their corporate backers often claim that such proposed restrictions recognize the “right to regulate” and to introduce new regulations, but this is misleading. The supposed “right to regulate” can be exercised only in accordance with the treaty



*Protesting the influence of banks on trade agreements, France.*  
Photo: PSI

obligations, including the proposed restrictions on domestic regulation.<sup>47</sup> Even if governments remain free to determine the ends of regulatory action, the means will be subject to challenge and dispute panel oversight.<sup>48</sup>

If these restrictions are agreed to, literally thousands of non-discriminatory public interest regulations affecting services would be exposed to TISA oversight and potential challenge. These regulations could include water quality standards, municipal zoning, permits for toxic waste disposal services, accreditation of educational institutions and degree-granting authority. The proposed restrictions would affect not only regulations in newly committed sectors under the TISA, but also regulations affecting services already committed under the GATS, or any previous FTA signed by a TISA party. TISA governments would instantly see their existing services commitments deepened and their right to regulate curtailed.

### **The chill effect: public auto insurance**

The threat of legal action under international trade treaties creates a “chilling effect”, which can deter governments from acting in the public interest and interfere with the creation or expansion of public services. An example is the fate of a popular proposal for public automobile insurance in the Canadian province of New Brunswick in 2004-5.

Provincial public auto insurance is typically provided through a not-for-profit crown corporation, which provides basic mandatory insurance and optional vehicle damage coverage. This aspect of the system is a public monopoly. Private agents and brokers continue to play a significant role in the distribution of the public product. Substantial premium savings are achieved through “lower administrative costs and the not-for-profit mandate of a sole provider Crown corporation.”<sup>52</sup> With more affordable rates and better coverage for elderly and young drivers, public auto insurance is popular among voters.

In the mid-1990s, Canada made GATS market access and national treatment commitments covering motor vehicle insurance. The GATS market access rule disallows monopolies in sectors where governments have made commitments, unless they are listed as exceptions in a country’s schedule. Canada listed an exception for public auto insurance monopolies, but it only protected existing public auto insurance systems in four provinces. Canadian negotiators failed to provide the flexibility to create new systems in other provinces.<sup>53</sup>

After an election fought mainly on this issue, the New Brunswick government appointed an all-party committee which recommended that the province proceed with public auto insurance. The private insurance industry, however, vigorously opposed these plans. They pointed to the inconsistency with Canada’s GATS commitments and also threatened to take action under NAFTA’s investor-state dispute settle mechanism to gain compensation for lost profits.<sup>54</sup> Despite widespread political and public support, the proposed policy never went ahead.

A special GATS procedure would have allowed the Canadian government to withdraw its 1997 financial services commitments covering auto insurance. Canada would then be expected to increase its GATS coverage in other sectors to compensate affected WTO member governments for any lost “market access” in insurance. The TISA standstill provisions, however, are intended to eliminate this limited GATS flexibility, interfering even more severely with the expansion of such public services.

## Movement of natural persons (Mode 4)

Under trade agreements such as the TISA, the term “movement of natural persons” refers to services provided by nationals of one country who travel to another member country to provide a service. This mode of international trade in services, known as Mode 4, applies to people. The term “legal persons” is used when referring to corporations. In keeping with the overall push for an ambitious agreement – not to mention the strict thresholds for allowing an economic integration agreement under GATS Article V – there has been pressure from some participants for “highly improved” market access commitments on the cross-border movement of services providers as part of the TISA.<sup>49</sup>

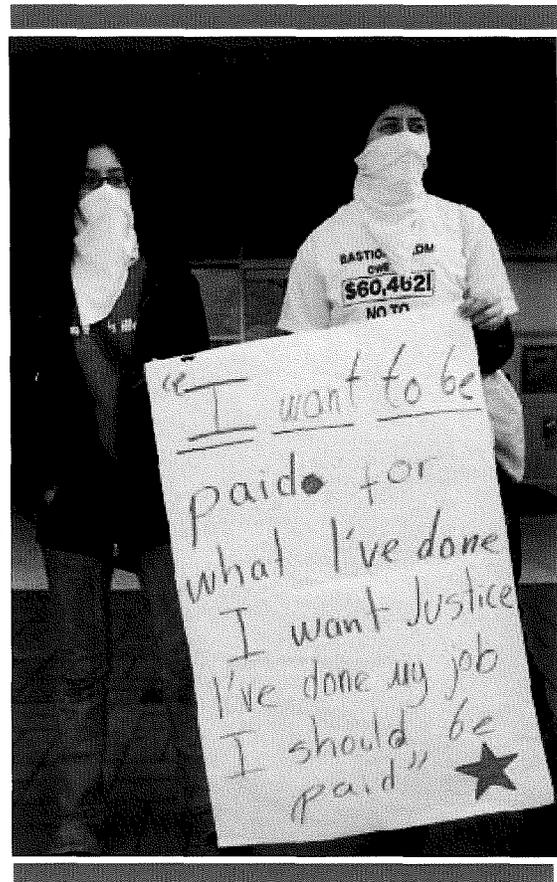
Mode 4 commitments enable firms from one country to temporarily send their employees - including executives, consultants, tradespeople, nurses, construction workers, etc. - to another country for the purpose of supplying services. The TISA, like the GATS, would prohibit so-called economic needs tests, including labour market tests, unless these measures are expressly exempted in a country’s schedule of commitments. In most countries, before hiring temporary foreign workers, a prospective employer is obliged to demonstrate that there is a shortage of suitably trained local workers. But under Mode 4 commitments, such economic needs tests are forbidden. Governments could not require, for example, that foreign companies conduct labour market surveys to first ensure that no local workers are available to perform the necessary work before engaging temporary foreign workers.

This is another sensitive topic for the U.S., which has resisted making additional Mode 4 commitments throughout the Doha Round negotiations on services. Nevertheless, Mode 4 expansion is a high priority for U.S.-based services corporations. As a former high-ranking executive of Citibank who serves as chairman of the Coalition of Service Industries explains: “It’s clearly a priority for lots of countries, and it’s clearly a sensitive issue in the United States. ... But we expect the U.S. to engage on the issue, and we’re hoping that some progress can be made there.”<sup>50</sup>

Significantly, Mode 4 commitments provide no path to workers for immigration, residency or citizenship in the host country. Foreign workers must return to their country after the work is completed or the term of their stay in the host country expires. This precarious situation makes these workers very dependent on the goodwill of their employer. If they lose their employment, they must immediately leave the host country. Despite this, U.S. negotiators have reported that there have been no proposals to include enforceable labour standards or labour rights protection in the TISA.<sup>51</sup>

## Cross-border data flows and privacy

TISA negotiators are also developing “new and enhanced disciplines” that relate to the Internet, electronic commerce and cross-border data flows. The “data” in question includes personal user information, financial information, cloud computing services and digital goods. U.S. industry lobbyists argue that the free exchange of data is “necessary for global business operations” and that governments have imposed too many



*Migrant workers will be denied rights under the TISA.  
Photo: flux*

“arbitrary and excessive measures” designed to constrain U.S. firms.<sup>55</sup> The U.S. Trade Representative has also stated that data protections in many countries are “overbroad” and inhibit the possibility of “truly global service.”<sup>56</sup>

If U.S. negotiators achieve their goals, the TISA will contain provisions that extend market access and national treatment commitments to the Internet and prohibit “forced localization” – the requirement that foreign companies store any data they collect within the country they are operating in. The first point appears settled in principle, since most negotiators consider e-commerce and cloud computing, for example, to be emerging service sectors automatically covered under the TISA. The second point remains controversial. The EU currently enforces rules that prevent companies from transferring data outside of the 28 member states, with some exceptions. By contrast, the U.S. has very lax privacy laws. In the U.S., corporations can collect extensive personal information about their users which can then be sold or used for commercial purposes with almost no restrictions. The EU is only willing to open up data flows in the TISA if the U.S. can demonstrate stricter domestic privacy controls. However, it is difficult to imagine the U.S. making a compelling case for privacy in the wake of recent revelations of extensive spying by its National Security Agency, exposed by whistleblower Edward Snowden.<sup>57</sup>

The TISA will apply to the Internet as it does to other service sectors, forcing liberalization in a way that disproportionately benefits the industry’s established major players. These massive corporations are almost exclusively American. If the U.S. gets its way, the TISA will also undermine user privacy by permitting the uninhibited collection and transfer of personal data.

### **Sectoral regulatory disciplines**

One of the most wide-open aspects of the TISA negotiations is the blanket authority for negotiators to develop rules “on any other issues that fall within the scope of Article XVIII of the GATS.” Article XVIII was the basis for the 1996 Telecoms Reference Paper and the 1997 Understanding on Financial Services Commitments, which were driven by developed countries dissatisfied with the level of commitments and regulatory restrictions in these sectors under the original GATS.

TISA negotiators are currently working on new sectoral agreements covering the regulation of financial services, telecommunications, electronic commerce, maritime transport, air transport, road transport, professional services, energy-related services and postal and courier services. These talks are aimed at developing binding, “pro-competitive” regulatory templates for a wide range of services sectors in order to facilitate the entry of foreign commercial providers and to privilege multinational corporate interests.

For example, such rules generally acknowledge the right of governments to apply universal service obligations in privatized sectors. Yet even these vestiges of public service values are subjected to necessity tests and other pro-market requirements biased towards global service providers.<sup>58</sup> The TISA is also explicitly designed as a “living agreement” that will mandate trade negotiators to develop new regulatory templates for additional sectors far into the future.

The scope of such highly customized sectoral agreements is limited only by the imagination of services negotiators and corporate lobbyists, and made even more worrisome by the near total secrecy surrounding such negotiations. Needless to say, this is totally unacceptable. Services negotiators have a core mandate to increase foreign trade and commerce. They should not be permitted to develop prescriptive regulatory frameworks that would restrict and potentially override public interest regulations that protect consumers, workers or the environment.

## Protecting public services

The availability of affordable, high-quality public services should be a key goal of economic development, to which international trade is but a means. Public service systems are dynamic and flexible. Accordingly, safeguards for public services in trade treaties must support this dynamism and innovation, not lock in liberalization or make privatization irreversible. In particular, trade treaty rules should not interfere with the restoration or expansion of public services, where experiments with private provision fail or are rejected by democratically elected governments.

It is technically feasible to carve out public services from trade agreements. Indeed, modern trade agreements invariably contain a broad, self-judging exemption for matters any party considers related to their national security.<sup>59</sup>

Accordingly, if the political will existed, it would be a reasonably straightforward matter for trade and investment treaties to exclude those services which a party considers to be provided within the exercise of its governmental authority.<sup>60</sup> Such a provision, and the universal public services it could facilitate, would be desirable and beneficial to the majority of citizens who are too often left behind in the pitiless arena of global competition.

Legitimate treaties to promote international trade must fully preserve the ability of governments to restore, revitalize or expand public services. On many levels, the TISA fails this critical test. Indeed, the TISA's very ethos – extreme secrecy, aggressiveness, hyper-liberalization, and excessive corporate influence – contradicts public service values.

The already formidable challenges in safeguarding public services under the GATS and other treaties will only be exacerbated by the TISA negotiations. The excessive breadth of the TISA means it also poses risks to other vital public interests, including privacy rights, Internet freedom, environmental regulation and consumer protection.

There is an urgent need for public sector unions to join with civil society allies on this issue. Working together, they can expose the official secrecy surrounding the TISA and counter the corporate pressure driving the talks.

Within those countries already participating in the TISA, governments must be pressed for full consultation and disclosure. Local and state governments, whose democratic and regulatory authority could be seriously affected, are key players in any moves to restrain national governments' zeal for the TISA. Governments that are not participating in the TISA must be lobbied not to join and to resist pressure to do so. Non-TISA governments should also be encouraged to speak out against the corrosive impact of these negotiations on multilateralism, and to block any efforts by TISA parties to access WTO institutional resources or the Dispute Settlement Body.

Strong alliances built on public interest rather than corporate profitability will be the cornerstone of efforts to reverse this out-of-control race to radical economic liberalization.



*Rallying for public services, Canada.  
Photo: flux*



## Endnotes:

- 1 See Sinclair, Scott. (2014). "Trade agreements, the new constitutionalism and public services." In Stephen Gill and A. Claire Cutler (Eds.), *New Constitutionalism and World Order* (pp. 179-196). Cambridge University Press.
- 2 Sauvé, Pierre. (May 2013). "A Plurilateral Agenda for Services? Assessing the case for a Trade in Services Agreement (TISA)." *Swiss National Centre of Competence in Research (NCCR) Trade Regulation, Working Paper 29*. Bern, Switzerland: Swiss National Science Foundation. p. 8. Online at: <http://www.nccr-trade.org/publication/a-plurilateral-agenda-for-services-assessing-the-case-for-a-trade-in-services-agreement-tisa>.
- 3 On the other hand, Singapore, an original member of the RGF grouping, has withdrawn from the TISA negotiations. Singapore already has RTAs, or is in negotiations, with nearly every other TISA participant except for the European Union. Singapore is also in separate negotiations with Canada, Japan and Mexico. In Singapore's view, with major emerging countries absent from the table, the TISA talks were not a priority.
- 4 At the WTO Public Forum in early October 2013, U.S. Trade Representative Michael Froman pledged to "consult closely with our Congress, with our stakeholders, with the other parties in the negotiations as part of a due diligence process to ensure that any new party to the TISA negotiations shares the same level of ambition for the negotiations as the existing parties." Pruzin, Daniel. (November 12, 2013). "TISA Round Sees Progress on Proposals, Commitments to Make Market Access Offers." *WTO Reporter*. Bloomberg Bureau of National Affairs.
- 5 Inside U.S. Trade. (November 22, 2013). "China Categorically Rejects U.S. Preconditions To Participation In TISA." *World Trade Online*, 31(46).
- 6 Rabinovitch, Simon. (September 27, 2013). "China unveils blueprint for Shanghai free trade zone." *Financial Times of London*.
- 7 As noted, China has specifically identified these social service sectors as priority areas for expanding commercialization.
- 8 Canada, for example, has taken no GATS commitments in health, education, social services or culture. "Canada's Commitments to the GATS." Foreign Affairs, Trade and Development Canada. Online at: <http://www.international.gc.ca/trade-agreements-accords-commerciaux/wto-omc/gats-agcs/commit-engage.aspx?lang=eng>.
- 9 Under a "top-down," or "negative listing" approach, the national treatment obligation applies generally. Governments must therefore negotiate explicit exemptions to exclude specific sectors or protect otherwise non-conforming policy measures.
- 10 A "limitation" is a note in a country's schedule of commitments that limits, or qualifies, the application of an obligation within a covered sector -- for example, by exempting an existing, otherwise inconsistent policy measure.
- 11 See European Commission. (February 28, 2011). "Reflections Paper on Services of General Interest in Bilateral FTAs." Brussels: European Commission Directorate-General for Trade.
- 12 Krajewski, Markus. (November 14, 2013). "Public Services in EU Trade And Investment Agreements." Draft paper prepared for the seminar *The politics of Globalization and public services: putting EU's trade and investment agenda in its place*. Brussels. p. 22. Online at: [http://www.epsu.org/IMG/pdf/Draft\\_report\\_Markus\\_Krajewski\\_mtg14Nov2013.pdf](http://www.epsu.org/IMG/pdf/Draft_report_Markus_Krajewski_mtg14Nov2013.pdf).
- 13 See discussion of "ratchet and standstill" in section below.
- 14 Khor, Martin. (May 2010). "Analysis of the Doha negotiations and the functioning of the World Trade Organization." Geneva: South Centre. Online at: <http://www.southcentre.int/research-paper-30-may-2010>.
- 15 This level of secrecy exceeds even that found in the Tran-Pacific Partnership, where negotiating documents are classified for "four years from entry into force of the TPP agreement or, if no agreement

enters into force, four years from the close of the negotiations.” See Sinclair, Mark (TPP Lead Negotiator, New Zealand). Undated letter. Online at: <http://www.mfat.govt.nz/downloads/trade-agreement/transpacific/TPP%20letter.pdf>.

Switzerland’s TISA proposals are, as required by Swiss law, publicly accessible at: <http://www.seco.admin.ch/themen/00513/00586/04996/index.html?lang=en>. But proposals made jointly by Switzerland with other TISA parties are not publicly available.

16 World Trade Organization. Information Technology Agreement. Online at: [http://www.wto.org/english/tratop\\_e/inftec\\_e/inftec\\_e.htm](http://www.wto.org/english/tratop_e/inftec_e/inftec_e.htm).

17 See, for example, the remarks of Wamkele K. Mene, Counsellor, Permanent Mission of South Africa to the WTO, October 2, 2013 at the WTO Public Forum. A video of Counsellor Mene’s opening remarks is accessible at: <http://www.youtube.com/watch?v=gpkch2CE2SI>.

18 World Trade Organization. General Agreement on Trade in Services. Article V. See note 1 to Article V:1(a): “This condition is understood in terms of number of sectors, volume of trade affected and modes of supply. In order to meet this condition, agreements should not provide for the *a priori* exclusion of any mode of supply.” Online at: [http://www.wto.org/english/docs\\_e/legal\\_e/26-gats\\_01\\_e.htm](http://www.wto.org/english/docs_e/legal_e/26-gats_01_e.htm).

19 World Trade Organization. General Agreement on Trade in Services. Article V. Online at: [http://www.wto.org/english/docs\\_e/legal\\_e/26-gats\\_01\\_e.htm](http://www.wto.org/english/docs_e/legal_e/26-gats_01_e.htm).

20 GATS Article V stipulates that in evaluating whether an agreement liberalizing trade in services meets the required conditions for an exemption from MFN treatment: “consideration may be given to the relationship of the agreement to a wider process of economic integration or trade liberalization among the countries concerned.” This suggests that the TISA could be held to higher standard of review than regional EIAs. World Trade Organization. General Agreement on Trade in Services. Article V. Online at: [http://www.wto.org/english/docs\\_e/legal\\_e/26-gats\\_01\\_e.htm](http://www.wto.org/english/docs_e/legal_e/26-gats_01_e.htm).

21 “Irrespective of the solutions to be found for the institutional structure of the TISA, and in view of facilitating its later multilateralization, *the emergence of two sets of jurisprudence, one by the organs of the WTO, and a parallel one by a procedure established under the TISA, is to be avoided by all possible means.*” Switzerland State Secretariat for Economic Affairs. (April 11, 2013). “Submission by Switzerland: Chapter on Dispute Settlement Procedures.” Federal Department of Economic Affairs, Education and Research. Online at: <http://www.seco.admin.ch/themen/00513/00586/04996/index.html?lang=en>.

22 Inside U.S. Trade. (May 10, 2013). “TISA Negotiators Begin Mode 4 Talks; New Proposals Expected In June.” *World Trade Online*, 31(19).

23 See European Commission. (June 2013). “The Trade in Services Agreement (‘TISA’).” Online at: [http://trade.ec.europa.eu/doclib/docs/2013/june/tradoc\\_151374.pdf](http://trade.ec.europa.eu/doclib/docs/2013/june/tradoc_151374.pdf).

24 See European Commission. (June 2013). “The Trade in Services Agreement (‘TISA’).” Online at: [http://trade.ec.europa.eu/doclib/docs/2013/june/tradoc\\_151374.pdf](http://trade.ec.europa.eu/doclib/docs/2013/june/tradoc_151374.pdf).

25 For a list of the EU member states’ extensive national treatment limitations, see the EU GATS schedule. Online at: <http://www.esf.be/pdfs/GATS%20UR%20Commitments/EU%20UR%20SoC%2031.pdf>.

26 The Coalition of Service Industries describes itself as “the leading business organization dedicated to the development of U.S. domestic and international policies that enhance the global competitiveness of the U.S. service sector through bilateral, regional, multilateral, and other trade and investment initiatives.” Following Vastine’s resignation in 2012, the organization is now headed by Peter Allgeier, the former U.S. Ambassador to the World Trade Organization and Deputy U.S. Trade Representative.

27 Inside U.S. Trade. (July 28, 2011). “Business Groups Say Countries Should Rethink, Or Abandon, Doha Round.” *World Trade Online*, 29(30).

28 Inside U.S. Trade. (February 13, 2009). “USTR Sees Difficulty In Obtaining Improved Services Offers In Doha Round.” *World Trade Online*, 27(6).

29 The Global Services Coalition is an umbrella lobby group that includes the U.S. Coalition of Services Industries, the European Services Forum, the Australian Services Roundtable, the Canadian Services Coalition, the Hong Kong Coalition of Service Industries, the Japan Services Network, the Taiwan Coalition of Service Industries, and TheCityUK, which promotes the U.K. financial services industry.

30 Global Services Coalition. (September 10, 2013). "Letter to Karel de Gucht, Commissioner for Trade, European Commission." Online at: <http://www.esf.be/new/wp-content/uploads/2013/10/GSC-Letter-on-TISA-to-Karel-de-Gucht1.pdf>.

31 Coalition of Services Industries. (Feb. 26, 2013). Letter to Douglas Bell, Office of the United States Trade Representative. p. 5. Online at: [https://servicescoalition.org/images/CSI\\_ISA\\_Comment\\_Letter\\_FINAL.pdf](https://servicescoalition.org/images/CSI_ISA_Comment_Letter_FINAL.pdf).

32 Devarakonda, Ravi Kanth. (March 17, 2012). "An Assault on Multilateral Trade Negotiations." Inter Press Service. Online at: <http://www.ipsnews.net/2012/03/an-assault-on-multilateral-trade-negotiations>.

33 Bradner, Eric. (February 14, 2014). "U.S. financial proposal for TISA could come next week." *Politico*.

34 "Market access" has two meanings in the GATS and TISA context. First, in a general sense, it refers to the right of a service supplier to supply a service through any of the four modes of supply. More specifically, it refers to GATS Article XVI, which prohibits government measures that limit the number of service operations, the value of service transactions or assets, the number of operations or quantity of output, the number of persons supplying a service and the participation of foreign capital, and also any requirements for specific types of legal entities. Such measures are GATS-illegal even if they apply equally to foreign and domestic service suppliers.

35 Pruzin, Daniel. (November 12, 2013). "TISA Round Sees Progress on Proposals, Commitments to Make Market Access Offers." *WTO Reporter*. Bloomberg Bureau of National Affairs.

36 For a good illustration of both the breadth and the complexity of implementing such standstill and ratchet provisions see: Switzerland State Secretariat for Economic Affairs. (February 27, 2013). "Questionnaire by Switzerland on Standstill and Ratchet." Federal Department of Economic Affairs, Education and Research. Online at: <http://www.seco.admin.ch/themen/00513/00586/04996/index.html?lang=en>.

37 Hall, David. (January 2010). "Challenges to Slovakia and Poland health policy decisions: use of investment treaties to claim compensation for reversal of privatisation/liberalisation policies." Public Services International Research Unit. Online at: [http://gala.gre.ac.uk/2744/1/PSIRU\\_Report\\_9828\\_-\\_2010-02-H-tradelaw.pdf](http://gala.gre.ac.uk/2744/1/PSIRU_Report_9828_-_2010-02-H-tradelaw.pdf).

38 McDonald, David A. (2012). "Remunicipalisation works!" In Pigeon et al. (Eds.), *Remunicipalisation: Putting Water Back into Public Hands* (pp. 8-23). Amsterdam: Transnational Institute.

39 Pigeon, Martin, David A. McDonald, Olivier Hoedeman, and Satoko Kishimoto (Eds.). (2012). *Remunicipalisation: Putting Water Back into Public Hands*. Amsterdam: Transnational Institute.

40 McDonald, David A. (2012). "Remunicipalisation works!" In Pigeon et al. (Eds.), *Remunicipalisation: Putting Water Back into Public Hands*. Amsterdam: Transnational Institute. p. 9.

41 Hoedeman, Olivier, Satoko Kishimoto, and Martin Pigeon. "Looking to the Future: What Next for Remunicipalisation?" In Pigeon et al. (Eds.), *Remunicipalisation: Putting Water Back into Public Hands*. Amsterdam: Transnational Institute. p. 106.

42 Hall, David, Steve Thomas, Sandra van Niekerk, and Jenny Nguyen. (2013). *Renewable energy depends on the public not private sector*. Public Services International Research Unit.

43 Hall, David. (2012). *Re-municipalising municipal services in Europe*. Public Services International Research Unit.

44 See World Trade Organization. (March 1, 1999). "Article VI:4 of the GATS: disciplines on domestic regulation applicable to all services." Note by the Secretariat.

45 See remarks by Sanya Reid Smith, Legal Advisor, Third World Network at the WTO Public Forum on October 2, 2013. Online at: [http://www.youtube.com/watch?v=2\\_pPqnbXpA4](http://www.youtube.com/watch?v=2_pPqnbXpA4).

46 This information is based on confidential interviews with a variety of TISA participants and observers conducted by Scott Sinclair in Geneva in early October 2013.

47 In the words of the U.S.-Gambling panel report: "Members' regulatory sovereignty is an essential pillar of the progressive liberalization of trade in services, but this sovereignty ends whenever rights of other Members under the GATS are impaired." World Trade Organization. (November 10, 2004). "United States—Measures Affecting the Cross-border Supply of Gambling and Betting Services." Report of the Panel, WT/D285/R.

48 See Sinclair, Scott. (June 2006). "Crunch Time in Geneva: Benchmarks, plurilaterals, domestic regulation and other pressure tactics in the GATS negotiations." Ottawa: Canadian Centre for Policy Alternatives. Online at: [http://www.policyalternatives.ca/sites/default/files/uploads/publications/National\\_Office\\_Pubs/2006/Crunch\\_Time\\_in\\_Geneva.pdf](http://www.policyalternatives.ca/sites/default/files/uploads/publications/National_Office_Pubs/2006/Crunch_Time_in_Geneva.pdf).

49 Pruzin, Daniel. (March 28, 2013). "Turkey Outlines Mode 4 Demand for Trade in Services Agreement Talks." *WTO Reporter*. Bloomberg Bureau of National Affairs.

50 Samuel Di Piazza, chairman of the U.S.-based Coalition of Services Industries and former vice chairman of the institutional clients group with Citibank. Quoted in Pruzin, Daniel. (March 28, 2013.) "Turkey Outlines Mode 4 Demand for Trade in Services Agreement Talks." *WTO Reporter*. Bloomberg Bureau of National Affairs.

51 Drake, Celeste. (October 2, 2013). "Presentation at the WTO Public Forum." Online at: <http://www.youtube.com/watch?v=uq9GxwRBTa8>.

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53 Furthermore, the GATS governmental authority exclusion could not be relied upon to exclude the creation of a new public auto insurance system.

54 David Schneiderman. (2008). *Constitutionalizing Economic Globalization: Investment Rules and Democracy's Promise*. Cambridge: Cambridge University Press. P. 71.

55 See Letter from U.S. Congressional representatives to USTR Michael Froman, July 17, 2013. Online at: [http://insidetrade.com/index.php?option=com\\_iwpfile&file=jul2013/wto2013\\_2288.pdf](http://insidetrade.com/index.php?option=com_iwpfile&file=jul2013/wto2013_2288.pdf).

56 United States Trade Representative. (2013), "2013 Section 1377 Review On Compliance with Telecommunications Trade Agreements." p. 4. Online at: <http://www.ustr.gov/sites/default/files/04032013%202013%20SECTION%201377%20Review.pdf>.

57 Inside U.S. Trade. (June 14, 2013). "Punke Signals U.S. Government Surveillance Could Complicate Trade Talks." *World Trade Online*, 31(24).

58 See Sinclair, Scott. (2014). "Trade agreements, the new constitutionalism and public services." In Stephen Gill and A. Claire Cutler (Eds.), *New Constitutionalism and World Order* (pp. 179-196). Cambridge University Press.

59 See GATS Article XIV bis, "Security exceptions," which reads, in part, "Nothing in this Agreement shall be construed ... to prevent any Member from taking any action which it considers necessary for the protection of its essential security interests ...." Online at: [http://www.wto.org/english/docs\\_e/legal\\_e/26-gats\\_01\\_e.htm](http://www.wto.org/english/docs_e/legal_e/26-gats_01_e.htm).

60 For an excellent discussion, in the EU context, of a range of options available to strengthen the protection for public services in trade and investment treaties, see: Krajewski, Markus. (November 14, 2013). "Public Services in EU Trade And Investment Agreements." Draft paper prepared for the seminar *The politics of Globalization and public services: putting EU's trade and investment agenda in its place*. Brussels. Online at: [http://www.epsu.org/IMG/pdf/Draft\\_report\\_Markus\\_Krajewski\\_mtg14Nov2013.pdf](http://www.epsu.org/IMG/pdf/Draft_report_Markus_Krajewski_mtg14Nov2013.pdf).

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April 30, 2014

Ambassador Michael Froman  
United States Trade Representative  
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*Submitted electronically via correspondence@ustr.eop.gov, STATA@USTR.eop.gov*

Dear Ambassador Froman:

The undersigned organizations appreciate our ongoing dialogue with your staff on prescription drug concerns related to the pending Trans-Pacific Partnership (TPP) trade agreement negotiations. While this dialogue has clarified a number of issues where we had questions, we continue to have substantive concerns that the TPP proposal, as we understand it, contains ill-advised provisions that could adversely affect U.S. prescription drug programs. We are writing today to reiterate these concerns in more detail, which center on the direction of the pharmaceuticals annex and how it would impact Medicare, as well as problematic provisions that the U.S. has proposed for inclusion in the intellectual property chapter. It remains our firm belief that the alteration of our nation's policies on Medicare reimbursement and patent standards should not be subject to binding provisions in international agreements like the TPP drafted through a process with little public transparency.

In general, we continue to be alarmed that the pharmaceuticals annex puts too much emphasis on drug industry priorities, and does not give equal weight to consumer priorities such as prescription drug affordability, safety, efficacy, and cost-effectiveness. To address this imbalance, we shared specific suggestions with your staff that we hope you will seriously consider adopting as part of the U.S. formal negotiating position on the annex. We strongly believe that consumer priorities, not drug industry priorities, should be the U.S. government's primary concern and encourage you to make every effort to address the current inequity in this regard as negotiations proceed.

We were pleased to learn from your staff that the current U.S. position is not to make the TPP pharmaceuticals annex provisions applicable to the operation of state Medicaid prescription drug programs, the Medicare Part D prescription drug program, or public health programs that utilize price negotiation such as the VA health program. However, national coverage determinations under Medicare Part B would be an expressly covered program and, consequently, would be subject to the annex's transparency and review commitments and bound by its policy restrictions. We strongly oppose this move that we believe could result in challenges to the payment methodology for Part B covered prescription drugs currently set at 106 percent of the average sales prices (ASP). Since shifting to the ASP in 2005, Medicare Part B drug spending has increased modestly at 2.7 percent per year, compared with increases of 25 percent per year between 1997 and

2003.<sup>1</sup> As an area where the U.S. government establishes pricing decisions, we are very concerned the current TPP proposal could be used by pharmaceutical companies to challenge the current Medicare B payment methodology, or its application in specific cases, which has had a measure of success in slowing spending growth.

As we have noted before, the TPP proposal could also limit the development of future policies. There is growing evidence that the ASP+6 percent payment methodology could be further improved to enhance cost containment efforts,<sup>2</sup> which will take on even greater importance as the high cost of specialty drugs including biologic medicines will make up an increasing percentage of overall drug costs in the future.<sup>3</sup> The recent release of comprehensive Medicare Part B physician reimbursement data underscores the need to reexamine payment methodologies for Medicare Part B covered prescription drugs.<sup>4</sup> According to the data, the high cost of prescription drugs is behind the highest billing trends, and these costs are borne directly by Medicare beneficiaries through increased cost sharing.<sup>5 6 7</sup>

Given this, we believe it is critically important that Congress retain the ability to adjust reimbursement policies for Medicare Part B covered prescription medicines unhindered by policy restrictions in the TPP. We are concerned a number of savings proposals could be restricted or foreclosed if the annex covers Part B, including current proposals that would:

- Lower the percentage paid by Medicare for Part B drugs from 106 percent to 103 percent of the ASP;
- Restore the legal authority for CMS to use a “least costly alternative” policy among competing Part B drugs;
- Require manufacturer discounts or rebates for Part B drugs; and

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<sup>1</sup> Medicare Payment Advisory Commission (MedPAC). 2012a. *Health Care Spending and the Medicare Program: A Data Book*, June 2012.

<sup>2</sup> J. Wilkerson, “Blum: CMS Eyes Cancer Drug Pay Reforms, Part D Spending Targets In ACOs,” *InsideHealthPolicy*, December 11, 2012; P. Whoriskey, D. Keating, and L.H. Sun, “Data Uncover Nation’s Top Medicare Billers,” *Washington Post*, April 9, 2014.

<sup>3</sup> Express Scripts, *2013 Drug Trend Report*, April 2014; CVS Caremark, *2014 Drug Insights Report*, April 2014.

<sup>4</sup> Centers for Medicare and Medicaid Services (CMS), “Medicare Provider Utilization and Payment Data: Physician and Other Supplier,” (April 2014), available at: <http://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/Medicare-Provider-Charge-Data/Physician-and-Other-Supplier.html>

<sup>5</sup> Whoriskey, P., “These maps tell you everything that is wrong with our drug pricing system,” *Washington Post* (April 11, 2013), available at: <http://www.washingtonpost.com/blogs/wonkblog/wp/2014/04/11/these-maps-tell-you-everything-thats-wrong-with-our-drug-pricing-system/>.

<sup>6</sup> Whoriskey, P., Keating, D., and L.H. Sun, “Cost of drugs used by Medicare doctors can vary greatly by region, analysis finds,” *Washington Post* (April 9, 2013), available at: [http://www.washingtonpost.com/business/economy/cost-of-drugs-used-by-medicare-doctors-can-vary-greatly-by-region-analysis-finds/2014/04/09/69ac93f0-c024-11e3-b574-f8748871856a\\_story.html](http://www.washingtonpost.com/business/economy/cost-of-drugs-used-by-medicare-doctors-can-vary-greatly-by-region-analysis-finds/2014/04/09/69ac93f0-c024-11e3-b574-f8748871856a_story.html).

<sup>7</sup> Department of Health and Human Services, Office of the Inspector General (OIG), “Review of Medicare Part B Avastin and Lucentis Treatments for Age-Related Macular Degeneration,” (September 2011), available at: <http://oig.hhs.gov/oas/reports/region10/11000514.pdf>; This OIG investigation revealed that Medicare beneficiaries would have saved \$275 million in 2008 and 2009 had the federal government reimbursed for the least costly alternative among available macular degeneration medicines.

- Allow Medicare to negotiate drug prices in Part B for those drugs where the Medicare program purchases the majority of a particular drug or accounts for a large share of drug spending.

We strongly urge you to consider the implications of the pharmaceuticals annex for consumers as well as the financial sustainability of the taxpayer-funded Medicare program. *Any final agreement in the TPP must make it clear that parties may adopt substantive savings proposals to lower consumer costs and reduce government spending under their healthcare authorities without restriction or the possibility of challenge through international forums.*

As we have discussed with your staff, we are also concerned by proposals in the intellectual property chapter that would greatly expand international minimum standards for domestic patent protection beyond that included in the World Trade Organization's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). This proposal, as we understand it, would lower the standards of patentability, which could hamper the efforts that TPP parties have made to curtail the problem of "evergreening" drug patents, particularly for products that do not demonstrate a clear, significant clinical advantage or efficacy over the reference product. We are also concerned the proposal would establish new requirements in international law to grant patents on diagnostic, therapeutic, and surgical methods, as well as new forms and uses of known products. These and other provisions could restrict the range of policy options that could be adopted by Congress to address the serious problem of patent "evergreening."

Our concerns also stem from the fact that expanding patentability criteria would be counter to ongoing efforts to reform U.S. patent standards to address the increase in overly broad patents that contribute to "patent trolling." More importantly, such efforts would directly contradict the development and implementation of restrictions on patentability, including the recent U.S. Supreme Court decision (*Association for Molecular Pathology v. Myriad Genetics, Inc.*) that isolating naturally occurring genes is not patent eligible subject matter.

For all these reasons, we request you withdraw proposed intellectual property chapter language that goes beyond the WTO TRIPS Agreement and would lower patentability criteria or restrict how governments can define patentable subject matter and patentability criteria.

Thank you for considering our comments. We look forward to your response to the issues raised in this letter. If you or your staff members have any questions, please do not hesitate to contact us.

Sincerely,

AARP  
AFL-CIO  
American Federation of State, County and Municipal Employees  
Alliance for a Just Society

Alliance for Retired Americans  
Center for Medicare Advocacy, Inc.  
Center on Budget and Policy Priorities  
Consumers Union  
Medicare Rights Center  
National Committee to Preserve Social Security and Medicare  
National Senior Citizens Law Center

Policy Review

Blog by Joshua Stanton and Kara Sutton, Bertelsmann Foundation

<http://www.policyreview.eu/optimism-fading-on-both-sides-trans-atlantic-trade-talks/>

posted: May 2014

Optimism fading on both sides trans-Atlantic trade talks

As US and EU negotiators look ahead to the fifth round of negotiations for a Transatlantic Trade and Investment Partnership (TTIP) at the end of May, the excitement surrounding the talks has been replaced with a sober sense of reality, write Kara Sutton and Josh Stanton.

Washington and Brussels are struggling to find common ground on a number of sensitive issues, which raises questions about the feasibility of reaching a TTIP deal on “one tank of gas”.

The latest Bertelsmann Foundation – Atlantic Council TTIP Stakeholder survey, which polled more than 300 American and European public- and private-sector stakeholders in early 2014, reflects this more grounded view. The stakeholder survey provides a guide for negotiators to better understand the significant issues in their talks and the reasons for pursuing TTIP. The survey can consequently help keep negotiators on track and define potential goals of an agreement.

The poll’s results show that optimism about concluding a deal remains strong – 85 percent of European and American respondents say they believe a deal will be reached. But stakeholders are less sanguine about the scope of an eventual agreement. Fifty-seven percent of respondents believe a moderate agreement,

one that omits more contentious issues, is the likely outcome. Twenty-nine percent see a comprehensive agreement ahead. Regarding a timeframe for a pact, only seven percent of respondents see an agreement taking effect in 2014. A majority views 2016 or beyond as the likely time for a completed TTIP.

This shift in timeframe and the low optimism about comprehensiveness is likely due to sensitivities about certain sectoral issues, such as genetically modified organisms (GMOs) and an investor-state dispute settlement (ISDS), which have created tension in the talks. Stakeholders have subsequently adjusted their views of the provisions in a final agreement. While respondents recognize the importance and ease of reducing tariffs in the trans-Atlantic market, many see traditional free-trade-agreement (FTA) issues as less significant to TTIP. For example, respondents found agriculture, labor standards and environmental standards to be less important than many 21st-century issues such as data privacy.

An even closer look at the results reveals that issues outside the negotiating room also influence stakeholder views. The NSA scandal, for instance, has only increased scrutiny of the role of data protection and privacy standards in the negotiations. Stakeholders rate such issues among the most important and difficult for an agreement. In other words, any comprehensive accord must include precisely those issues on which compromises will be the most challenging.

Current events have also added a strategic element to TTIP. The Ukraine crisis has already turned stakeholder attention towards the role energy-export liberalization could play within a deal. With much of Europe looking to US oil

and gas as viable alternatives to dependence on Russian resources, survey respondents view energy-export liberalization among the more important TTIP-related topics. On this issue, however, agreement is seen as less difficult to achieve.

US and EU officials repeatedly seize upon the narrative of TTIP as a driver of jobs and economic growth. The survey's results, however, show that stakeholders recognize the impact of a deal on external issues. Negotiators and leaders on both sides of the Atlantic certainly need to continue underscoring the potential for jobs and growth, but TTIP discourse needs to go further. Nearly 61 percent of Europeans and 46 percent of Americans believe that their governments have not done enough to communicate the costs and benefits of a prospective agreement. Proper communication must incorporate the strategic components of a potential agreement as well as its economic impact.

The issues that stakeholders emphasize – regulatory cooperation, data protection and privacy, and energy-export liberalization – are undoubtedly important to a final agreement and will likely boost jobs and growth. But each issue can also strengthen trans-Atlantic ties and define new best practices for the global trade system. TTIP is key also for this reason.

As the survey shows, strategic elements of TTIP resonate strongly with stakeholders and give further impetus to the importance of concluding a strong and successful agreement. Leaders and negotiators should understand stakeholders' priorities and ensure that an accord incorporates them rather than allowing talks to stagnate over more controversial yet insignificant areas.

TTIP's fate ultimately lies with the degree to which stakeholders are

satisfied with the agreement and its potential impact. As talks enter a "post-honeymoon" phase, negotiators will seek compromises on politically sensitive issues. Understanding stakeholders' views will be necessary to overcome the challenges ahead.

Joshua Stanton is project manager, trans-Atlantic relations and Kara Sutton is project manager, legislative relations at the Washington DC-based Bertelsmann Foundation

<http://mlcalliance.org/pdf/newsletter-may-2014.pdf>

## INTERNATIONAL TRADE AGREEMENTS AND MAINE LOBSTER

*by Melissa Waterman*

Let's talk trade. We all know what it means to sell something. I have a widget, you want a widget, I sell you my widget for an agreed-upon price. What happens, though, when I want to sell you my widget and you live in another country?

That's when things get complicated. Nations use a tax called a tariff to protect those native industries they consider important. For example, the Japanese eat rice and rice cultivation is a part of the country's cultural heritage.

So Japan has long had in place tariffs on imported rice to protect local growers from foreign competition.

Those tariffs make rice produced in other countries, such as the United States, much more expensive for Japanese people to buy.

Countries also have different health, safety, and environmental standards for items that they make which affect the cost of production.

Sustainability, for example, is a hot topic in the United States and Europe. Consumers want to know that the fish they buy in the grocery store was caught sustainably or that the shrimp they purchase meets certain safety standards. Creating and then enforcing those standards adds to the cost of the final product.

So what happens among countries who want to sell things to each other but which may have tariffs and different standards for their products?

They make trade agreements.

*Trade agreements*

One trade agreement with which most Americans are familiar is the North American Free Trade Agreement, an international treaty agreed to by Canada, the United States, and Mexico in 1994. The agreement basically eliminated tariffs on products traded among the three countries. Its major focus was on agricultural products but it also affected other sectors such as textiles, electronics, and automobiles. Twenty years after the agreement went into force, the question of whether NAFTA has been a boon to the United States is much debated. In a paper published by the Council on Foreign Relations earlier this year, Mohammed Aly Sergie noted that after NAFTA came in, trade flows among the three countries increased greatly, from roughly \$290 billion in 1993 to more than \$1.1 trillion in 2012. Today the United States trades more in goods and services with Mexico and Canada than it does with Japan, South Korea, Brazil, Russia, India, and China combined. Most of that growth comes from increased trade between the United States and Mexico. In 1993, the trade balance was a \$1.7 billion U.S. surplus; in 2012, the U.S. ran a \$61.4 billion deficit (we bought more from Mexico than Mexico bought from us). Currently the United States is in talks with the countries around the Pacific to enter into a trade agreement. Australia, Brunei, Chile, Malaysia, Mexico, New Zealand, Canada, Peru, Singapore, Vietnam, Japan, and the United States are in the fourth year of negotiating the Trans-Pacific Partnership (TPP) agreement. But this trade agreement includes numerous provisions that go beyond NAFTA. The treaty has 29 chapters, dealing with everything from financial services and telecommunications to standards for food products. The United States has also begun negotiations

with the European Union for a separate trade agreement, called the Transatlantic Trade and Investment Partnership (TTIP). This agreement would remove trade barriers in a range of sectors in order to make it easier to buy and sell goods and services. In addition to removing tariffs, the TTIP will address other issues, called non-tariff barriers, such as protection of intellectual property, technical regulations, and environmental and health standards.

*Asia: Trans-Pacific Partnership (TPP)*

Maine House representative Sharon Treat knows a lot about the pros and cons of U.S. trade agreements. Formerly a state senator, Treat is co-chair (with Sen. Troy Jackson) on the Maine Citizen Trade Policy Commission. The commission was created in 2003 expressly "to assess the impact of international trade policies and agreements on Maine's state and local laws, business environment and working conditions."

Maine is one of only three states in the country with such a commission. Treat also is an official Advisor to the U.S. Trade Representative, Michael Froman. There are about 700 such advisors across the country, organized in 28 committees, who offer input to the Representative on everything from agriculture to the environment. Many of those individuals come from large corporations and firms.

Foreign policy analysts generally concur that if agreed to, the TPP would provide a strong economic bulwark for the United States against China. But, argues Treat, that agreement will primarily benefit large multinational corporations while it may prove costly to smaller businesses.

"When you talk to [the negotiators] and read the text that has leaked you realize that they very much see themselves as standing in the shoes of very large corporations, the big pharmaceutical,

insurance, and banking corporations,” Treat said. “Those corporations want to reduce the level of regulation applied to them. They are very clear about that.”

The TPP alarms people for a number of reasons. First, the elements of its 29 chapters are secret. The details are not made public until the negotiations are concluded. Second, it’s a really big agreement that addresses many non-tariff barriers, such as copyright law, drug standards, and investor-state relations. In fact, of its 29 chapters, only five deal with traditional trade issues such as tariffs.

One chapter is the Phytosanitary chapter. Phytosanitary regulations refer to health and safety standards for food items. The United States has a strong seafood inspection program through the U.S. Food and Drug Administration and through the National Oceanic and Atmospheric Administration. “One goal of this chapter is to make it easier to sell foreign-caught seafood in the U.S. without requiring strict compliance with U.S. food safety standards. If a Vietnamese company shipping to the U.S. meets Vietnamese standards for food safety then it’s OK to come in to the U.S.,” Treat said. “This is definitely not going to improve sales of seafood from Maine because we’ll always be more expensive.” The theory is that the agreement will cause those countries with lower Phytosanitary standards to raise them to a higher level. In practice, Treat said, that may not occur due to lax enforcement of those standards.

The TPP also could affect labeling standards for many products. Treat explained that the negotiators are drawing on earlier trade agreements under the World Trade Organization (WTO). The WTO, to which the United States is a party, has overturned U.S. labeling standards for “dolphin-safe tuna” and ruled against

the U.S. in a case brought by Canada that successfully challenged U.S. country-of-origin labels for beef. "In the U.S. we have standards for what is dolphin-safe tuna. We require the fishing industry to ensure there is no by-catch of dolphin," Treat said. However, the WTO found such standards to discriminate against Mexico, which has its own tuna fishing industry that does not use the same fishing requirements. "We don't know how the labeling issue will be handled [in the TPP] but we do know that they will build on previous agreements and strengthen them," Treat said. The investment provisions in the TPP also worry Treat. Through a provision called investor-state dispute settlement, companies can sue a nation for implementation of regulations unfavorable to that company. The company would not go to court to do so; instead it would go to an international arbitration panel. This process means that U.S. laws on health, safety or the environment that are seen as adversely affecting trade could be challenged by large corporations outside of the U.S. court system. "If a company doesn't operate in a certain country, it could create a subsidiary and then sue against laws that it does not like," Treat said.

The effect the TPP might have on Maine seafood producers and exporters is unclear. Removing tariffs on seafood exports to countries such as Korea or Malaysia would surely be a financial benefit. But it might also leave the door open to a flood of cheaper seafood imported to this country. "The question I have is, what would a good agreement look like?" Treat said. "What in this agreement would make things better?"

*European Union: Transatlantic Trade and Investment Partnership (TTIP)*

The Transatlantic Trade and Investment Partnership would

reduce tariffs on many U.S. and European items. Currently EU tariffs on lobster vary from 8% to 20%. But the TTIP would also address many of the same issues contained in the TPP, such as copyright laws, investor-state arbitration, and food standards.

Canada recently concluded a trade agreement with the EU, which will remove tariffs on seafood and agricultural products.

Treat is concerned about the impact so-called "harmonization" of laws and regulations implicit in the agreement would have on Maine and other U.S. states. Under U.S. law, states must meet federal regulations for such things as clean water or food quality. However, states have the right to pass their own laws that are stricter than federal law. For example, California long ago passed air quality standards for automobiles that are much stronger than EPA regulations. According to documents leaked from the TTIP negotiations, there is a major effort by European Union negotiators to preempt state regulations.

"They want to make sure that state regulations are no different than those of the U.S. government," Treat explained. "In addition, some European regulations are stronger than those here. U.S. companies don't like that."

Treat sees additional concerns for Maine and other states which have small, regionally recognized products. "We are marketing Maine as a place with sustainable agriculture, sustainable fisheries. The way things are going, we need to look very closely at anything that supersedes state or federal laws," she cautioned. Provisions within TTIP negotiations could restrict or even eliminate criteria that favor local or regionally grown foods as barriers to trade.

#### *Fast Track Power*

Since the mid-1970s, the U.S. President has the power to negotiate

international treaties and offer them to Congress, which must vote on them without amendment. The authority was provided as a way to reassure other nations that an agreement reached by the U.S. Trade Representative, on behalf of the executive branch of government, could actually make it through Congress in a finite period. The President's trade promotion authority, nicknamed fast track authority, expired in 2007.

The Obama administration has asked Congress to pass a bill renewing fast track authority in order to conclude the TPP. That, however, has not happened.

"There is a bill in Congress right now to reinstate fast track authority but it will not come to the floor before the November elections," Treat said. Both Democrats and Republicans in Congress have voiced their unease with reauthorizing such authority.

According to critics, fast track authority is yet another way to keep the public from knowing what is in these trade agreements. "It limits review, speeds up the time frame [for voting], allows no changes, and requires an up or down vote," Treat explained. With fast track authority, the President would send an international trade agreement to the appropriate Congressional committees for review. Those committees then have 45 days to report the bill out of committee.

The House and the Senate then must vote within 15 days after the bill is reported. Once the treaty is up for debate, it can be debated for no more than 20 hours (no filibusters are permitted). The whole process can take no more than 90 days.

"Congress will probably look at authorizing legislation after the November election. If it passes then it is a push for the TPP. If it doesn't pass, then it will be a rockier road to get that agreement through," Treat said.

*Keeping track of these trade agreements*

as they are developed is difficult since the text of each agreement is not made public. Those interested can visit the official Web site [www.ustr.gov/tpp](http://www.ustr.gov/tpp) to learn more about the TPP. For information about the TTIP, visit <http://ec.europa.eu/trade/policy/in-focus/ttip/>.

The Maine Citizen Trade Commission is drafting a report on the TTIP and Maine food policy. The commission will be holding a hearing on the topic in June. For further information about the commission, visit the Web page, [www.maine.gov/legis/opla/citpol.htm](http://www.maine.gov/legis/opla/citpol.htm).  
Trade continued from page 5

<http://www.commondreams.org/view/2014/05/05-6>

Published on Monday, May 5, 2014 by [Think Forward Blog](#)

## **The Anti-Localization Agenda in TTIP**

by [Karen Hansen-Kuhn](#)

When U.S. and EU officials talk about the Transatlantic Trade and Investment Partnership (TTIP), they say it will bring the two economies together as leaders in the global economy. Just this week, European Commission President [José Manuel Barroso](#) told the U.S. Chamber of Commerce that, “TTIP should become the economic pillar of the EU and US alliance. It should be our joint attempt to shape a fast changing world and to set the standards of the future. It should act as a platform to project shared EU-U.S. values worldwide with regard to open markets and rule of law.”(Credit: Creative Commons / alexmartin81)

But what do they mean, and how would that work? Negotiating a series of bilateral or regional trade deals seems like a direct challenge to multilateralism, and something likely to further weaken the already anemic World Trade Organization. TTIP and the 15 bilateral or regional trade deals being negotiated by the EU create a cobweb of interlocking agreements that in many ways serve to lock in global norms on issues like investment, intellectual property, food safety and other issues that go well beyond what WTO members have agreed to even consider at the multilateral level.

TTIP is being negotiated in secret, so we’re forced to rely on general comments and bits of leaked text to try to figure out what’s really happening. One such paper came our way recently, a leaked document describing a proposed chapter on “Localization” in TTIP. That chapter, if enacted, would formally commit the EU and U.S. governments to work together to challenge trade barriers in countries that are not part of TTIP. It pushes back on practices in other countries, especially larger emerging economies like Brazil or India, to promote their own local economic development. This could include domestic content requirements, such as those in India’s solar energy program, which USTR is already challenging at the WTO ([a move rejected by U.S. environmental groups](#)), or other measures designed to promote national industrialization strategies. Under the TTIP proposal, the U.S. and EU would work together to use diplomatic or perhaps even economic pressure to convince other countries to play by their rules.

In a new commentary, entitled "Trading away localization in TTIP", we explore this issue, drawing on submissions from corporations on their priority targets for “localization” barriers to trade. “Free markets” do not exist anywhere in the world. Decisions are shaped by the very unequal power of corporations vs. local businesses, massive economies such as the US and EU vs. emerging economies such as Brazil and India. This is true within the U.S. and EU, as well as within developing countries, especially the emerging economies whose own transnational corporations are entering into this complex arena. The danger is that if this coordinated attack on localization were formalized in TTIP, along with the broader protections for corporations embedded in provisions on investment, intellectual property rights, and public procurement, it would further tilt the scales in favor of corporate interests. This would create one more obstacle

to national or local governments' efforts to channel economic activity towards broader social goals.

Upsetting that balance, and consciously steering economic policies in the direction of democratically determined local priorities, is at the heart of sustainable and equitable development. That process works best when it happens in a transparent process with active public participation by the broadest possible range of stakeholders. The proposal for a chapter on localization barriers appears to be at an early stage. The U.S. and EU should discard this dubious proposal. Instead, they should find ways to embrace localization, rather than embarking on this dangerous new path.

Read IATP's new commentary, ["Trading away localization in TTIP."](#)

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[http://vtdigger.org/2014/05/16/states-small-businesses-shut-international-trade-negotiations/?utm\\_source=VTDigger+Subscribers+and+Donors&utm\\_campaign=274577c5f3-Weekly+Update&utm\\_medium=email&utm\\_term=0\\_dc3c5486db-274577c5f3-392497054](http://vtdigger.org/2014/05/16/states-small-businesses-shut-international-trade-negotiations/?utm_source=VTDigger+Subscribers+and+Donors&utm_campaign=274577c5f3-Weekly+Update&utm_medium=email&utm_term=0_dc3c5486db-274577c5f3-392497054)

# STATES AND SMALL BUSINESSES SHUT OUT OF INTERNATIONAL TRADE NEGOTIATIONS

HILARY NILES MAY. 16 2014, 10:17 PM 5 COMMENTS

A pending international trade deal will affect businesses in Vermont and there's little the state can do about it, lawmakers said Friday.

A [new transatlantic trade agreement](#) being secretly negotiated between the U.S. and the European Union could challenge state laws and policies ranging from tobacco regulation to GMO labeling to procurement practices and more.

"People don't know enough about it to be upset," Sen. Ginny Lyons, D-Chittenden, said Friday. "And the reason they don't know enough is because there's no transparency to the process."

Lyons was one of several lawmakers from Vermont, Maine and New Hampshire attending an International Trade & the Environment forum on Friday and Saturday in Montpelier. The event was presented by the National Caucus of Environmental Legislators. The goal of some speakers Friday was to raise awareness of how international trade agreements can affect state and local laws.

Brent Raymond, Vermont's international trade director, is privy to only very limited information about the trade agreements and other negotiations made through the World Trade Organization.

He said in an interview Friday that he's conflicted about the prospects of the agreement. He believes global trade can be done well, Raymond said, but he's got serious concerns about this negotiating process.

"I have concerns about big tobacco's influence on TPP (Trans-Pacific Partnership) and WTO," Raymond said. Tobacco companies in the past have sued countries with strict cigarette marketing regulations, claiming the rules have hurt their business.

In addition to tobacco's influence, he's not seeing small businesses in the mix, in spite of the fact that small businesses — from import/export companies to six person machine shops — are increasingly competing in the global marketplace.

"I just don't feel like they're adequately represented by the representatives of the U.S. to these discussions," Raymond said. "The larger multinationals weigh in a lot and have a heavy amount of influence."

International trade representatives will hold their fifth round of meetings May 19-23 in Arlington, Va. They'll also take questions and solicit input from stakeholders on the Transatlantic Trade and Investment Partnership (TTIP) between the U.S. and EU. A different international agreement, the Trans-Pacific Partnership (TPP) also is pending. Both are compared to the North Atlantic Free Trade Agreement, but on a much larger scale.

Both negotiations take place in secret.

Maine state Rep. Sharon Treat said she's virtually the only member of the U.S. Trade Representative's [Intergovernmental Policy Advisory Committee](#) who continually speaks up about the potential impact of the trade agreements on states.

Treat can comment on trade documents in advance of negotiations, but is not allowed to share them or even seek counsel from subject-matter experts. And the committee is not updated after the negotiating process, so she never knows what's actually being discussed, she said.

This concerns her because international trade agreements have the potential to trump state and local laws. The agreements don't nullify state laws outright, but they open a door for international corporations to challenge state laws as being anti-competitive.

Raymond said, for example, that Vermont's net-metering program could be considered a "subsidy."

A foreign energy company that wants to enter the Vermont market may conclude that net metering constitutes an unfair market restraint. They could sue — or threaten to sue — and challenge the state not in U.S. court but in a closed-door international arbitration tribunal.

"So states' rights on a lot of different fronts are potentially at risk," Raymond said. "The problem is we don't know what's being negotiated."

<http://www.foodsafetynews.com/2014/05/food-safety-standards-could-be-threatened-in-u-s-eu-trade-agreement/#.U5n9wu9eHIU>

# CRITICS SAY FOOD SAFETY STANDARDS COULD BE THREATENED BY U.S./EU TRADE AGREEMENT

By [Lydia Zuraw](#) | May 16, 2014

Some call it the Transatlantic Trade and Investment Partnership (T-TIP) agreement. Others call it the Trans-Atlantic Free Trade Agreement (TAFTA).

Either way, it's the trade deal currently under negotiation between the U.S. and the European Union (EU) for which the fifth round of talks start next week in Arlington, VA.

While proponents of the agreement say it will grow economies and increase jobs, consumer advocates argue that hasn't been the case with the North American Free Trade Agreement (NAFTA). Instead, they worry about food safety, environmental, public health and labor standards being undermined as "trade barriers."

The content of the negotiation talks is not made public, and even members of Congress have only limited access to relevant documents. There are, however, about 600 "corporate advisers" who have been allowed to review and comment on negotiation texts.

Under previous trade negotiations, such as NAFTA, texts were made available after each round of talks. The Center for Food Safety (CFS) and other consumer advocates are calling for a revival of this precedent.

This lack of access to texts has many people irked, and, as a result of the relative secrecy, the little we do know about T-TIP has come from leaked documents or position statements put out by industry.

One of the goals noted in a leaked [EU position paper](#) was for parties to "engage in such cooperation without unnecessary restrictions, including any institutional, statutory or other barriers/ inflexibilities." It also calls for the creation of a Regulatory Cooperation Council (RCC) to have oversight in the regulatory systems of the U.S. and the EU.

At a briefing to Congress on Thursday, Gynnie Robnett, Outreach Coordinator at the Center for Effective Government and coordinator of the Coalition for Sensible Safeguards, said the first

goal would place a “high burden of proof on governments to show the necessity of particular regulations,” and she said she thinks of the RCC as an international version of the U.S. government’s Office of Information and Regulatory Affairs (OIRA).

### **Food Issues As Trade Barriers**

Another speaker at the briefing, CFS International Director Debbie Barker, said that “food issues under negotiations provide an ... entrée point to really demonstrate to people that trade agreements are really relevant to their lives every day. It affects the food they eat and that they feed their children.”

She went on to say that food issues in T-TIP “are extremely contentious. This is probably the area in T-TIP that has the potential to stop the agreement.”

A [CFS bulletin](#) released Wednesday and authored by Barker explains that the proposed agreement is more focused on trade barriers than quotas and tariffs.

“Many analysts believe that a central aim of the negotiations is to dismantle many food safety regulations that corporations view as impediments to trade and profitmaking,” the report states.

It also lists the effects these barriers could have on food issues on each side of the Atlantic. Because the EU uses the precautionary principle as its regulatory foundation, it has more to lose from T-TIP in terms of food and farming issues.

In referring to the principle, the [1992 Rio Declaration on Environment and Development](#) states: “Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.”

The precautionary principle “sets the bar higher for safety standards” in Europe, Barker told **Food Safety News**.

So, according to the CFS report, the EU’s bans on GE crops, meat from livestock treated with non-therapeutic antibiotics and growth hormones, ractopamine, and chemically washed poultry, plus standards for things such as animal welfare, organic equivalency, chemicals and nanotechnology, would all be in jeopardy under T-TIP.

In the U.S., standards for feed ingredients that include ruminant materials known to transmit mad cow disease could be relaxed, the zero-tolerance policy for *Listeria* and *E. coli* could be eliminated, GE-labeling initiatives across the U.S. could be threatened if the EU lowers its labeling requirements, “Buy American” policies could be on their way out, and Europe’s milk standards could be recognized as equivalent to U.S. Grade A.

“Yes, we’re concerned about citizen rights and the sovereignty of other countries, but, in effect, that also makes it harder for us in the U.S. then to be rallying or campaigning for higher

standards here,” Barker told **Food Safety News**. “Once something gets set on an international level or in a trade agreement, the domestic regulatory agency can say that would be trade illegal.

“If we lower standards elsewhere, we are also, in effect, inhibiting chances of us raising our standards.”

These barriers to trade have the potential to lead to a situation like the current dispute Canada has with the U.S. regarding country-of-origin labeling.

“When you think of the time, the expense, the energy that our country is having to do in international tribunals to defend what should be domestically led standards — that, in itself, regardless of the outcome — is troubling,” Barker said.

### **Regulatory Mechanisms**

“TTIP is not a conventional trade agreement; it’s a regulatory agreement,” said Baskut Tuncak, an attorney with the environmental health program at the Center for International Environmental Law, during the congressional briefing. “It’s a regulatory agreement that’s designed to prevent differences between the U.S. and EU, including the states of the U.S. and federal government.”

A major concern for advocates is the proposed Investor-State Dispute Settlement (ISDS) mechanism in T-TIP that gives foreign investors and corporations the opportunity to challenge sovereign governments on their domestic policies outside of a normal domestic judicial system.

And it’s not just a theoretical fear, they say. During the congressional briefing and in her report, Barker referenced the case of the U.S.-based Ethyl Corporation suing Canada in 1997 for banning a toxic gasoline additive called MMT.

The Canadian government ultimately settled the case, repealed their ban, paid \$13 million in compensation and issued a public apology.

“It wouldn’t matter if a substance was liquid plutonium destined for a child’s breakfast cereal,” a lawyer for Ethyl said at the time of the settlement. “If the government bans a product and a U.S.-based company loses profits, the company can claim damages under NAFTA.”

Within the U.S. federal system, advocacy groups have ways to contribute concerns about the regulatory system — comment periods, for example — “however, a permanent regulatory council like T-TIP will definitely enhance corporate influence over standard-setting and it will make it much, much more difficult for consumer and other civil society groups to monitor or even know what’s being discussed and to provide immediate input involving the food that we’re all eating,” Barker said.

“Trade agreements should set at least a minimum standard for critical issues such as food safety and then also allow countries to set even higher standards to protect citizens and environments,” she added.

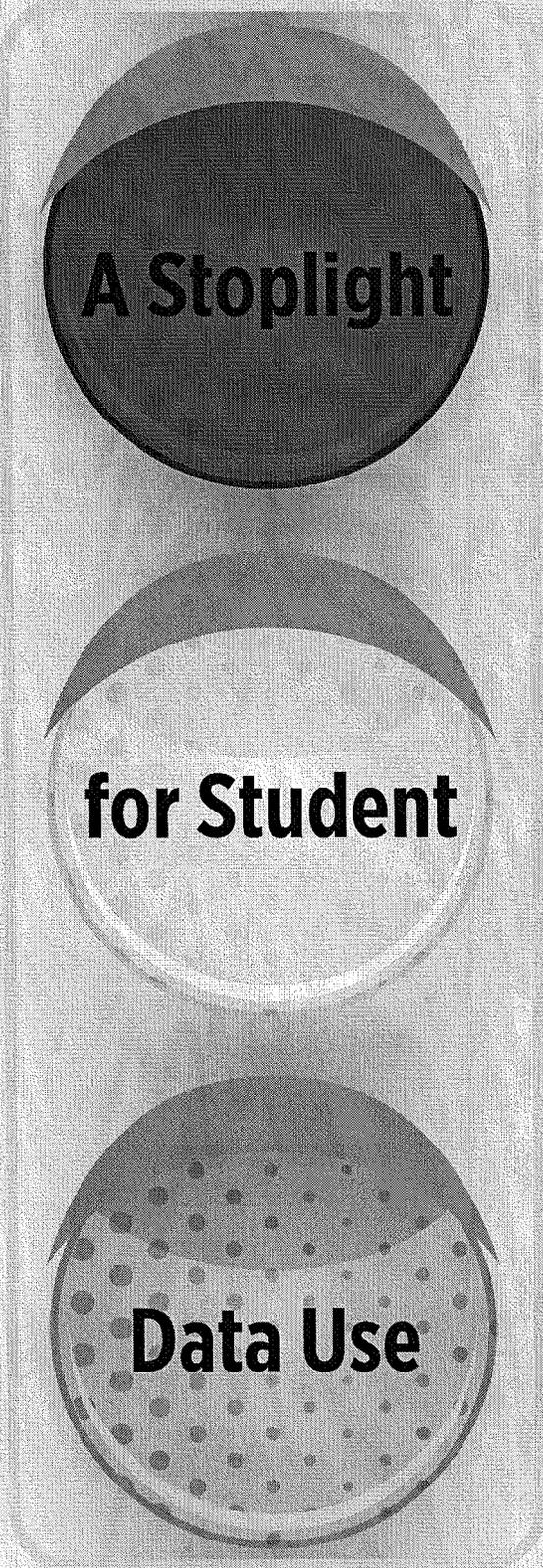
## **Globalization of Food Systems**

Barker's report also briefly addresses the issues of trade on climate change.

"Given the state of the planet and the urgent need to reduce [greenhouse gas] emissions, economic imperatives should aim to bolster local production mainly for local consumption, localize energy sources as much as possible, and root capital primarily in local or regional economies," the report states.

"T-TIP is part of this global economic trade system in food that just doesn't make sense on an environmental level, on a nutritional level and on a food security level," Barker told **Food Safety News**.

© Food Safety News



**A Stoplight**

**for Student**

**Data Use**



*Using Data  
to Improve  
Student  
Achievement*

# Making FERPA as Simple as **Green, Yellow, or Red**

**Student information helps educators, students, parents, and policymakers make informed decisions and provide tailored education to ensure each student is on track to succeed. Data use can be transformative, and protecting student privacy is an essential component of effective data use.**

The foundational federal law on student privacy, the Family Educational Rights and Privacy Act (FERPA), establishes student privacy rights by restricting with whom and under what circumstances schools may share students' personally identifiable information. This tool summarizes some of the main provisions of FERPA, and identifies when students' personally identifiable information may be shared under the law. However, this tool should be used as a guide to help you understand when you need to take a closer look at the law or consult an expert. It should not be considered a comprehensive review of FERPA-authorized disclosures and should not be considered a substitute for appropriate legal counsel.



## **For more information, check out these sections of FERPA:**

§99.30 Under what conditions is prior consent required to disclose information?

§99.31 Under what conditions is prior consent not required to disclose information?

View the full text of the law at [http://bit.ly/FERPA\\_law](http://bit.ly/FERPA_law).

# FERPA RULES OF THE ROAD

Stop

**NO ONE**  
Can **sell** student education record data.

**EMPLOYERS**  
Can't be given a student's personally identifiable information, unless applicants or their parents (if applicants are under age 18) give consent.

**AUTHORIZED THIRD PARTIES**  
Can't use personally identifiable information from educational records to market to kids and families.

**SCHOOL OFFICIALS & AUTHORIZED THIRD PARTIES**  
Must have a **legitimate educational need** for student data before they can view them.

**AUTHORIZED THIRD PARTIES**  
Can use data **only for the original purpose for which the data were shared**, and each third party is **under the direct control of either the school district or the state education agency.**

**RECIPIENTS**  
Must maintain strict data use and security requirements where applicable. This includes **using data only for the purposes for which they were disclosed** and **destroying the data when no longer needed** for the specified use.

Slow Down

**ANOTHER SCHOOL**  
Can receive data if **the student seeks or intends to enroll in that school**, including a postsecondary institution.

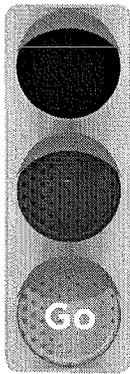
**SCHOLARSHIP & FINANCIAL AID PROVIDERS**  
Can receive data when the **student has applied for or received financial aid** from that entity.

**HEALTH & SAFETY**  
Student data can be shared for reasons of **health and safety** in certain emergencies.

**PARENTS**  
Can access **their child's education data** if the child is younger than 18 and not enrolled in postsecondary education.

**STUDENT'S TEACHER**  
Can access the **student's data** to meet educational needs.

Go



**DISCLOSURE TO PARENTS:** FERPA requires that the parent of a student who is younger than 18 and not enrolled in postsecondary education be able to review his or her child's records.

**DISCLOSURE WITH PARENTAL CONSENT:** FERPA permits a school to disclose student record data if a parent provides written consent.

**DISCLOSURE WITHOUT PARENTAL CONSENT:** FERPA establishes a limited number of ways in which student record data can be disclosed without prior parental consent. These disclosures include the following:

- Disclosure is permitted to **school officials, including teachers, who have legitimate educational interests** in the data.
- FERPA permits schools to disclose **directory information**, which is personally identifiable information contained in a student's education record that would not generally be considered harmful or an invasion of privacy if disclosed, such as name, address, name of parent, etc. Directory information may not include a student's Social Security number or identification number. Schools that elect to disclose directory information must notify parents of their policy to do so, and parents have the right to opt out of these disclosures.
- Data can be shared with officials of **another school, school system, or institution of postsecondary education where the student seeks or intends to enroll or where the student is already enrolled** so long as the disclosure is for purposes related to the student's enrollment or transfer.
- The disclosure is in connection with **financial aid for which the student has applied or which the student has received.**
- The disclosure is in connection with a **health or safety emergency**, under certain conditions.

### No Detours for Parents to Access Education Records

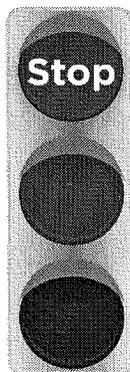
FERPA provides parents with the right to access and review their children's education records and to challenge information contained therein.

Schools cannot charge parents for access to or copies of their child's education record if the cost effectively prevents the parent from exercising his or her right to review it.



**DISCLOSURE WITHOUT PARENTAL CONSENT:** FERPA establishes a limited number of ways in which student data can be disclosed without prior parental consent. These disclosures include the following:

- Personally identifiable information can be shared with **third parties that provide outsourced services to the schools, if access to the data is necessary to provide that service.** For example, schools may use a contractor to conduct school assessments, provide student support services, or maintain the school's database. These parties must remain under the direct control of the school with respect to the use and maintenance of data and can use the data only for the purpose for which they were disclosed.
- Data can be shared with **authorized representatives of certain state or local education officials to audit or evaluate a state- or federally supported education program or to conduct a compliance or enforcement activity under related federal laws.** Authorized representatives must safeguard personally identifiable information and must destroy the information once they are finished using it for its intended purpose. §99.31 (a)
- Personally identifiable information can be shared with **researchers who conduct studies for or on behalf of schools and school districts** to develop, validate, or administer predictive tests; administer student aid programs; or improve instruction, subject to a required written agreement between the education agency and the research organization. Personally identifiable information can be shared only with researchers with a legitimate interest in the data and **cannot be released publicly.** Data may be used only for the purpose for which they were disclosed and must be destroyed when no longer needed for the study.



**DISCLOSURE NOT ALLOWED:** Most other disclosures of students' personally identifiable information are not permitted under FERPA.

- This means that under FERPA, schools **may not share student data for commercial purposes or marketing without parental consent.**
- FERPA also **does not permit the sharing of student data to make decisions regarding a student's (or former student's) employment** unless the job applicant (or parent) consents to a disclosure.



The Data Quality Campaign (DQC) is a nonprofit, nonpartisan, national advocacy organization committed to realizing an education system in which all stakeholders—from parents to policymakers—are empowered with high-quality data from the early childhood, K-12, postsecondary, and workforce systems. To achieve this vision, DQC supports policymakers and other key leaders to promote effective data use to ensure students graduate from high school prepared for success in college and the workplace.

For more information, visit [www.dataqualitycampaign.org](http://www.dataqualitycampaign.org) or email [info@dataqualitycampaign.org](mailto:info@dataqualitycampaign.org).

## Friends of the Earth news release

<http://www.foe.org/news/news-releases/2014-05-closed-door-us-eu-trade-talks-put-safeguards-at-risk>

# What's the secret? Closed door U.S.-EU trade talks put environmental and public health safeguards at risk

Posted May. 19, 2014 / Posted by: Kate Colwell

**WASHINGTON, D.C.** – Today, the United States and the European Union opened the fifth round of negotiations on the Transatlantic Trade and Investment Partnership, which are scheduled to run through Friday, May 23. The negotiations will be held in secret, and the negotiating text is hidden from the press and public. But, approximately 600 “cleared advisors” to the United States, mostly corporate lobbyists, have access to the text and negotiators.

Because tariffs are already quite low on both sides of the Atlantic, it unfortunately appears that TTIP negotiations will focus on lowering regulatory “barriers” to transatlantic trade and investment. Such “barriers” include environmental and public health protections -- such as those related to food safety, genetically-engineered organisms, and toxic chemicals, among many others. In the alleged interest of making trade easier, environmental and public health safeguards are put at risk.

Magda Stoczkiewicz, director of Friends of the Earth Europe, released a statement today saying, “These negotiations have the potential to impact upon every aspect of life for citizens here and in the U.S., from food or chemical safety to the environment. The European Commission cannot continue to remain deaf to civil society calls for transparency -- people have the right to know what’s at stake.” Friends of the Earth Europe -- on behalf of 257 organization around the globe -- released today in Brussels a [joint civil society call](#) for TTIP transparency to EU Commissioner De Gucht.

Erich Pica, president of Friends of the Earth U.S., which signed the call for TTIP transparency, had this to say about the coming week of TTIP negotiations: “It’s amazing that the longest living democracies in Europe and the United States cannot negotiate in public. Why keep these negotiations secret? Why do corporate lobbyists have privileged access to negotiators and text and not the public?”

<http://www.foe.org/news/news-releases/2014-05-europe-trade-deal-threatens-food-safety>

**For Immediate Release**

May 21, 2014

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**Europe trade deal threatens food safety**

***Friends of the Earth protests corporate capture of trade policy at USTR stakeholder event***

**WASHINGTON, D.C.** – Today in Arlington, Virginia, trade negotiators from the United States and the European Union gathered at the George Mason University School of Law to hear public comments about a giant trade deal that is likely to undermine sensible safeguards that protect public health and the environment.

The Trans-Atlantic Free Trade Agreement, also known as the Transatlantic Trade and Investment Partnership, is being negotiated behind closed doors with input from official advisors to the U.S. Trade Representative Michael Froman, most of whom represent global corporations. This facilitates special interest capture of the negotiating process.

The Trans-Atlantic Free Trade Agreement, also known as the Transatlantic Trade and Investment Partnership, is being negotiated behind closed doors with input from official advisors to the U.S. Trade Representative Michael Froman, most of whom represent global corporations. This facilitates special interest capture of the negotiating process.

Outside the negotiating venue, public interest groups staged a rally to protest this corporate-driven trade agenda that Friends of the Earth, U.S. called “a race to the bottom approach to food and worker safety.”

Earlier this year, Friends of the Earth and 28 other organizations wrote [a letter](#) to Froman expressing concern “over possible measures in the Transatlantic Trade and Investment Partnership that could have sweeping ramifications for how meat is produced in the United States and EU in coming decades... Rather than an opportunity to raise standards that protect public health and the environment, the meat and feed industries on both sides of the Atlantic are seeking to proliferate destructive practices in the animal agriculture industry with ramifications for other parts of the world.”

Bill Waren, a trade analyst with Friends of the Earth, said that “If global meat and feed industry interests have their way, the U.S. will lower its safety standards for imported beef, leading to an increased risk of mad cow disease in this country.”

The transatlantic deal could prove even more harmful to Europeans. Global meat companies, with a major stake in U.S. meat production, aim to weaken several EU rules that prohibit the use of chemicals, additives and veterinary drugs in meat production. For example, companies are

pushing to overturn current rules that prohibit U.S. exports to Europe of chicken soaked in chlorine or other chemical rinses. They are also seeking to end EU restrictions on U.S. exports to Europe of beef and pork treated with growth hormones and additives, such as ractopamine, a powerful compound that can lead to health and behavioral disorders in animals and possibly in humans. Ractopamine is currently banned in 160 countries.

“If these profit-driven demands by global meat companies are accepted, it will undermine efforts on both sides of the Atlantic to make our animal agriculture system more humane, healthy and fair,” Warren said.

[http://citizen.typepad.com/eyesontrade/2014/05/wto-final-ruling-european-ban-on-products-from-inhumane-seal-harvest-violates-wto-rules.html?utm\\_source=feedburner&utm\\_medium=email&utm\\_campaign=Feed%3A+eyesontrade+%28Eyes+on+Trade%29](http://citizen.typepad.com/eyesontrade/2014/05/wto-final-ruling-european-ban-on-products-from-inhumane-seal-harvest-violates-wto-rules.html?utm_source=feedburner&utm_medium=email&utm_campaign=Feed%3A+eyesontrade+%28Eyes+on+Trade%29)

**May 22, 2014**

## **WTO Final Ruling: European Ban on Products from Inhumane Seal Harvest Violates WTO Rules**

### **Statement of Lori Wallach, Director of Public Citizen's Global Trade Watch**

The WTO today added fuzzy white baby seals clubbed to death on bloody ice flows to dolphins and sea turtles as animals that the WTO has declared cannot be protected by domestic laws because they violate "trade" rules, which will just fuel public and policymaker skepticism about these so-called trade deals.

As a technical matter, today's ruling confirms the uselessness of the WTO exceptions, allegedly designed to protect countries' domestic public interest laws, that are now being touted as the way to safeguard environmental, health and safety policies in proposed pacts such as the Trans-Pacific Partnership (TPP). This is the 39<sup>th</sup> time out of 40 attempted uses that the exception has been rejected by WTO tribunals when raised to safeguard a domestic public interest law.

**BACKGROUND:** In this final ruling, the WTO Appellate Body acknowledged that the European Union's ban on the importation and sale of seal products resulted from concerns about "inhumane" hunts with "inherent animal welfare risks," but concluded the EU failed to satisfy the litany of conditions required to defend public interest policies under the WTO's "general exception" provisions. Specifically, the Appellate Body ruled against use of the WTO exception for policies "necessary" to protect public morals. Only one out of 40 government attempts to use the the WTO General Exception, found in Article XX of the WTO's General Agreement on Tariffs and Trade (GATT) and Article XIV of the General Agreement on Trade in Services (GATS), has ever succeeded.

In its ruling today, the Appellate Body also rebuffed arguments made by the U.S. government as a third party observer to the case demanding that the WTO evaluate whether policies that appear to have a discriminatory effect stem from a "legitimate regulatory distinction." The Appellate Body ruled against this U.S. government position, concluding that WTO panels do not need to consider under GATT whether a challenged domestic policy stems from a legitimate policy objective.

Today's ruling follows a string of WTO rulings against popular U.S. environmental and consumer policies. In May 2012, for example, the WTO ruled against voluntary "dolphin-safe" tuna labels that, by allowing consumers to choose to buy tuna caught without dolphin-killing fishing practices, have helped to dramatically reduce dolphin deaths. Today's decision will again spur public ire over WTO rules that extend beyond "trade" to target domestic environmental and consumer safeguards.

Wednesday, May 28, 2014 6:08 PM

**FOR IMMEDIATE RELEASE**

**Contact: Steve Mercer, Vice President of Communications, U.S. Wheat Associates, (703) 650-0251, [smercerc@uswheat.org](mailto:smercerc@uswheat.org)**

**Statement on TPP Negotiations**

*U.S. Wheat Associates and the National Association of Wheat Growers today join USA Rice Federation, the National Pork Producers Council and the International Dairy Foods Association in the following statement on Trans-Pacific Partnership negotiations.*

Minister Amari's statement in Singapore that none of Japan's sensitive agricultural items will be fully liberalized may signal the end of hopes for the Trans-Pacific Partnership (TPP) to become a truly comprehensive and forward-looking 21st Century agreement. A country cannot shield its primary agricultural products from competition and still claim to be committed to a high-standard agreement liberalizing essentially all goods.

When Japan joined the TPP negotiations, it agreed to "to pursue an agreement that is comprehensive and ambitious in all areas, eliminating tariffs and other barriers to trade and investment," as stated in the earlier (Nov. 12, 2011) TPP Trade Ministers' Report to Leaders. Yet according to several reports from the TPP Ministerial meeting just completed in Singapore, Japanese Minister of the Economy Akira Amari has now flatly told the other negotiating countries that Japan will not abolish tariffs in the five agricultural sectors it considers "sacred." Those five sectors include seven basic agricultural products, covering most of agricultural production: dairy, sugar, rice, beef, pork, wheat and barley. They also include many downstream products made from those seven items, such as flour and flour mixes made from wheat and rice.

The broad exemption that Japan is demanding will encourage other partner countries to withhold their sensitive sectors as well. The result would fall far short of a truly comprehensive agreement that would set a new standard for future trade agreements. In fact the TPP envisioned by Japan, if it stands, would be the least comprehensive agreement the U.S. has negotiated since the 21st Century began.

U.S. negotiators still have a chance to push Japan to provide meaningful agricultural market access in the agreement. Failing that, the alternative is suspending negotiations with Japan for now and concluding a truly comprehensive agreement with those TPP partners who are willing to meet the originally contemplated level of ambition. It is a big step, but one that will be justified if Japan continues to refuse to open its agricultural sector to meaningful competition.

U.S. Wheat Associates is the industry's market development organization working in more than 100

countries. Its mission is to “develop, maintain, and expand international markets to enhance the profitability of U.S. wheat producers and their customers.” USW activities are made possible through producer checkoff dollars managed by 19 state wheat commissions and cost-share funding provided by FAS. USW maintains 17 offices strategically located around the world to help wheat buyers, millers, bakers, wheat food processors and government officials understand the quality, value and reliability of all six classes of U.S. wheat.

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## FRIENDS OF THE EARTH, U.S. BLOG

### CORPORATE CAPTURE: EUROPE TRADE TALKS THREATEN ENVIRONMENT

Posted May. 29, 2014 / Posted by: Bill Waren

On Friday, May 23, the United States and the European Union concluded weeklong negotiations on the Transatlantic Trade and Investment Partnership (also called the Trans Atlantic Free Trade Agreement). This fifth negotiating round was held behind closed doors in the Washington, D.C. area. TAFTA negotiating documents were classified as government secrets, even as several hundred corporate lobbyists who are “cleared advisors” to the U.S. Trade Representative were granted privileged access.

Tariff issues are a secondary matter in these talks. Generally speaking, tariffs on transatlantic trade in goods are low. Negotiators, therefore, focused last week -- as they will throughout the course of U.S.-EU talks -- on lowering regulatory “barriers” to transatlantic trade and investment. Such “barriers” include environmental and public health protections -- such as those related to climate change, food safety, genetically-engineered products and toxic chemicals, among many others.

Here are a few of the threats posed by TAFTA to sensible regulatory protections for the environment, public health and the climate that Friends of the Earth raised last week in discussions with negotiators, participants at “stakeholder events,” and the press.

*Fossil fuel exports.* The boom in oil, coal, and liquefied natural gas exports is fueling climate change, but international trade agreements encourage international commerce in these carbon-polluting products. Friends of the Earth believes that TAFTA negotiators should steer a different course: one that creates enough policy space for bold governmental action to curb fossil fuel exports.

For example, Friends of the Earth condemned statements in congressional testimony by Michael Froman, the U.S. Trade Representative, challenging an EU fuel quality directive that would limit shipments to Europe of dirty Canadian tar sands oil, including that which would flow through pipelines like the proposed Keystone XL system for export from U.S. ports.

On Monday, May 19, as TAFTA negotiations kicked off, a leaked draft negotiating text for the E.U. on energy issues was published online. An analysis of the leaked text by the European NGO, Power Shift, and Sierra Club shows that the draft European proposal for TAFTA energy provisions would “expand fossil fuel exports from the U.S. to the EU.”

“This proposal exposes the contradiction of policy makers who promise to do everything they can to act on climate and then push a trade and investment agreements that would devastate our climate,” said Peter Fuchs, executive director of PowerShift.

***Investment tribunals.*** U.S. Trade Representative Froman is also pushing for an investment chapter in TAFTA that would allow firms to sue governments for millions or billions in money damages if environmental or public health regulations interfere with expected future profits. This would discourage government action, for just a few examples, restricting oil and gas drilling,

imposing pollution controls, or limiting the use of hydraulic fracturing.

***Toxic chemicals.*** TAFTA poses risks to the EU's health-protective approach to chemical regulation, called REACH. If the American Chemistry Council gets its way, the TAFTA process could "harmonize down" European chemical regulations so that they approach low federal standards in the U.S., namely the failed Toxic Substances Control Act. In coming years, this could also prevent comprehensive reform of federal chemicals regulation, resulting in weaker rules for chemicals associated with breast cancer, autism and infertility. More immediately, it would undercut more effective toxic chemical regulation currently on the books in California and other states.

***Genetically engineered products.*** TAFTA could open the door for U.S. exports of genetically engineered goods into Europe, where market access is currently restricted -- or at least labeling is required -- because of safety concerns. This could threaten ecosystems, public health and the livelihoods of small farmers, among other adverse consequences.

***Gene patents.*** Friends of the Earth fears that U.S. negotiators will propose, as they have in Trans Pacific Partnership trade negotiations, that intellectual property provisions cover and protect patents on plants, animals and other life forms. We support a ban on gene patenting that covers human genes and all the genes that occur naturally on the planet. By giving corporations monopolies over the use of parts of the genetic code that have evolved naturally and are part of our common natural and human heritage, gene patents are inherently dangerous and unfair

***Government procurement.*** Friends of the Earth believes that green purchasing preferences should not be limited by TAFTA government procurement rules that might be based almost exclusively on product cost and performance. For example, a TAFTA procurement chapter should allow governments to impose procurement rules that require products to be made with recycled or organic materials or meet energy efficiency standards. And, governments should be able to discriminate against products made with environmentally destructive methods. Trade agreement prohibitions on “buy local” purchasing policies should not undercut government policies intended to encourage the growth of green industries, such as solar and other renewable energy ventures. Similarly, school lunch programs that favor healthy food produced by local farmers, rather than giant agribusiness, should not be endangered.

***Food safety.*** Industry lobbyists have called for TAFTA provisions that would make it much easier to challenge safeguards related to food safety and animal health. European firms are seeking to relax U.S. regulatory safeguards related to mad cow disease. But U.S. agri-business has even more ambitious plans to lower food safety standards in Europe, seeking to deregulate EU restrictions on imports of beef treated with growth hormones, chicken washed in chlorine and meat produced with growth stimulants, among others.

Earlier this year, Friends of the Earth and 28 other organizations wrote a letter to Trade Representative Froman expressing concern “over possible measures in the Transatlantic Trade and Investment Partnership that could have sweeping ramifications

for how meat is produced in the United States and EU in coming decades... Rather than an opportunity to raise standards that protect public health and the environment, the meat and feed industries on both sides of the Atlantic are seeking to proliferate destructive practices in the animal agriculture industry.”

In order to appear responsive to an outraged European public and press, both U.S. and EU officials have made broad and artfully disingenuous statements that might sound like support for at least some existing food safety measures in Europe. The Chief U.S. negotiator Dan Mullaney went so far as to tell the press that “The United States has no intention of forcing Europeans to eat anything a European does not want to eat” -- a statement totally at odds with USTR’s recent public comments, including Mullaney’s own wisecrack at last week’s meeting belittling European concerns about “bleached chicken.”

Even if a few EU food safety regulations, such as restrictions on hormone-treated beef, are technically “reserved” (or grandfathered) in a final TTIP agreement and stay on the books, they could prove difficult to interpret and enforce, and might be impossible to update. These rules could be required to meet tough regulatory review standards proposed by the United States and the U.S.-E.U. High Level Working Group. Interpretations and enforcement actions are generally regarded as “measures” covered by trade agreements. They could be subject to review under standards that ignore “the precautionary principle” as it is now applied in Europe. They could be required to meet restrictive TAFTA standards related to sanitary measures, technical barriers, regulatory coherence, cost-benefit analysis

and so forth that have been proposed by the U.S. and the HLWG.

In any case, how can the public be assured that the U.S. has not “out-lawyered” EU negotiators on this and other technical issues in the TAFTA text on food safety if the text is a secret?

***End the secrecy and the corporate capture of the TAFTA negotiating process.*** The U.S and the EU should release the negotiating text of TAFTA as it develops after each round of negotiations. In that way, the public, in the United States and Europe, could make an informed judgment. On Monday, May 19, as TAFTA negotiations got underway, Friends of the Earth Europe -- on behalf of 257 organizations around the globe -- released a joint civil society call for this veil of secrecy over the talks to be lifted. Erich Pica, president of Friends of the Earth U.S., reasonably asked: “Why keep these negotiations secret? Why do corporate lobbyists have privileged access to negotiators and text and not the public?”

Inside U.S. Trade - 05/30/2014

News Analysis

## Fight Brews In Wake Of EU Elections, But Limited TTIP Impact Expected

Posted: May 29, 2014

The European Council and European Parliament are preparing for an institutional power battle over who should take the helm of the next European Commission, but EU officials and observers say they doubt the fight or its outcome will have much of a bearing on the EU's handling of the Transatlantic Trade and Investment Partnership (TTIP).

This is due in part to the expectation that the square-off -- while messy -- will not actually lead to a delay of the seating of the new commission, and by extension the next trade commissioner, after the current term of the EU executive branch expires on Oct. 31. They also expect the next commission, whoever may lead it, will be supportive of continuing with the TTIP negotiations -- both because the same working-level trade experts will be present in the commission, and because member states also favor continuity in EU policy generally across commissions.

Other sources have also pointed out that the TTIP mandate approved by the council will continue to guide the new commission. One EU observer, however, did say that if the commission is ultimately left with a weak leader, that may hamper its ability to shepherd what is likely be a politically contentious final TTIP deal to final passage. But at this point, it's far from clear how the leadership battle will shake out.

Aside from teeing up the fight over the commission presidency, the May 22-25 EU elections also left the European Parliament with a significant number of new members from extreme far-right parties hostile toward Brussels. But that development, too, appears to have a limited bearing on TTIP -- to the extent it will have an influence at all.

Observers said that the election of roughly 60 "euro-skeptics" to the parliament could make a potential TTIP deal more difficult to ratify in the end because they would complicate the debate. On the other hand, these members do not appear to adhere to one philosophy on trade, and some of them may even support the U.S. trade deal.

Frederik Erixon, director of the European Center for International Political Economy (ECIPE), noted in an interview with *Inside U.S. Trade* that either way -- because their numbers are so small in the 751-member parliament -- the euro-skeptics are not expected to be able to block any decisions taken by the legislature.

That still doesn't mean that TTIP will get a free pass in the new European Parliament. The second-largest Socialists & Democrats (S&D) Group, for example, has staked out its position that it will not accept a deal that includes investor-state dispute settlement. The left-leaning Greens Group has also been sharply critical of the overall TTIP agenda.

**This year marks the first time that the European Council and parliament have fought over the right to propose presidential candidates.** The roots of the battle lie in language in the Lisbon Treaty stating that the council must take "into account" the results of the European elections in putting forward a candidate.

The parliament has interpreted that language to mean that the council should endorse the nominees put forward by the leading political blocs in the parliament -- colloquially known as *spitzenkandidaten*. The leading candidate advanced by the parliament is Jean-Claude Juncker,

the pick of the European People's Party (EPP) Group, which had held and retained its status as the largest voting bloc in the parliament after this year's elections.

But many EU heads of government have balked at the notion that the parliament has the right to choose the candidate. At least two heads of government -- United Kingdom Prime Minister David Cameron and Swedish Prime Minister Fredrik Reinfeldt -- have also publicly voiced their opposition to nominating Juncker. One observer said Cameron's opposition to Juncker is based on his reputation as an adamant EU federalist.

Martin Schulz, the former president of the European Parliament and the S&D Group's *spitzenkandidat*, is also viewed as a "divisive" figure and seems unlikely to get a council endorsement, according to Erixon.

There have been rumors that the council could nominate an "outsider" -- someone who is not the selected candidate from the EPP, S&D, or another political bloc. How that will sit with the parliament, however, is still not clear.

If the council's candidate cannot get the majority backing of parliament, the council has one month to nominate another candidate, according to the Lisbon Treaty. "At the end of the day, you need an agreement between the council and the parliament," one EU official said. "There's no way around that."

International Monetary Fund chief Christine Lagarde's name has been floated as a possibility, according to EU sources. Other "outside" candidates include Finnish Prime Minister Jyrki Katainen, Irish Prime Minister Enda Kenny, Polish Prime Minister Donald Tusk, and Danish Prime Minister Helle Thorning-Schmidt.

In the end, the fight could ultimately boil down to horse-trading over senior posts within the European Commission, another EU official said. "We have 27 commissioners that will be nominated between the end of the year," the official said. "There's plenty of tradeoffs."

*Inside U.S. Trade - 05/30/2014, Vol. 32, No. 22*

Inside U.S. Trade

Daily News

## EU Pursues Strong Energy Chapter In TTIP, Along The Lines Of Leaked Paper

Posted: June 2, 2014

The European Union is continuing its push for a strong energy chapter in the Transatlantic Trade and Investment Partnership (TTIP) that will broadly abolish restrictions on trade and investment in energy and raw materials bilaterally and set guidelines for government regulators. In addition, the EU is seeking rules that are more relevant to global than bilateral energy trade, such as freedom of transit applied to pipelines, though those are not necessarily meant as binding obligations.

The energy issue was on the agenda of the fifth round of TTIP negotiations held from May 19 to 23 in the Washington, DC area. At the closing May 23 press conference, the two chief negotiators made clear that the two sides had not yet agreed whether there should be a separate chapter, as proposed by the EU, or whether the obligations on energy and raw materials trade should be covered by the same rules as established for other goods trade in the agreement.

Assistant U.S. Trade Representative Dan Mullaney last week told a stakeholder briefing that with respect to exports of gas and oil, nothing in the TTIP will change existing U.S. law, according to informed sources. His EU counterpart, Ignacio Garcia Berceero, told the briefing that the energy chapter should have common principles that are not binding rules, sources said.

Some sources said that what the EU is pursuing for energy and raw materials trade and investment in TTIP, including the efforts to reduce restrictions on energy exports, is not radically different from what is laid out in a European Commission non-paper dated September 2013 and leaked in May.

Ilana Solomon, director of Sierra Club's Responsible Trade Program, said that, based on the conversations she has had in recent weeks, it is her understanding the leaked non-paper reflects the energy proposal on the table now. The non-paper was sent by the European Commission to member states for review in September 2013, and it is unclear to what extent it was changed based on member state comments.

EU Trade spokesman John Clancy last week refused to comment on the status of the non-paper. "As is normal practice, the European Commission does not comment on possible leaks," he said in a statement e-mailed on May 19. "Furthermore, the EU has published its position paper on energy which clearly sets our position on what we would like to achieve on the energy issue within TTIP."

That EU position paper, dated June 17, 2013, contains many of the same concepts that are in the leaked non-paper such as non-discrimination, market access and transparency as previously leaked position

papers. For example, the non-paper seeks to establish wide-ranging rules that ensure unfettered access for firms established in either the U.S. and EU to sell, import and export raw materials and energy goods in the others' market under the same conditions as domestic firms.

The non-paper proposes a prohibition against a dual-pricing policy under which a signatory would take measures that increase the export price of an energy good above the domestic price. It also wants to open up the licensing and permit process for exploring energy in each others' markets to firms from one signatory that are established in the others' territory. According to the non-paper, licensing procedures should also be applied without discrimination and with a transparent application process.

**But the leaked non-paper is more explicit than the position paper on lifting export restrictions.** The non-paper said a party to TTIP automatically is deemed to comply with the requirements of the other for exporting all energy products, which the paper defines as coal, crude oil, oil products, natural gas and electrical energy.

In terms of natural gas, a TTIP deal would mean the EU meets the requirements of the Natural Gas Act, which already stipulates that FTA partners may bypass the public interest review unlike other countries.

But this language, if it prevails, also seems aimed at ensuring that the EU would qualify for the waiver from existing crude oil export restrictions under the U.S. Energy Policy and Conservation Act of 1975. That law directs the president to issue regulations prohibiting the export of crude oil, but provides for a waiver if exports are "consistent with the national interest and the purposes" of the law. The purposes include creating a Strategic Petroleum Reserve and conserving energy.

Sources have said that the EU will likely continue to push for reduced energy export restrictions as a priority to diversify its energy supplies, as indicated by the EU's chief TTIP negotiator last week and German Chancellor Angela Merkel earlier this month.

This is partially to reduce EU dependence on Russian energy, and, according Solomon, due to an EU interest in avoiding hydraulic fracturing to extract its own energy supplies for fear of the environmental damage.

According to the Sierra Club the EU wants access to U.S. "fracked gas" because many member states are opposed to fracking, especially France who has placed a moratorium on the practice. Solomon cited France as having a fracking ban, while countries such as Germany have "de facto" bans.

In response to the non-paper leak, the Sierra Club and the German environmental group Power Shift strongly criticized the EU demands as leading to more environmental damage through increased climate emissions, increased reliance on fossil fuels and an increase in fracking.

**But the TTIP rules may only be able to shape the direction of energy exports from the U.S.** to a limited extent, according to David Livingston, an associate in the Energy & Climate Program at the Carnegie Endowment for International Peace.

He noted that for liquified natural gas (LNG), the costs of liquefaction, transportation and re-gasification are considerable. In the near term, a potential gas supply disruption by Russia "shutting off the spigot" would have to be sizeable and prolonged before LNG exports from the U.S. would be called on to make up the supply shortfall, he said. This is because spot prices and contracted LNG prices are at a premium compared to EU national gas benchmark prices, he said. Russia could still undercut U.S. prices, he said.

Livingston said that there is no doubt that a TTIP deal, once in place, would lead to a quicker permitting process for exports to the EU. But at the same time, the U.S. is conducting FTA negotiations with Asian countries in the Trans-Pacific Partnership deal and already has an FTA with Korea. Given the price spreads at the moment, these markets would be highly attractive. "At the end of the day, the gas goes to the highest bidder, given particular commercial circumstances," he said in an e-mail. He noted that the export decision are made by companies making commercial decisions.

The TTIP can remove red tape and tinker on the margins, but it is unlikely to do much to override companies' commercial decisions, he said.

**The non-paper's proposed provisions on pipeline transit would break new ground because it** specifically identifies pipelines as being covered under Article V of the General Agreement on Trade and Tariffs. This is the first time this has been specifically addressed, according to Sarah Burt, a lawyer with Earthjustice. Burt said that pipelines were always assumed to be covered under Article V, but never explicitly specified before.

According to the Sierra Club and Power Shift, the EU demands would limit the flexibility of transatlantic regulators to ensure "environmental, public health, and other public interest safeguards." For example, under the domestic price regulation provisions of the non-paper, parties have the right to establish public service obligations, but they must be limited in duration, non-discriminatory and not "more burdensome than necessary" for the kind of public service defined.

The Sierra Club and Power Shift said this EU proposal follows a precedent that allows countries to successfully challenge laws designed to protect public health and the environment.

The transportation of energy goods is particularly worrisome for environmental groups because it could restrict local or national governments from implementing what they deem to be environmental safety measures. Those safety measures could be deemed as more burdensome than necessary, making a government liable to litigation.

"For us, this is really problematic because there are reasons that a country would need to stop the transit to stop the oil through a country," one environmentalist said.

## U.S., Japan Still Far Apart In Ag Talks; Safeguard Among Difficulties

Posted: June 2, 2014

The United States and Japan are still "far apart" in their bilateral negotiations on agricultural market access under the Trans-Pacific Partnership (TPP), and it will be difficult for the two nations to reach a deal before a meeting of TPP chief negotiators next month, Japanese deputy chief negotiator Hiroshi Oe said on May 30.

"Of course I don't exclude the possibility, but it will be very difficult," Oe told reporters, when asked whether the two sides would be able to resolve their differences by the July meeting.

He spoke after two days of market access negotiations in Washington with Acting Deputy U.S. Trade Representative Wendy Cutler that both sides indicated yielded only incremental progress. "We made some progress, but we are still far apart," Oe said.

A USTR spokesman delivered a similar message in a prepared statement provided to *Inside U.S. Trade* on June 2, saying Cutler and Oe "continued to make progress with respect to market access for agricultural products, but difficult issues remain." The spokesman added that Cutler and Oe agreed to meet again in the "near future, with dates to be set through diplomatic channels." Oe told reporters that the next round of bilateral market access talks would take place in a "couple of weeks," maybe in Tokyo.

Oe said the two sides during last week's meeting did not discuss the possibility of concluding the TPP negotiations without Japan, as some U.S. agriculture groups have said should happen if Japan does not provide "meaningful agricultural market access" for U.S. farm goods. Oe acknowledged that both U.S. and Japanese agriculture groups have called for Tokyo to exit the talks, but emphasized that "we are not negotiating with the stakeholders."

One of the difficult issues that the two sides are wrestling with is the parameters of a safeguard mechanism for beef and pork, Oe said. Such a mechanism would allow tariffs on those products to snap back to higher levels if tariff reductions under a TPP deal led to a surge in meat imports.

One observer said the U.S. would likely want a "tight" trigger for such a safeguard that would make it difficult for Japan to invoke, as well as a short time period for the higher tariff level to stay in effect if the safeguard were invoked. But Japan is likely to resist those demands, this source said.

A safeguard is just one element of the market access deal for a specific product; other elements include the final tariff levels and the length of the phaseout. Sources said the U.S. and Japan

are likely negotiating all of these elements in parallel. This is because, in the U.S. view, a strong safeguard that is easy to invoke could undermine the value of any agreement to reduce tariffs, the observer noted.

The two sides already worked out some parameters of a potential market access deal on beef and pork during President Obama's April trip to Japan, but left other issues open, sources said. During that visit, Obama delivered the message that the U.S. would not press for Japan to eliminate all tariffs on beef and pork.

INSIDE US TRADE

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## House-Passed Funding Bill Aims To Block USTR From Negotiating On Procurement

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The House early this morning (May 30) passed a bill funding federal trade agencies after making several changes on the floor, including the addition of language aimed at preventing the Office of the U.S. Trade Representative from negotiating trade agreements that would further open up the U.S. government procurement market to other countries.

The language was proposed by Rep. Alan Grayson (D-FL) as an amendment to the fiscal year 2015 Commerce, Justice, Science (CJS) Appropriations bill, known as H.R. 4660. The amendment was approved by voice vote, and the underlying bill was passed on a bipartisan vote of 321-87.

Grayson's amendment, H. Amdt. 761, consists of one sentence stating that "[n]one of the funds made available by this Act may be used to negotiate an agreement that includes a waiver of the 'Buy American Act.'"

Sources indicated it is unclear what the exact impact of the provision would be if it were included in a final appropriations bill passed by Congress. A congressional aide supportive of the language said it is intended to block USTR from negotiating agreements like the Trans-Pacific Partnership (TPP) and the Transatlantic Trade and Investment Partnership (TTIP) that would provide foreign suppliers the same treatment as domestic companies when it comes to procurement of goods by the U.S. federal government.

The 1933 Buy American Act (BAA) generally requires a preference for U.S.-made goods in direct purchases by the federal government, but it does not apply to procurement of services or to non-federal agencies.

The aide argued that the House passage of the amendment also sends a signal to U.S. negotiating partners that there is serious opposition in Congress to new trade agreements. This should give these negotiating partners greater pause in proceeding in the negotiations, especially given that the president lacks fast-track negotiating authority.

But one informed source noted that U.S. free trade agreements with procurement commitments do not in and of themselves waive the Buy American Act. Instead, such FTAs establish an obligation for the U.S. to provide national treatment to suppliers of signatory countries.

The U.S., however, has typically implemented those national treatment obligations by waiving the BAA requirement, using authority provided under the Trade Agreements Act of 1979. That law expressly allows the president to waive BAA requirements for countries with which the U.S. has a reciprocal procurement agreement. Typically, once a new FTA enters into force, USTR will implement this waiver by issuing a *Federal Register* notice.

One House aide said Grayson's amendment could be changed, removed or altered in a potential conference committee on a CJS appropriations bill. In the meantime, the Appropriations Committee will likely hold consultations with USTR and the Ways and Means Committee on the potential impact of Grayson's amendment. The Senate has not yet passed its own CJS funding bill.

In addition to Grayson's amendment, the House passed an amendment from Rep. Mark Meadows (R-NC) that would prevent funds from being used for negotiations to enter into a trade agreement that regulates greenhouse gas emissions. The amendment was adopted on a vote of 226-179.

In his floor speech defending his amendment, Meadows pointed to Congress's previous rejection of so-called "cap and trade" legislation in 2009, as well as an analysis by the U.S. Chamber of Commerce analysis that new rules from the Environmental Protection Agency set to be released next week could cost 3.6 million jobs over the next 15 years.

The U.S. has not sought to regulate greenhouse gas emissions through free trade agreements. However, New Zealand has proposed non-binding language in the TPP that would have countries reaffirm the benefit of pricing carbon, with a view towards establishing a regional carbon emissions trading system.

**The House also passed amendments that reduced the funding of the Commerce Department's International Trade Administration (ITA) and increased appropriations for the U.S. International Trade Commission.**

Under an amendment sponsored by Rep. Stephen Lynch (D-MA), \$3 million of ITA's funding has been re-directed to the drug courts program in the Department of Justice (DOJ). This leaves the congressional allocation for ITA at \$460 million, which is a 0.1 percent decrease compared to the funding the agency is currently receiving under the FY2014 appropriations bill Congress passed in January.

Lynch's amendment was approved by a voice vote. Rep. Susan Davis (D-CA) sought to restore the ITA funding by moving \$3 million from the Federal Bureau of Prisons within DOJ. However, the amendment was opposed by CJS appropriations chairman Frank Wolf (R-VA), and Davis's amendment was rejected.

Separately, Rep. David McKinley (D-WV) successfully pushed an amendment that diverted \$1.5 million from DOJ's general admissions fund to ITC. This brings ITC's total budget to \$86 million, which is a roughly 1.8 percent increase compared to the funding the agency is currently receiving.

McKinley emphasized that small businesses were being harmed by "unfair, low-cost imports." He singled out China, faulting its alleged currency manipulation and its state-owned enterprises for undercutting U.S. businesses through unfair trade practices.

McKinley questioned why the U.S. does not provide pro bono representation for small businesses in trade remedy cases, similar to the representation defendants receive in criminal cases, although none of the new money going toward ITC would be used for that purpose.

"They don't have access to the same legal resources as larger companies, and they can't afford the cost to file a claim against large state-subsidized industries like we find in China," he said.

**The House also passed by voice vote an amendment from Rep. Jim Langevin (D-RI) that would shift \$5 million within BIS to conduct surveys among companies to measure the extent they have adopted the cybersecurity framework from Commerce's National Institute of Standards and Technology (NIST).**

In February, Commerce released the NIST framework, which is a voluntary set of guidelines and practices companies can undertake to protect the nation's critical infrastructure. In President Obama's executive order establishing the framework, critical infrastructure was defined as any system or asset that could debilitate the country's national security, economic security, and public safety and health.

Langevin's amendment did not detail what the survey would cover, or how often it would be used. In his floor speech in support of the amendment, Langevin praised Obama for establishing the framework, but stressed the need for congressional involvement as well as data on how companies have adopted the NIST framework. He also referenced the DOJ indictments of Chinese military officers who have allegedly hacked U.S. entities, most of which were involved in trade cases against Chinese companies.

"It will take congressional action to address issues such as incentives, liability protections, information sharing, and breach notification," Langevin said. "However, while we continue to work toward passage of bipartisan cybersecurity legislation, it is important that we measure how well the NIST framework is faring."

# Transatlantic trade: Hard sell

By Shawn Donnan

## Today the EU-US trade talks are facing a growing number of political obstacles

One morning last month Giorgio Bocedi, a rotund Italian lawyer with a practised charm, stood up in a brightly-lit university classroom in the Washington DC suburbs and began extolling the virtues of eight centuries of cheesemaking tradition – and the 245,170 cows responsible for producing the world's *Parmigiano reggiano*.

Those cows – and the 3,439 dairy farmers around the northern Italian city of Parma that they belong to – helped produce 3.279m wheels of parmesan each year, Mr Bocedi boasted. And yet still there were pretenders. “The name Parmesan has been used for a long time in America. But we don't know why. Usually it is used in association with Italy!”

Within minutes he had handed over to Patrick Kole, a representative of the Idaho Potato Commission, who was eager to defend the importance of Idaho's soil in growing the unique tuber and to point out the injustice of a pizza company registering the US state's name as a trademark in Germany.

“We know exactly what is going to go on top of that pizza,” Mr Kole declared. “Kartoffel! Potatoes!”

Both men's presentations in defence of the value of regionally-linked foods were made to EU and US negotiators now engaged in the laborious process of trying to construct what, should their work succeed, will be the largest regional trade alliance in the world. They were also emblematic of what, a year after talks were launched, has become one of the dominant features of the negotiations.

Hailed by David Cameron, the UK prime minister, as a “once-in-a-generation prize” that would “fire up” economies on both sides of the Atlantic as they tried to escape the shadow of the 2008 global financial crisis, the Transatlantic Trade and Investment Partnership, to give it its official name, has from day one been billed as a “21st-century” trade agreement. It would eliminate duelling regulatory regimes and the other non-tariff barriers that now complicate the flow of goods, services and capital across the Atlantic. It would move beyond the realm of tariffs and other traditional trade topics and tackle issues relevant to today's digital economy. Beyond that

the goal, as US and EU trade officials regularly point out, is to create something “transformative” that will serve as a model for all future agreements.

Yet a year into the negotiations, the pursuit of a 21st-century agreement looks as though it risks becoming bogged down in 19th-century issues such as the trade in cheese or potatoes.

Days before Mr Bocedi made his case for Parmesan, 175 members of the US Congress issued a call for US negotiators to resist the EU’s push to include its own strict geographical rules governing the branding of cheeses such as Parmesan. The call from Congress had even made the front page in the tiny dairy state of Vermont, where the Burlington Free Press boldly told the EU to “Back off our cheese”. “Hang on to your Gorgonzola, America,” the article began.

The threat that a trans-Atlantic-cheese war might break out is minuscule and the issue of “geographic indicators”, as the regional labels are known, is undoubtedly a small, though sensitive, part in the discussions over building a transatlantic trade pact.

But it is also emblematic of the increasing noise that is surrounding the negotiations as they accelerate towards a goal of concluding a deal by the end of 2015. Whether it is the volatile politics of globalisation in the EU and the US, a heated debate over what rights investors should have guaranteed under any agreement, or simply the head-spinning complexity of the regulatory task at hand, it is clear that the honeymoon is over and that the obstacles are emerging.

When we bring something up with the US they say: ‘We’re willing to talk about it. But don’t mention it in public before the elections’

Negotiators insist that, behind closed doors, a pact is taking shape, even if talks are still at the early stages. Most of the past year has been spent discussing how to approach big subjects such as bringing “coherence” to transatlantic regulation of cars, chemicals and other sectors, and how to overcome longstanding stumbling blocks such as an EU ban on hormone-fed beef and strict import rules for genetically modified organisms. But they have now begun to hammer out actual texts in some areas.

“There is a lot of work ahead of us, but we are making steady progress and we have a firm understanding of the key issues that need to be resolved,” Mike Froman, the US trade representative, said at the end of May’s fifth round of negotiations.

Backers of a deal on both sides of the Atlantic insist the economic case remains strong. The US and EU still face difficult recoveries from the financial crisis. And, while the real economic impact will depend on what an agreement ends up looking like, business groups and governments in both the US and Europe still frame the argument in favour of a deal in terms of boosting trade and creating jobs.

Its advocates also argue that the strategic case for an agreement has only grown stronger over the past year.

When the talks started, the geopolitical justification offered for an EU-US trade deal was the rise of China and the need to get on the front foot in writing the rules of global commerce for the next century – particularly in a world where multilateral negotiations were stalled.

“We need to maximise our influence by sticking together, and leading by example,” Karel De Gucht, the EU trade commissioner, told an audience in Poland on Friday.

These days, however, the strategic reasoning more often has to do with the Ukraine crisis and the newly-aggressive Russia it has revealed. The signing in May of a \$400bn, 30-year gas supply contract between Moscow and Beijing came as EU negotiators were again pressing their case for including an ambitious energy chapter in TTIP. Besides finding a way to accord European companies the same access to cheap oil and gas that their American counterparts now enjoy, EU negotiators also are eager to secure an alternative supply of gas to Russia in order to reduce members’ dependence on the country.

For all the progress and the geopolitics, however, the reality is that the deal is facing a growing number of obstacles, many of them political.

The shadow cast by the revelations that the US National Security Agency was listening in on Europeans, including Angela Merkel, the German chancellor, remains. It has made negotiations over how to guarantee the free transatlantic flow of data, something businesses argue is crucial in today’s economy, incredibly sensitive, even as officials have vowed to treat privacy issues in a separate agreement.

A surge in support for anti-establishment parties in last month’s European Parliament elections has also complicated the politics of trade in the bloc. Some of the biggest winners in that election, such as Marine Le Pen’s National Front, have actively campaigned against the deal.

Even if a majority of the European Parliament that will eventually have to ratify a deal remains firmly pro-trade, there are fears the election result will begin to infect the national politics of EU member states.

President François Hollande of France and his Socialist party, which has traditionally viewed the cause of free trade with a sceptical eye, have become vocal backers of the EU-US deal. But Ms Le Pen’s strong showing in the May elections may be changing that. Already last week Laurent Fabius, the French foreign minister, was linking a looming heavy fine for BNP Paribas, France’s largest banks, to the EU-US trade talks and threatening consequences, echoing a line first uttered by Ms Le Pen.

The reality is that politics was having an impact on the negotiations even before the elections.

Both sides have agreed to put off hard negotiations on some of the most controversial areas of discussion – such as agricultural tariffs – until after the seating of a new European Commission and November midterm elections in the US. The latter has already complicated President Obama’s efforts to secure “fast-track” negotiating powers for trade deals.

They have both also displayed a willingness to bend easily to politics. Vocal opposition in Germany and other EU member states to a proposed dispute settlement mechanism, which would allow foreign investors to take governments to international arbitration panels to seek compensation, caused the EU to suspend negotiations on the investment chapter earlier this year. The US has also stuck by its refusal to include financial services regulation in the

negotiations, with the Treasury opposed on territorial ground. Some Democrats worry it would weaken post-crisis financial regulations such as the Dodd-Frank law.

Privately, officials on both sides complain that the other seems stuck in limbo and unwilling to make what ought to be even easy decisions. “Whenever we bring something up with the US side they say: ‘That’s very interesting, we’re willing to talk about it. But please don’t mention it in public before the fourth of November’,” when the US has midterm elections, says one senior EU official.

There are other signs of tensions. The tabling of initial tariff offers from both sides in February triggered a pointed back and forth after Mr De Gucht complained publicly about the US’s “lack of ambition”. The episode has caused officials to move more deliberately on the offers on services and government procurement, though all are expected to have been tabled by the end of the summer.

For now, the political will to overcome the obstacles and pull off a deal seems to be firm. Business groups are continuing to speak out in its favour. Mr De Gucht and Mr Froman are also determined to set the negotiations on an “irreversible” path, aides say.

There are concerns about timing, however. Mr De Gucht is due to fly to Washington this week in part to try to keep the talks on track. If a deal is not concluded by the end of next year, the 2016 US presidential campaign could interfere, leaving its fate in the hands of Mr Obama’s successor. The trope in Washington is that trade votes rarely succeed in election years, although experts insist that a deal with Europe is likely to be less contentious than most the US has signed.

Bernard Hoekman, director of the global economics programme at the European University Institute in Florence, argues that the biggest challenge on both shores of the Atlantic remains selling the value of a deal that is being negotiated behind closed doors. It is also difficult to make the case for a free-trade agreement when debates over inequality and globalisation are very much in the public conversation.

Ultimately, making that case is going to depend on the deal itself and whether it ends up being as transformative as promised. “It’s fundamentally still the same challenge,” Mr Hoekman says. “How much is going to be there? And is it really worth the effort in terms of the gains?”

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### **Legal protections: clause at centre of disputes with states**

Until recently, “investor-state dispute settlement” was a term used mostly in trade and investment treaties to protect foreign investors from rogue actions by governments, usually in the developing world.

These days the clauses are at the centre of negotiations on a trade deal between the advanced economies of the EU and the US.

Faced with increasingly vocal opposition to ISDS articulated on social media and by member states including Germany, the European Commission was forced this year to suspend

negotiations with the US over the investment chapter of the mooted Transatlantic Trade and Investment Partnership.

- **What is at issue?**

ISDS clauses allow companies to take governments to international arbitration panels to seek compensation if they feel their investment has been hurt by government action.

Until a few years ago cases were rare. But there has been a surge in filings by companies taking an ever broader view of what constitutes a legitimate cause for action. According to the Organisation for Economic Co-operation and Development, 57 ISDS cases were filed against governments in 2013, almost half of them in developed economies.

- **Why is that contentious?**

Increasingly ISDS cases are based on regulatory actions rather than simple cases of expropriation. In a high-profile case, Philip Morris International has taken Australia to an arbitration panel over its introduction of plain-packaging laws for cigarettes. Vattenfall, the Swedish energy company, has challenged Germany's decision to phase out nuclear power. Eli Lilly has filed a case against Canada over a court decision invalidating two drugs.

Opponents argue the cases have become a tool for big corporations to challenge domestic regulations.

- **So what's the solution?**

EU and US trade officials argue that by closing loopholes and tightening the rules, an ISDS clause in a transatlantic deal would go a long way to ending abuses. It would also set an example for investment treaties both parties are negotiating with China and other countries

Opponents, including some trade lawyers and the conservative Cato Institute, argue such a clause is simply unnecessary. The EU and US have functioning judiciaries that provide protection for foreign investors.

11 June 2014 Last updated at 19:10 ET

# BUSINESS V STATE INVESTMENT DISPUTES IN EU SPOTLIGHT

By **Andrew Walker** BBC World Service Economics correspondent

Should foreign businesses have the right to take a sovereign state to arbitration to seek compensation for a change in the law or government policy? And if so, in exactly what circumstances?

These issues have been raised as a result of a plan being negotiated by the EU and the US called the Trans-Atlantic Trade and Investment Partnership (TTIP).

The questions about companies' rights to seek arbitration are the subject of a public consultation exercise that is under way in the EU, ending in early July.

The European Commission has a [page on its website](#) for members of the EU public wanting to contribute.

*"[ISDS] serves as a powerful corporate weapon to delay, weaken and kill regulation"*

*-Olivier Hoedeman Corporate Europe Observatory*

TTIP is controversial and the proposed rights for foreign investors are especially contentious. That part of the plan is known as investor-state dispute settlement (ISDS - not to be confused with the International Sheepdog Society).

The basic idea of ISDS is that foreign investors should be able to go to independent arbitration if they believe they have been treated by a host government in a way that breaches an international investment agreement. If they win, they may get compensation.

The potential benefits for the foreign investors are clear enough. But why would governments subject themselves to this kind of constraint?

## **'Chilling factor'**

There are two arguments. The legal protection can be appealing to foreign companies, so it could encourage them to invest when they might not otherwise have done.

And if you offer this arrangement in a bilateral agreement, the same protection would be available to your own companies when they invest in the other country involved.

The inclusion of ISDS in the transatlantic negotiations is hotly debated. Critics say that it could inhibit governments' rights to regulate in the public interest, and expose them and taxpayers to hefty compensation bills if they do regulate in a way that hits foreign investors' profits.

Brussels-based Corporate Europe Observatory (CEO) is one of the leading groups campaigning against ISDS.

It rejects the idea that ISDS protects investors against unfair behaviour by host states. Instead, the group argues: "It serves as a powerful corporate weapon to delay, weaken and kill regulation."

*"It will be made crystal clear that this agreement will not limit the scope for governments to take decisions on, for example, the balance between public provision of healthcare and private services"*

- *European Commission*

Olivier Hoedeman of the CEO says that ISDS will impose a "chill factor" on regulation, as governments will be reluctant to act for fear of being sued.

The group also complains that ISDS gives special privileges to foreign companies and says that it will not bring the economic benefits claimed.

### **Company v country disputes**

This type of provision is not new in international agreements. They have existed for decades and the World Bank has had an agency dedicated to arbitration in such disputes since 1966. But there is some strong evidence that international companies are making more use of them than they used to.

Research by the United Nations Conference on Trade and Development found a cumulative total of 568 known cases (and the agency suggests there probably are further cases where there are no public records), most of them happening since the turn of the century.

About half have been concluded, 43% in favour of the state defending itself, 31% in favour of the investor. The remainder were settled.

The largest award to date, so far as is known, went to the oil company Occidental in a dispute with Ecuador over the cancellation of an exploration and drilling agreement. The amount awarded by arbitrators was \$1.77bn (£1.06bn) plus interest.

Other cases have involved regulation of energy prices, invalidation of patents and alleged wrongful criminal prosecution. A number of cases have been brought against Spain and the Czech Republic over changes to their treatment of the renewable energy sector.

One of the most famous, or infamous, examples is the complaint by the tobacco company Philip Morris about Australia's plain packaging law. There has been no ruling in that case.

### **Limited investor protection**

In the UK, some campaigners have a specific concern about how ISDS might interact with domestic UK legislation on the National Health Service.

One group, called patients4nhs, says that ISDS means it will be "virtually impossible in future for the UK government to reverse the privatisation of the NHS that we see as a result of the Health and Social Care Act (2012) - even if this proves to be a disaster."

The worry for them and other groups is that once foreign companies have a place in the market, they might be able to seek compensation if a British government wanted to revert to public sector provision.

The European Commission does not accept this argument. It says: "It will be made crystal clear that this agreement will not limit the scope for governments to take decisions on, for example, the balance between public provision of healthcare and private services."

John Clancy, a spokesman for the Trade Commissioner, Karel de Gucht, says the protection that investors would get would cover a limited number of actions, such as "discrimination, denial of access to justice, expropriation without compensation and the inability to transfer capital to invest".

Many campaigners, however, are not reassured by what the Commission says or by its consultation.

## **Chem Watch**

### **US states demand more say in TTIP negotiations**

Retaining rights to regulate chemicals a concern

12 June 2014 / United States

Fears that provisions under discussion at the Transatlantic Trade and Investment Partnership (TTIP) talks could impede their ability to regulate chemical safety, environmental protection and public health, have prompted several US state, led by Vermont, to demand a "seat at the table".

Citing leaked information, Senator Virginia Lyons, co-chair of Vermont's Commission on International Trade and State Sovereignty, says she is concerned by the proposal to bring states under the purview of the regulatory co-operation provisions. That could hinder states' ability to regulate, she says.

As a consequence Ms Lyons has been talking to counterparts in other New England states like Maine, New Hampshire, Massachusetts, Connecticut and Rhode Island, with the aim of crafting a common position on states' rights, she tells *Chemical Watch*.

Another issue that could affect states is the potential inclusion of provisions to have investor-state dispute settlements carried out by tribunals, rather than US courts, she says. "It is critically important that state authority be recognised in any process and that the US court system be utilised rather than a tribunal process for decision-making." The dispute resolution process through tribunals should be outside the scope of TTIP, she says. "State laws need to be respected, particularly in this country, where we have such a robust judiciary."

The United States Trade Representative's (USTR) office should have a "more collaborative process with states," Ms Lyons says. When talking about "standards for chemical regulations... it seems to me that with states engaged in the conversation, we could reach some pretty important decisions," she says, pointing out that several states regulate toxic chemicals in consumer products, and adding that negotiations about chemical regulations "must be transparent and inclusive to protect future generations".

Saying that TTIP negotiations have a "very blind process," Mr Lyons says states are having a hard time because "we don't know what is being negotiated. The only way we learn about what is being negotiated is if there is a leak or if the USTR asks for input on specific issues." States are used to a very transparent, democratic process, she says, urging the USTR to "reach out" to states in a "more robust fashion." Members of Congress and senators are also being lobbied to ensure state rights in any US-EU trade pact, she says.

The leaked position paper on regulatory cooperation "clearly implicates the states and mentions explicitly that the states would be subject to regulatory cooperation provisions," says Baskut Tuncak, attorney at the Center for International Environmental Law (Ciel). Those provisions would require trade impact analyses and ensuring that regulatory measures are the least trade restrictive options. "These sort of analyses would be very, very onerous for the federal government, and for states it would make it virtually impossible for them to actually exercise their right to regulate."

There is also the potential for investor-state dispute settlement provisions where foreign investors, in the past, have sued states "demanding compensation for public interest measures that decrease their expected profits," Mr Tuncack says. Such lawsuits are not conducted in US courts, but by foreign arbitration tribunals. Such actions not only cause the taxpayers to compensate these companies, but, he says, are also used as a "tool to chill the development of laws by threatening these sorts of investor-state settlement lawsuit."

The investor dispute resolution mechanism could be used against regulation of hydraulic fracturing in many states, including California, according to William Waren, trade policy analyst at the NGO Friends of the Earth. Although international agreements are unlikely to roll back state regulations already on the books, they could limit states' ability to act in the future, he says.

# French concerns over geographical indications will hamper TTIP talks

Published: 18/06/2014 - 08:25

**Wine is a casus belli for the French government, who may block transatlantic negotiations if geographical indications are not protected. EurActiv France reports.**

Internet domain names like '.vin' and '.wine' and geographical indications could emerge as the thorn in the side of the TTIP talks.

TTIP has already come under fire from both sides of the Atlantic. European governments - and especially France - have highlighted geographical indications and domain names as major stumbling block for trade negotiations. According to the Commission, "a geographical indication is a distinctive sign used to identify a product as originating in the territory of a particular country, region or locality where its quality, reputation or other characteristic is linked to its geographical origin."

"We have written to the President of the European Commission to ask him to act, especially regarding the .vin and .wine domain names," said France's Secretary of State for Digital Affairs, Axelle Lemaire, in a report on 13 June.

Her letter to the EU executive was also signed by Stéphane Le Foll, French Minister for Agriculture, and Laurent Fabius, Minister for Foreign Affairs, who called on the European Commission to oppose giving the domain names .vin and .wine without guaranteeing protection for French geographical designations.

"This decision undermines ongoing talks on the transatlantic partnership by forcing it to be based on technical discussions regarding internet naming," said one of the three Ministers in the report.

The US also has its reserves. "The American government worries that if it starts recognising wine geographical indications in the framework of internet domain names, it will be weakened during transatlantic negotiations," said Pascal Bobillier-Monnot, Director of France's national confederation for producers of products that come under French geographical indications.

**Safeguard**

The problem of internet domains is not new. In 2011, the institution that manages and coordinates the attribution of domain names in the world, ICANN (Internet Corporation for Assigned Names and Numbers) started a world-wide attribution process for new thematic or geographical extensions such as '.paris', '.food', '.hotel' or '.wine', as opposed to the classic '.fr' or '.com'.

The attribution rules were put in place by ICANN and do not take account of safeguards that are important to many European countries, such as limiting speculation on domain names and protecting the commercial use of wine geographical indications.

In late September 2013, the EU's Commissioner for Digital Agenda, Neelie Kroes, asked the ICANN not to assign '.vin' and '.wine' without an agreement to protect geographic indication in the wine sector.

On 4 April, ICANN decided to push back the attribution process and grant 60 days of extra negotiations to parties involved. However after the extension period ended on 3 June, "no agreement could be found," according to the French confederation for producers. "Since then, no one knows if the attribution process has resumed or not," added Pascal Bobillier-Monnot.

### **Meeting in London**

The letter from Paris to Brussels comes at an important time. There will be an ICANN meeting in London between 22-26 June, where the issue of '.vin' and '.wine' will be central.

A letter signed by the European Commission and numerous member states will be presented at the meeting. "However, it is unlikely that the Commission will have the same position as France in transatlantic negotiations," said Pascal Bobillier-Monnot.

Not everyone is as concerned by the matter. "The problem is that ICANN don't give a damn!" said one of Axelle Lemaire's advisors.

### **>>Read: EU challenges US hegemony in global internet governance**

"ICANN takes decision that it deems technical, when they actually have political and economic consequences that are totally out of proportion with their legitimacy!" said David Martinon, French representative for international negotiations on the information and digital economy.

"ICANN's board of directors [...] is getting ready to take decisions, and there is strong evidence that they will be bad for European interests," he added.

France is counting on support from Italy, which will take over the presidency of the European Union on 1 July 2014

<http://www.reuters.com/article/2014/06/20/us-usa-trade-tpp-idUSKBN0EV2KE20140620>

# Obama says hopes for Pacific trade pact in November

WASHINGTON Fri Jun 20, 2014 5:44pm EDT

(Reuters) - Pacific trading partners hope to have a free trade agreement ready to present to the public and stakeholders in November, U.S. President Barack Obama said on Friday.

He said the aim was to have a document to discuss with other leaders of Trans-Pacific Partnership nations when he travels to Asia in November, a trip that will include the Group of 20 leaders meeting in Australia on November 15-16. Asia Pacific Economic Cooperation (APEC) leaders also meet that month.

The United States holds mid-term elections on Nov. 4, and many trade experts had despaired of finalizing the TPP this year because of the risk that it could cost Obama's Democrats votes at the poll, given the party's links to trade unions worried about the impact of trade agreements on jobs.

Obama said he discussed a timeline to complete the deal this year with New Zealand Prime Minister John Key, whose country is one of 11 others in the pact covering two-fifths of the world economy and a third of global trade.

"Our hope is by the time we see each other again in November, when I travel to Asia, we should have something that we have consulted with Congress about, that the public can take a look at, and we can make a forceful argument to go ahead and close the deal," he told reporters after the meeting.

"But we've got a lot of work to do between now and then."

The White House hoped to complete the TPP, part of Obama's strategic shift toward Asia, last year, but talks stalled over Japanese tariffs on agricultural imports. Tokyo wants to shield rice, wheat, dairy, sugar and beef and pork products, while Washington seeks to protect U.S. carmakers from increased Japanese competition.

But participants reported new momentum after a U.S.-Japan summit in April. A Mexican official told Reuters some countries were pushing to get an agreement in September at the latest, although other participants are less optimistic. [ID:nL1NoOL1MB]

Australian Trade Minister Andrew Robb, who visited the United States last week, was reported as saying on June 18 there was no chance of a deal this year, though he hoped it could be concluded in the first half of 2015.

Key, who has said Japan should be cut out of the deal if it cannot make the necessary concessions, said he was confident of reaching a high-quality, comprehensive TPP.

"There's always a period of sort of arm-wrestling that goes on between the parties, and sometimes it always feels a bit darkest before the dawn," he said. [ID:nL2NoPo16P]

The other TPP members are Brunei, Canada, Chile, Malaysia, Mexico, Peru, Singapore and Vietnam.

(Reporting by Roberta Rampton; Writing by Krista Hughes; Editing by Dan Grebler)

<http://www.foe.org/news/blog/2014-06-2014-election-dont-fast-track-pacific-trade-deal>

## The Pacific trade deal, Fast Track, and the 2014 elections

*Posted Jun. 20, 2014 / Posted by: Bill Warren*

Recently, I had the opportunity to appear with Ian Levitt, the host of The Daily Report on Minnesota radio station KTNF. He is conducting a series of interviews with me regarding the environmental threat posed by legislation that would "fast track" the Trans Pacific Partnership trade agreement and a similar trans Atlantic free trade agreement, which is the early stages of negotiation.

The focus of our discussion was the TPP, which appears to be in the final stage of closed-door bargaining among the parties. It is a colossal trade deal in terms of its geographic and economic reach. The participants in the secretive negotiations include Japan, the communist dictatorship of Vietnam, the Sultanate of Brunei (ruled under sharia law), and eight other Pacific nations: a mixed bag in terms of observance of human rights standards, to say the least.

The TPP would undercut sensible safeguards related to food safety, financial industry abuses and global warming, among many others. As I told KTNF listeners, "a long list of special favors to the wealthy and the corporations is in this so-called trade agreement. It's a Wall Street Bill of Rights."

"The TPP is not a trade agreement in the traditional sense. It is an attempt to constrain the capacity of governments to act in the public interest." The U.S. Trade Representative, Mike Froman, is attempting to lower so-called non-tariff barriers to trade such as economic and environmental regulations.

The TPP and other trade deals are intended to deregulate the world economy, expand corporate property rights and establish principles in international law of what I'd call market fundamentalism. This would allow global corporations, in many instances, to have their way regardless of the views of the people and parliaments and regardless of international human rights standards.

Of particular concern are the leaked U.S. intellectual property proposals that would grant monopoly rights to multinational pharmaceutical corporations. As I explained in the interview, the TPP "still contains provisions on intellectual property that could cause the price of lifesaving medicines to skyrocket." You're really talking about the putting lives of millions of people at risk.

Intellectual property provisions would also allow biotechnology firms "to patent life forms, taking title to our common genetic inheritance."

Similarly, Biotech giants like Monsanto want to protect trade in genetically modified food and restrict GMO labeling through TPP provisions on so-called "technical barriers to trade."

Even worse, "The TPP still contains 'investor-state dispute settlement ... which would create a 'private court' for multinational corporations..." We have lots of horror stories to tell about existing investment agreements on the same general model.

For example, take the "rain forest Chernobyl" case, Chevron v. Ecuador. The oil company refused to clean up an oil spill that polluted an area the size of Rhode Island, destroying a wild and biodiverse place and causing deaths, miscarriages and illness among the indigenous peoples of the Amazon. Yet, the oil giant is suing Ecuador before an international tribunal and hiding behind the U.S.-Ecuador bilateral investment treaty in order to resist the Ecuadorian courts and the call of common decency to make amends.

The TPP investment chapter could also be used to protect the fossil fuel industry from climate regulations. "They want to use these agreements to protect their investments in shale oil and shale gas and to continue to 'frack' and to continue to export planet-killing, carbon -polluting products around the world."

Fast Track legislation is the key to getting the any trade deal approved by Congress. Fast Track would allow the TPP to be ratified on an expedited schedule with little debate, no amendments, and a straight up or down vote. This turns the U.S. Constitution upside-down -- the founders intended for Congress, not trade bureaucrats, to regulate trade with foreign nations.

"If they pass Fast Track," I explained, "we are going to be in a corner. We will not have lost everything, but it would be like going into the fourth quarter of a football game two or three touchdowns behind." Pressure from big campaign contributors would make it tough for legislators to shoot down the whole deal, when it's presented on a take it or leave it basis.

Ian asked me whether the amount of public attention on the TPP has been successful in stopping it thus far. As I explained, "We have been successful in the last part of 2013 and the first part of 2014. The corporations and the U.S. trade representative made a serious push to complete the TPP and more immediately threatening to push through Congress the Fast Track trade promotion legislation that would be necessary to ratify such a radical plan."

"In the short term, I'm optimistic. But, we have mid-term congressional elections coming up and because progressives are not as active in mid-terms and do not vote in the same numbers as the folks who are rallied by corporate money, people are expecting the Republicans to take control of the Senate and perhaps increase their margin in the U.S. House of Representatives. And, that will bring Fast Track legislation and the Trans Pacific Partnership roaring back."

We could even see an attempt to move a Fast Track bill in the lame duck session of Congress after the November election. "So, this is no time for people to be complaisant... Unfortunately, too many good progressives only show up at the polls when it is a presidential election year."

People need to talk to their members in Congress today about the dangers of Fast Track and the TPP. And, they need to vote in November.

- See more at: <http://www.foe.org/news/blog/2014-06-2014-election-dont-fast-track-pacific-trade-deal#sthash.tfAKTqW7.bRXdc8R0.dpuf>

<https://www.techdirt.com/articles/20140625/04305727679/why-taftattip-isnt-worth-it-economically-how-we-can-do-much-better.shtml>

## Why TAFTA/TTIP Isn't Worth It Economically, And How We Can Do Much Better

from the *doing-it-by-numbers dept*

As recent posts on Techdirt have made clear, resistance to TAFTA/TTIP is growing on many fronts. In countering that, supporters of the negotiations unfailingly cite the "unique opportunities" or "huge benefits" of the deal. There's no denying that potentially TAFTA/TTIP will be huge: the European Commission's pages on the negotiations point out that the US and EU trade €2 billion every day (around \$2.7 billion). They also note the following important facts about investment between the two regions:

*Total US investment in the EU is three times higher than in all of Asia.*

*EU investment in the US is around eight times the amount of EU investment in India and China together.*

Of course, those impressive figures completely undermine the case for including corporate sovereignty provisions in TAFTA/TTIP, since investors are clearly happy to put their money into the US and EU even in the absence of ISDS mechanisms.

But what counts is not just the present size of the trade and investment between the US and EU, but the future gains that TAFTA/TTIP would bring. This is clearly the central question about the negotiations, because if those benefits are small, there is no point making painful concessions of the kind that will be required to conclude the deal. And yet, surprisingly, there is precious little in the way of rigorous research into what the effects of TTIP would be on the US and EU economies. It's true that figures about the benefits are regularly trotted out by those involved, but these come almost exclusively from one source: econometric modelling carried out by the Centre for Economic Policy Research (CEPR) in London (pdf), and paid for by the European Commission. Here are its key claims about the benefits of TAFTA:

*An ambitious and comprehensive transatlantic trade and investment agreement could bring significant economic gains as a whole for the EU (€119 billion a year) and US (€95 billion a year). This translates to an extra €545 in disposable income each year for a family of 4 in the EU, on average, and €655 per family in the US.*

Those figures of €119 billion a year (about \$160 billion) for the EU and €95 billion a year (about \$130 billion) for the US are uncritically quoted in most articles about TAFTA. That's a pity, because they are misleading in the extreme. For example, the passage quoted above speaks of "€119 billion a year" as if this would be the gain from TTIP each year. But a footnote on page 3 of the CEPR study, where a table lays out the predicted change in GDP, explains:

*Note: estimates to be interpreted as changes to a projected 2027 global economy.*

That is, the €119 billion figure is the extra GDP that would be seen in 2027 as the result of TTIP being in place for the previous ten years, compared to the situation in 2027 without the agreement: it is

a cumulative GDP gain. That means the other figure often thrown around -- that TAFTA will increase the GDP of the EU and US by around 0.5% is similarly misleading: it refers to the cumulative GDP gain after ten years. In terms of how much TAFTA would add to GDP each year, that would be far less -- roughly 0.05%, a rather different matter. Here's what the economist Dean Baker has to say on this misdirection, in a blog post on the TTIP negotiations with the provocative title: "Why Is It So Acceptable to Lie to Promote Trade Deals?"

*Implying that a deal that raises GDP by 0.4 or 0.5 percent 13 years out means "job-creating opportunities for workers on both continents" is just dishonest. The increment to annual growth is on the order of 0.03 percentage points. Good luck finding that in the data.*

He goes on to make a great point about the impact of strengthening intellectual monopolies in these trade agreements:

*there are reasons to believe the growth effect could go in the opposite direction. The model used by the London CEPR does not assume any negative growth impact from higher prices for drugs or other goods that might be more costly due to stronger patent and copyright protections coming out of the deal.*

*These will likely be a drag on growth. Economists tend to like patents and copyrights (probably because their friends and family members benefit from them), but that doesn't change the fact that they lead to market distortions and have major economic costs. If the price of a drug rises by 1000 percent because we imposed stronger or longer patent protection it has the same effect in the market as if we imposed a 1000 percent tariff on the drug.*

Nor is this the only negative factor that is ignored in the CEPR projections. A study by a group of economists at the Austrian Foundation for Development Research, commissioned by the Confederal Group of the European United Left/Nordic Green Left in the European Parliament, points out that a number of major costs have been omitted when calculating the overall benefit of TTIP (pdf). The most important of these are the costs that arise from TAFTA's stated aim to eliminate "non-tariff barriers", or "non-tariff measures", by harmonizing regulations and standards. As the researchers point out:

*All studies, but particularly the Ecorys study, assume that a reduction of NTMs [non-tariff measures] is welfare-enhancing. This ignores that NTM such as laws, regulations and standards pursue public policy goals. They correct for market failures or safeguard collective preferences of a society. As such they are themselves welfare-enhancing. The elimination or alignment of an NTM thus will imply a social cost for society. This applies equally to NTM elimination, harmonization and mutual recognition.*

In other words, eliminating or harmonizing regulations may well produce a boost for companies, which no longer need to worry about stringent health and safety standards, say, but represent a loss for society, which suffers through increased health costs. Many of the supposed gains from TAFTA/TTIP are actually counterbalanced by similar losses that society as a whole will be forced to accept.

It's also worth emphasizing that the "€119 billion a year" figure that is used by supporters of TAFTA is what the CEPR research calls an "ambitious, comprehensive agreement" -- in other words, the most optimistic prediction. Strangely, no one ever talks about the other figures in the study -- the less

optimistic, more realistic ones. Naturally, those would produce even lower growth than the tiny 0.05% extra GDP per year discussed above.

Because mainstream media unquestioningly accept this "€119 billion a year", and fail to challenge the assumptions that lie behind it, we don't know how the US and EU negotiators would attempt to justify TAFTA given the extremely small economic benefit predicted by the European Commission's research. Presumably, they might say that it's better than nothing at a time when both the US and EU are keen to boost their economies and create jobs.

But that's not really true, because it ignores the fact that there are other ways of achieving this goal that don't involve placing companies above nations through corporate sovereignty provisions, or require massive changes to regulations on both sides of the Atlantic. For example, a report commissioned by the Omidyar Network, entitled "Open for Business: How Open Data Can Help Achieve the G20 Growth Target" (pdf), claims that:

*implementation of open data policies including in areas corresponding to G20 agenda items could increase G20 output by around USD 13 trillion over the next five years. This would boost cumulative G20 GDP by around 1.1 percentage points of the 2% growth target over five years.*

That would work out as an extra GDP boost per year of around 0.22% -- four times what TAFTA might offer in the most optimistic case. And of course, open data initiatives do not require negotiations or concessions: governments can implement them unilaterally for very little cost. Or how about this new report on "climate-smart development"?

*Government policies that improve energy efficiency and public transport could increase global economic output by more than \$1.8 trillion per year, and also save lives, reduce crop losses and tackle climate change, according to new analysis released today from the World Bank and the ClimateWorks Foundation.*

The increased economic output (pdf) works out at \$242 billion for the US, and \$271 billion for the EU, both in 2030. In this case, a collateral benefit of taking this route is that it would help to improve the environment and tackle climate change, too -- not something that can be claimed for TTIP. The current negotiations between the US and EU are being presented as a "once-in-a-generation" chance to boost transatlantic economies. They are nothing of the sort. TAFTA/TTIP is merely one of a number of ways of achieving that, and, as the above discussion indicates, not even a very good one.

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# US embassy in Berlin sparks TTIP Twitter tangle

[http://www.euractiv.com/sections/trade-industry/us-embassy-berlin-sparks-ttip-twitter-tangle-302869?utm\\_source=EurActiv+Newsletter&utm\\_campaign=e441a78592-newsletter\\_daily\\_update&utm\\_medium=email&utm\\_term=0\\_bab5f0ea4e-e441a78592-245709193](http://www.euractiv.com/sections/trade-industry/us-embassy-berlin-sparks-ttip-twitter-tangle-302869?utm_source=EurActiv+Newsletter&utm_campaign=e441a78592-newsletter_daily_update&utm_medium=email&utm_term=0_bab5f0ea4e-e441a78592-245709193)

6/26/14

EXCLUSIVE / A tweet by the US embassy in Berlin offering grants of up to \$20,000 for pro-TTIP projects has triggered a row with campaigners dismissing it as a propaganda campaign that reveals a desperate shortfall of original ideas in the US establishment.

The Transatlantic Trade and Investment Partnership (TTIP) is a free trade agreement currently being negotiated between the EU and US which its proponents say would remove tariffs on goods and services worth billions of dollars, and offer a massive boost to jobs and growth. But environmentalists, unions and health campaigners are concerned that its investor-state provisions could lead to a spate of lawsuits challenging EU legislation from corporations claiming breaches of their legitimate expectations of profit.

The tweet from the US embassy, translated from German said: “Are you pro-TTIP and angry at the negative coverage it’s been getting? Send us your ideas and we’ll support you!”

US diplomats say that the tweet was intended to spark a contest that would raise the tone of the public debate and move it beyond the image of “the famous chlorinated chicken,” as Peter Claussen, a US diplomat at the Berlin embassy put it.

However, many of the tweeted replies to the post were not enthusiastically supportive:

“@U.S. Embassy: Your TTIP PR will not save this project no matter how much money you paid,” one said.

“@U.S. Embassy here is my proposal: Democracy has never been so cheap: On sale at only €545 per year per household!” said another

“At first I thought this #TTIP campaign by @U.S. Embassy was satire...” a third read.

“Frankly we had an awful lot of responses to these tweets which were not particularly positive,” Claussen told EurActiv.

## Famous broadsides

“A lot of the [TTIP] discussion has been very un-nuanced,” Claussen said. “We were looking for ways of encouraging people with different perspectives by providing a venue for them and asking: ‘Is everybody against this or do some people have a different perspective? We wanted to open up a conversation, which is what social media is for.’”

The embassy was looking for positive ideas that supported TTIP he said, but campaigners countered that this was a mission the US government should not be undertaking.

“As a public administration you have a different responsibility,” said Pia Eberhardt, a spokeswoman for the Corporate Europe Observatory, an activist group campaigning against excessive corporate influence and lobbying. “It would be an OK position for industry to take but the US government has a duty to negotiate for its whole population, not just the big industrial sector,” she told EurActiv.

“If large sections of the population are coming out against that agreement, the appropriate thing would be to reconsider and listen to the voices of your critics,” she added.

A Pew Research Study recently reported that a majority of Germans and Americans backed a TTIP agreement. But the same research paper also found that 96% of Germans trusted European environmental protection while only 2% trusted the US's corresponding regulatory framework. In response, even centre-right German politicians have begun taking sceptical positions about the desirability of an agreement. For Washington, such phenomena merely proves the need for new initiatives, such as the tweet contest.

#### **'Demonising TTIP'**

"This image of the chlorinated chicken is a stereotypical way of over-simplifying and demonising the nature of the debate, suggesting that standards are different [in the US] and that's something that politicians have also addressed in Germany," Claussen said.

In its place, he suggested an image of two partners who have been working hard for years to improve trade relations, shaking hands.

Ideas sent in for the initiative so far have ranged from conferences to speaker programmes, online activities, and various digitally-linked online programmes, he said, adding that all of Europe's US embassies were "reaching out and doing support work" but the tweet contest had been the brainchild of the Berlin embassy alone.

The US embassy's literature on the project says that grants could also go to projects aimed at creating 'a Twitterfall wall during a conference', online discussion forums, TTIP websites, and digital posters in German with QR codes to inform about TTIP objectives.

"Because of the nature of the medium, we assume that young people may respond more energetically than others," Claussen said.

#### **Escalating campaign**

Campaigners though dismissed the enterprise as a propaganda campaign illustrating a lack of original ideas in the US embassy and a PR campaign that it was losing.

"It is a clear and definite sign of a first success of this growing movement against TTIP," Eberhardt said. "I'm sure there is a fear that they have lost the public debate in the last months - at least in Germany - and so they are intervening with more resources."

"But it is also a sign that defenders of the agreement in government and business will invest much more in the coming months to sell TTIP to the public," she cautioned.

Corporate Europe Observatory says that industry lobbyists are currently hiring PR representatives and are expected to escalate pro-TTIP campaigning in the months ahead.

<http://www.nytimes.com/2014/06/28/us/catfish-inspection-trans-pacific-partnership.html> 1/3  
<http://nyti.ms/1mlGEwl>

## POLITICS

### U.S. Catfish Program Could Stymie Pacific Trade Agreement

By RON NIXON JUNE 27, 2014

WASHINGTON — Ten Asian and Pacific nations have told the Office of the United States Trade Representative that the Agriculture Department's catfish inspection program violates international law, and their objections could hamper Obama administration efforts to reach a major Pacific trade agreement by the end of next year.

They say that the inspection program is a trade barrier erected under the guise of a food safety measure and that it violates the United States' obligations under World Trade Organization agreements. Among the countries protesting are Vietnam and Malaysia, which are taking part in talks for the trade agreement — known as the Trans-Pacific Partnership — and have the ability to derail or hold up those negotiations.

The complaints are outlined in a May 28 letter signed by diplomats from the 10 countries. The letter does not threaten retaliation, but it stresses that the American catfish program stood in the way of the trade talks.

Vietnam, a major catfish producer, has long complained about the program, but it has never before won international support for its fight. Several of the countries whose representatives signed the letter — including the Philippines, Myanmar, Thailand and Indonesia — do not have catfish industries to protect and are not involved in the trans-Pacific trade talks. But the letter expresses the concern that the inspection program could lead the Agriculture Department to expand its ability to regulate seafood exports to the United States, catfish or not.

"Many of these countries are looking to see what happens to Vietnam on the catfish issues, and what precedence it might set for other trade deals in the region," said Jeffrey J. Schott, a senior fellow at the Peterson Institute for International Economics in Washington and the co-author of a book on the Trans-Pacific Partnership. The United States and 11 countries on both sides of the Pacific — as well as Australia, New Zealand and Brunei — are still negotiating the trade pact, which has been repeatedly delayed over various disputes.

The Vietnam Association of Seafood Exporters and Producers recently hired James Bacchus, a former chairman of the World Trade Organization's appeals panel, to prepare a possible legal challenge to the catfish inspection program.

Mr. Bacchus said in an interview that only governments have standing to bring a case before the trade organization, but that the export group was working closely with Vietnamese officials to monitor the catfish inspection program.

"I'm confident that Vietnam would have a case before the W.T.O. if they decided to bring one," said Mr. Bacchus, a former United States House member from Florida who is now a lawyer with Greenberg Traurig in Washington.

The inspection program was inserted into the 2008 farm bill at the urging of catfish farmers, who have been hurt by competition from both Vietnam and China and by the rising cost of catfish feed. The domestic catfish industry has shrunk by about 60 percent since its peak about a decade ago, and in the past few years about 20 percent of American catfish farming operations have closed.

The catfish industry and lawmakers led by Senator Thad Cochran, Republican of Mississippi, fought for the new office, saying it was needed to protect Americans from eating fish raised in unsanitary conditions or contaminated with drugs. The Food and Drug Administration has a similar program, but it inspects less than 2 percent of food imports, and advocates of the Agriculture Department program said that was not good enough.

The Agriculture Department has traditionally inspected meat and poultry, while the F.D.A. has been responsible for all other foods, including seafood.

Agriculture Department inspections are more stringent than those conducted by the F.D.A. The Agriculture Department requires meat- and poultry-exporting countries to set up their own inspection programs — an expensive and burdensome regulation that Vietnam says is unnecessary for catfish.

A Government Accountability Office report in May 2012 called imported catfish a low-risk food and said an Agriculture Department inspection program would "not enhance the safety of catfish." The Agriculture Department said it had spent \$20 million since 2009 to set up its office, which has a staff of four, although it has yet to inspect a

single catfish. The department said it expected to spend about \$14 million a year to run the program; the F.D.A., by comparison, spends about \$700,000 annually on its existing seafood inspection office.

Senator John McCain, Republican of Arizona, and other critics say the Agriculture Department program is a waste of money, and Mr. McCain sponsored an amendment in the latest farm bill that would have killed the program. But the measure was never brought up for a vote. The Obama administration has also called for eliminating the Agriculture Department program.

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# USTR NEWS

## UNITED STATES TRADE REPRESENTATIVE

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### **United States and WTO Partners Announce Launch of Negotiations for Environmental Goods Agreement**

Washington, DC –The United States and 13 other WTO Members, representing 86 percent of global trade in environmental goods, launched negotiations on the new Environmental Goods Agreement (EGA) at the World Trade Organization (WTO) today.

Global trade in environmental goods totals nearly \$1 trillion annually, and some Members currently apply tariffs as high as 35 percent on these products. Tariffs add unnecessary costs to the green technologies and solutions we need to protect the environment. By taking action to eliminate those barriers, the EGA can make a major contribution to green growth and sustainable development. It will also increase market access for U.S. manufacturers and workers – supporting more green jobs.

The EGA is the primary trade aspect of President Obama’s Climate Action Plan, announced at Georgetown University in June, 2013.

U.S. Trade Representative Michael Froman announced U.S. plans to prepare for the initiative earlier this year, and today’s launch marks an important step forward in our efforts to eliminate tariffs on environmental goods, such as wind turbines, water treatment filters, and solar water heaters. The United States is joined in the EGA negotiations by Australia, Canada, China, Costa Rica, the European Union, Hong Kong, Japan, Korea, New Zealand, Norway, Singapore, Switzerland, and Chinese Taipei.

**“Today’s launch of the Environmental Goods Agreement underscores President Obama’s commitment to tackling environmental protection on all fronts,”** said Ambassador Froman. **“The Obama Administration is advancing a trade policy that reflects our core values and unlocks new economic opportunities for American exporters and families – especially when it comes to fostering exports of Made-in-America environmental goods. By eliminating tariffs on the technologies we all need to protect our environment, we can make environmental goods cheaper and more accessible for everyone, making essential progress toward our environmental protection and trade policy goals.”**

On March 21, Ambassador Froman notified Congress of the Administration’s intent to enter into negotiations on the EGA, which aims to eliminate tariffs on a wide range of environmental

goods. Since then, USTR has engaged in broad consultations on the objectives and priorities for the EGA negotiations, including by soliciting written comments, holding a public hearing on June 5, and meeting with Congress, businesses, environmental groups, and labor unions. We will continue to consult with these and other stakeholders as the negotiations progress in order to ensure that the EGA is commercially meaningful and environmentally credible, and delivers concrete benefits for the United States.

<https://www.techdirt.com/articles/20140712/10031927860/bolivia-shows-how-to-dismantle-corporate-sovereignty-provisions-treaties-without-losing-foreign-investment.shtml>

7/15/14

## Bolivia Shows How To Dismantle Corporate Sovereignty Provisions In Treaties Without Losing Foreign Investment

**from the *they-said-it-couldn't-be-done* dept**

As Techdirt has reported, corporate sovereignty chapters in TAFTA/TTIP and TPP have emerged as some of the most **controversial** elements in those agreements. Meanwhile, countries that already have bilateral investment treaties (BITs) with investor-state dispute settlement (ISDS) mechanisms are looking for ways to **get rid of them** in order to avoid the loss of sovereignty they imply. One nation that already has considerable experience in this area is Bolivia. A new report provides **fascinating background information on exactly how it has gone about this** (pdf), with valuable lessons for others looking to do the same.

Things began back in 2000, during what was called the "Water war." After Aguas del Tunari, a subsidiary of the US company Bechtel, had taken control of water supplies in the central Bolivian city of Cochabamba, it raised prices to such an extent that the poorest citizens struggled to pay for drinking supplies. This led to demonstrations in the streets, with many people injured (**original in Spanish**.) Control of the water company was removed from Bechtel, which demanded \$50 million compensation for the loss of its investment. The case was finally settled in 2006, when Bechtel agreed to sell its shares in the water company to the Bolivian state -- for 2 Bolivianos (then about \$ 0.30).

That experience led the Bolivian people to give their new president of the time, Evo Morales, a mandate to withdraw from all investment agreements and tribunals that allowed claims to be made against the country. Here's how he did that:

*The Evo Morales government rejected the Investor-State Dispute Settlement mechanism from the outset. This was reflected in the country's withdrawal from ICSID -- the most widely used Investor-State Dispute Settlement forum -- in May 2007. In addition, the new [Bolivian] Constitution prohibits the state from settling investment related disputes with foreign investors in international tribunals.*

...

*one of the most important provisions of the new Constitution in this regard is to denounce and renegotiate all international treaties that are contrary to the constitutional text, that is to say, the BITs, which is ultimately where the power lies for corporations to do whatever they want in the countries in which they operate. The BIT's are where the rules of the game between companies and states are established. They are also the reason why Bolivia, despite regaining sovereignty from corporations and shielding itself from this system, could still be liable to further lawsuits in international tribunals similar to ICSID, which establish their jurisdiction in such treaties.*

Bolivia has now cancelled all 21 of its previously-signed BITs, and its subsequent experience is instructive. The conventional wisdom is that without such treaties, foreign investment will plummet, and that the economy of the country concerned will suffer. Here's what actually happened in Bolivia:

*When we asked about the reaction of other countries, [Walter Clarems Endara Vera, Deputy Minister for Trade and Integration of Bolivia] said that obviously there was concern on the part of European countries and the United States, which are among those that invest most overseas, and with which Bolivia signed most of its BITs. However, he also said that "in all of these cases there has not been a negative response", and that, "in conclusion, our understanding is now that we do not have bilateral investment agreements."*

*Deputy Minister Endara also noted that "...many countries are interested in signing a new investment agreement with Bolivia."*

There are two important reasons why withdrawing from these BITs with their corporate sovereignty clauses has not been the disaster that many pundits predicted:

*When we asked the Deputy Minister Endara why he believed that these countries were being so accommodating, his response was that "... chickens have now come home to roost. Countries promoting BIT's are now also being sued in forums such as ICSID as well as other tribunals, sometimes by their own investors. Unfortunately, the economic crisis in Europe has led some countries to take measures affecting foreign investments and they are now being sued. This means that the conversation with some European countries is now different. We can now talk as equals because they are suffering the same problems we have suffered ... I mean, we can now see some of the biggest defenders of the investor-state dispute settlement mechanism defending their own countries against these cases. The situation really has changed."*

But perhaps the most significant reason is the following:

*In the Bolivian context, it is important to note that, unlike at the time of the first case with Aguas del Tunari, the country now has a legal and constitutional framework, as well as public institutions and a clear policy, to address these Bilateral Investment Treaties and the system of international arbitration that corporations are using to undermine the actions of sovereign countries.*

That is, with a functioning government and fair legal system that can resolve investment disputes, there is simply no need to hand over so much power to opaque and expensive supranational tribunals of the kind that lie at the heart of ISDS. Bolivia's success in cancelling its BITs while boosting foreign investment -- \$2 billion in 2013, 35% more than in 2012 -- is clear evidence the argument that agreements like TAFTA/TTIP "must" contain corporate sovereignty chapters to achieve the same, is incorrect.

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<https://www.theparliamentmagazine.eu/articles/news/meps-wary-commissions-approach-ttip-negotiations>

## **MEPs wary of commission's approach to TTIP negotiations**

Written by Kayleigh Rose Lewis on 16 July 2014 in News

The European commission's TTIP proposals could lead Europe "down a regulatory race to the bottom" and there is "a growing sense of unease and concern" surrounding the negotiations, say MEPs.

MEPs have raised concerns in a plenary debate with EU trade commissioner Karel De Gucht regarding the nature of the transatlantic trade and investment partnership (TTIP) as the sixth round of negotiations take place.

S&D deputy Nessa Childers said, "We have recently been brought up to date on the commission's trade dealings through the unfortunately usual means of leaked documents.

"The leaked commission papers show that it is pushing for the mutual recognition of banking and finance rules that would enable market players to do business across the Atlantic under the laws that apply in their own jurisdiction.

"This proposal from the commission will give a competitive advantage to those hailing from the side that applies the lightest touch to finance. This may well lead us down a regulatory race to the bottom," she warned.

"This proposal from the commission will give a competitive advantage to those hailing from the side that applies the lightest touch to finance" - Nessa Childers

The Irish MEP went on, "The US authorities are actually the ones who have so far resisted this idea, as they rightly fear it will make it more difficult to regulate banks and tie regulators hands on future reforms.

"US banks, on the other hand, will happily endorse the commission's approach, which seems designed to please the European banking sector in the first place," suggested Childers.

"I am very interested in learning how wedded the commission is to pushing for this mutual recognition approach and what it is willing to concede to the US in exchange.

"US multinationals stand to profit from the downgrading of the more stringent labour, environmental and data protection standards in force in the EU.

"Our American counterparts also want to include an investor-state dispute system, which is trade lingo for the ability for big corporations to sue governments in arbitration courts, for multimillion sums in compensation when regulations passed in the public interest eat into their profits," she complained.

"This is simply not acceptable. I expect the newly elected commission president Mr Juncker to stand by his commitment, given to us in writing, not to undermine EU legislation and reject any such invidious parallel mechanisms."

During Tuesday's plenary session GUE/NGL deputy Helmut Scholz addressed De Gucht, saying, "You carried out a public consultation on the inclusion of an investor state dispute settlement (ISDS) clause which received over 115,000 responses.

"Citizens don't want ISDS; neither in TTIP nor in the agreement with Canada," the German deputy argued.

"I urge you again to take the concerns expressed by broad sections of civil society seriously. Do you really think small-scale producers and consumers want further liberalisation of trade in agricultural products? I assure you, this is not the case."

He continued, "In the eyes of our citizens, the US is guilty of espionage and data theft. There is no confidence in these negotiators.

"In the eyes of our citizens, the US is guilty of espionage and data theft" - Helmut Scholz

"As long as the Americans do not want to commit to protecting EU citizens' data and to respect us, there is no basis for a trade agreement," he concluded.

Meanwhile, the Greens/EFA group have backed a citizens' initiative on TTIP. A joint statement from the group's trade spokespersons Yannick Jadot and Ska Keller said, "There is a growing sense of unease and concern among European citizens and civil society about the ongoing TTIP negotiations.

"This concern reflects the broad scope of the negotiations and their possible implications on European standards, and is reinforced by the opaque negotiation process," they explained.

"The voices of these citizens must be heard and this European citizen's initiative is a landmark development to this end."

However, in his speech to parliament in Strasbourg on Tuesday, De Gucht addressed the three themes which have "been on the forefront of the criticism levied against TTIP: the

alleged lack of transparency, the alleged risk of lowering of regulatory standards which underpin our way of life and ISDS".

He told parliamentarians, "You have a very serious responsibility as it will ultimately fall to you to vote on what will have been negotiated. Your thumbs up or down will make or break TTIP.

"Given the wide spectrum of opinion in this parliament, disagreement is unavoidable" - Karel De Gucht

"Given the wide spectrum of opinion in this parliament, disagreement is unavoidable. But I hope the debate will be based on facts and logic, we cannot afford to let it be controlled by irrational fears or false information."

The Belgian official told the plenary debate that, "We do approach many areas differently than in the US, and sometimes our rules here are stricter than in the US.

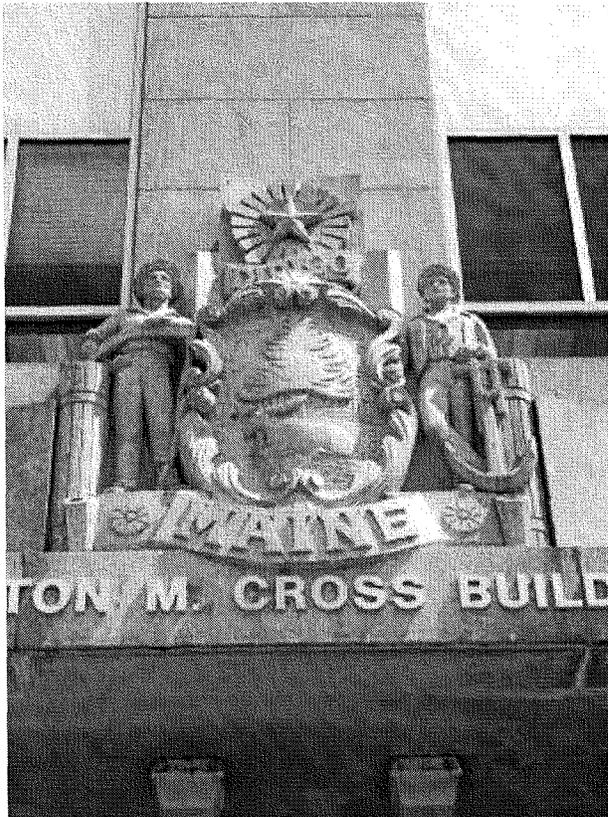
"But we share the same objectives of quality and protection and even where we differ, our values and concerns are much more similar than with any other part of the world.

"That is why president Obama flatly stated in Brussels that he would not agree to any deal if it lowered the standards of protection. Neither would the commission," he stressed.

<http://iatp.org/blog/201407/states-get-proactive-on-trade-agreements-the-maine-model#sthash.waC31SNe.dpuf>

# States get proactive on trade agreements: The Maine model

Posted July 16, 2014 by [Karen Hansen-Kuhn](#)  
TTIPFree trade agreements



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Trade agreements are negotiated in a top down process: negotiators cut secret deals and then push for approval. These trade deals set rules on investment by corporations and banks, and lowering standards and regulations to the “least trade restrictive” possible. Local decision-makers are then left to figure out exactly what these rules mean for their state or community programs to build local

economies, protect the environment or promote public health, or face challenges in special trade courts. This problem, and the fact that trade talks are held in secret until the completed deal is dropped on lawmakers' desks, is a huge point of tension in the public debate on the Transatlantic Trade and Investment Partnership (TTIP) and Trans Pacific Partnership (TPP), as well as the continuing debate on fast track authority, which would restrict Congressional input to an up or down vote.

The Maine Citizen Trade Policy Commission (CTPC) takes a proactive approach to this dilemma. The CTPC, made up of state representatives and senators, along with representatives of important state agencies and civil society, holds public hearings and weighs in with the U.S. Trade Representative on issues of concern to local citizens. Under Maine law, the commission is mandated to "conduct an assessment of the impacts of international trade agreements on Maine's state laws, municipal laws, working conditions and business environment."

This year, the CTPC asked IATP and the Maine Farmland Trust to look into the potential impacts of TTIP on Maine agriculture and food systems. Tariffs between the U.S. and EU are already quite low. The real focus of agriculture in the trade talks are "behind the border" (i.e., local) rules on such issues as food safety and public procurement. Maine is known for its vibrant local foods movement, in which farmers and consumers have found common ground to increase the value of healthy and sustainable food crops. This includes a special dairy support program to balance erratic price swings, and the expansion of artisanal cheese production. Lawmakers are exploring new ways to strengthen local Farm to School programs to increase the use of locally grown fruits and vegetables in school lunches, hospitals and daycare.

The assessment focused on four sets of issues that could be impacted by TTIP, along with recommendations for follow-up by the commission:

- **Food safety:** There are some real differences in U.S. and EU rules on food additives, pesticides and other agrochemicals. The EU's restrictions on genetically modified organisms (GMOs) and its labeling laws could come under pressure in TTIP. Any changes in those rules made under TTIP would apply to the U.S. as well as the EU, potentially limiting Maine's GMO labeling law and other state-specific programs.
- **Public procurement:** Procurement programs, whether for local foods, roads, or renewable energy, are important tools to strengthen local economies. Maine (along with 36 other states), the U.S. and the EU are already included in the plurilateral Government Procurement Agreement at the World Trade Organization, which requires many procurement programs (but not federally funded Farm to School programs, at least for now) to be open to bids from foreign companies. The EU is seeking to expand those commitments in TTIP at the state level to include all goods, all services and all sectors, potentially undermining these important programs.
- **Geographical Indications (GIs).** GIs establish legal protections for products based on their place of origin, specific production techniques, and the reputation of quality for those goods. The EU protects over 1,200 such products through intellectual property rules

## **Japan, Australia agreement could make TPP completion harder**

Farm Futures

By Janell Baum

April 8, 2014

<http://farmfutures.com/story-japan-australia-trade-agreement-make-tpp-completion-harder-0-110947>

Australia and Japan have completed negotiations on a Free Trade Agreement that at least one U.S. ag group says will have implications on agricultural trade and the ongoing discussions surrounding the Trans-Pacific Partnership.

In the new Japan-Australia FTA, announced Monday, Australia has agreed to submit to Japan's requests to exempt some agricultural products from tariff removal – an issue that U.S. ag groups have been fighting in separate negotiations with Japan on the Trans-Pacific Partnership.

Australia, Japan, the U.S. and nine other countries are participating in TPP talks, where Japan has requested exemption from tariff elimination of certain "sensitive" products, like pork and beef, dairy, sugar, wheat and barley, and rice and starch.

Being unable to reach agreement on the TPP and continuing to fight against its requests, U.S. ag groups maintain that approval of exemptions for Japan would set a precedent that allows other countries to request similar special treatment.

Bob McCan, president of the National Cattlemen's Beef Association, said on Monday that Australia's new partnership with Japan will push the "high-standing ideals of TPP further out of reach for all countries involved."

He argues that Australia has undermined goals in the Trans-Pacific Partnership by approving Japan's requests in a separate FTA.

"The TPP has been referred to as a 21st century agreement, but this Bilateral Agreement is from the 20th century playbook and will not serve to foster open trade and certainly will not benefit consumers and producers globally," McCan said.

Despite the concern from U.S. interests, Australia's Minister for Trade and Investment Andrew Robb noted in a statement the benefits for his country.

The agreement "will give Australia a head start over our competitors" in beef, cheese, horticulture and wine markets due to expanded access, he said.

It also presents an opportunity for Australian beef producers, as the tariff on frozen beef would be cut in half under the agreement – going from 38.5% to 19.5%. The tariff on fresh beef will be cut to 23.5% over 15 years.

Cheese, which Robb said is Australia's largest dairy export to Japan, will gain new duty-free access, while immediate tariff eliminations on fruit, vegetables and nuts and canned products like tomatoes, peaches and pears, fruit and vegetable juices will also be implemented.

While a benefit to Australia, the National Pork Producers Council pointed out Australia's inability to achieve full tariff elimination on a number of important products, and a clause in the agreement that requires the Japanese to provide the same access to Australia that it provides to other nations.

Should the United States get better access to Japan in the TPP negotiations, NPPC said, Australia would get that same access.

"The Japanese need to eliminate tariffs on pork and other U.S. farm products," said NPPC President Dr. Howard Hill. "Japan is asking for special treatment in the form of exempting myriad tariff lines from tariff elimination, yet tariff elimination is the heart of an FTA."

Hill said U.S. farmers and ranchers likely would agree that if Japan is not ready to participate in a high-standard, 21st century agreement, which means elimination of tariffs, it needs to exit the negotiations.

"We support the efforts of [U.S. Trade] Ambassador Froman and our trade team to get the same result from Japan that we have gotten from every other U.S. FTA partner: elimination of virtually all tariffs," Hill said.

TPP negotiations continue this week as Froman begins talks with Japanese counterparts in Tokyo this week.

The Australia-Japan agreement follows on the heels of an Australian agreement with Korea, scheduled for official approval on Tuesday.

tpp-allies

April 10, 2014

# 21st Century Trade Policy Must Give All Americans a Chance to Get Ahead

by Communications Office

*As delivered by Senator Wyden at the American Apparel & Footwear Association Conference on April 10, 2014.*

Today I want to talk about how trade in the 21st century can create good middle-class jobs and expand what I call the winners' circle in our country.

It starts with the fact that American trade policy has always been a story of adaptation and change. Fifty-two years ago, President John Kennedy went before Congress to deliver an address on his vision for international trade. The historical context of that period is apparent throughout the speech.

President Kennedy rightly saw international trade as more than something that was just an isolated economic matter. To President Kennedy, trade was in effect an inextricable aspect of foreign policy and an important front in the clash between free nations and communism. What President Kennedy was seeking to do was to promote the strength and unity of the West and fortify the relationship between the United States and the European Common Market. Of course those were days when that was a powerful economic force that was growing. President Kennedy knew American businesses and workers had a great chance to benefit from Europe's growth, and that would create new jobs at home. It was President Kennedy's judgment, and a correct one in my view that required adaptability and in order to have that American trade policy had to be nimble, and it had to reflect those times. I thought the president summarized it very well when he said, "A new American trade initiative is needed to meet the challenges and opportunities of a rapidly changing world economy."

Today's challenges and opportunities, more than any other time in my lifetime, come down to creating more good-paying, middle-class jobs. It's my view that every trade discussion, every single trade discussion, must now focus on how trade policy can be a springboard to high-skill, high-wage American jobs. Jobs in innovative fields that didn't exist before the digital era. Jobs in high-tech manufacturing that can't be easily outsourced. Jobs that give Americans a ladder into the middle class. Here's the reality folks, or the one that I hear at every town meeting - I have another coming up in a week or so - millions of middle-class Americans simply don't believe trade can help them get ahead, or they worry their voices aren't being heard. A 21st century trade policy has to meet the needs of those who are middle class today and those who aspire to be middle class tomorrow. On my watch, I can tell you, those voices are not going to get short shrift in the Senate Finance Committee.

My basic philosophy with respect to trade is I want to see Americans grow and make things here, innovate and add value to them here, and ship them somewhere, whether in containers, on airplanes, or in electronic bits and bytes.

My view is there are opportunities for the U.S. to do that in trade agreements with nations across the Pacific and in Europe, but it is going to take fresh policies – adapted to the times – to make those trade agreements work for all Americans.

I want to be very clear: only trade agreements that include several ironclad protections based on today's great challenges can pass through Congress. I am not going to accept or advance anything less.

First, trade agreements must be enforceable, and not just in name only. The United States has to follow through on enforcement at home and around the world. If it doesn't, trade agreements will not deliver on their job-creating potential and the economic winners' circle, instead of expanding, could actually shrink.

A World Trade Organization ruling that came out just last week showed a great example of enforcement done right. China's restrictions on rare earth mineral exports have done real damage to American businesses and consumers and could cost our country jobs across a wide array of industries.

Manufacturers of rechargeable batteries for hybrid and electric vehicles, MRI machines, night-vision goggles and many others took a hit. My friend Leo Gerard from the United Steelworkers will tell you the impact China's restrictions have had on his members' jobs. So the U.S. stood up and challenged China in the WTO, and the WTO ruled in America's favor – making clear that as a member of the global trading system, the Chinese have to play by the rules.

With American jobs on the line, all trade agreements ought to be enforced with that kind of vigor. Enforcement has to happen without hesitation over politics or other kinds of secondary considerations.

Right now, for example, Customs often appears to focus on security at the expense of its trade mission. Fake NIKE shoes and counterfeit computer chips with a fake Intel logo too often make their way past America's border agents unnoticed. Foreign companies have evaded the trade remedy laws that protect American workers, like those in the solar and steel industries. A 21st century trade policy can't work if the cops at the border aren't doing an adequate job on the beat.

Second, trade agreements must promote digital trade and help foster innovation in areas where America leads, like cloud computing. When President Kennedy made his pitch for a modern trade policy to Congress five decades ago, nobody could have imagined what the digital world would become, or how important the Internet would be to the global economy. Even when the North American Free Trade Agreement entered into force in 1994, a lot of trusted economic thinkers had doubts about how big a role the Internet would play in people's lives.

Fortunately, our country today enjoys a major trade surplus in digital trade that fuels the growth of high-quality, high-skill jobs. Twenty-first century trade agreements have to preserve this American advantage. They must prevent unnecessary restrictions on data flows or requirements to localize data and servers. Make no mistake about it, these NSA policies have harmed the American brand in parts of this debate and it's something that I'm going to focus on changing, not just from the Finance Committee, but from the Intelligence Committee as well. They must include assurances that Internet companies have no more legal liability in foreign markets than they do in the U.S. There is a

reason that America is home to the leading technology and Internet companies: our legal framework promotes innovation and the digital economy.

Preserving this legal framework at home, and promoting it abroad, protects and preserves good paying jobs -- and not just jobs at big technology companies like Google or Intel or IBM. It helps the self-employed: the craftsmen on Etsy and collectors on Ebay, and it helps auto workers, farmers, ranchers, and healthcare providers. Why? Because all of these industries, every one of them, rely on an open global Internet that connects them with foreign consumers and suppliers of digital goods and digital services.

Similarly, provisions like the PIPA and SOPA bill that would do so much damage to the Internet or result in its censorship have no place in trade agreements. I want everyone to know that I'll do everything in my power on the Finance Committee to keep them out of future agreements. I welcomed Ambassador Froman's statement in February that he is committed to keeping them out of TPP. It's as simple as this: the Internet, which is really the shipping lane of the 21st century has to be kept open and free.

Third, trade agreements must combat the new breed of predatory practices that distort trade and investment and cost American jobs. Chinese state-owned enterprises, for example, don't have the risk or borrowing costs that their American competitors do. China's indigenous innovation policies too often undermine American innovators by requiring them to relocate intellectual property. And currency manipulation undercuts American autoworkers and a number of our manufacturers here at home. Again, these are practices that cost good American jobs. They have the same harmful effects on American exports as any other trade barrier, so modern agreements -- including the TPP -- have to give our country the tools to level the playing field.

Fourth, some nations simply don't share America's commitment to labor and the environment, so when the U.S. doesn't lead the way with strong standards and enforcement, trade agreements fall short. Commitments on these issues have to be core parts of trade agreements, rather than something like a side deal that's just coasting along for the ride. This is one area where the U.S. has made progress. Twenty years ago, many considered including any labor or environmental rules in trade agreements to be unreasonable. Today, it is widely recognized that including strong disciplines on both -- with equally strong enforcement -- is an imperative. People on all sides of the trade debate should more openly acknowledge the progress in these areas and the hard work that went into getting those reforms. But as the situation in Colombia shows, there's more work to be done. Under my watch, TPP will be much, much different than older agreements in these areas.

When the United States leads on trade, it is my view it can raise the bar for labor in ways that improve conditions for millions of workers around the world. The TPP is an opportunity to establish improved labor rights in places like Vietnam and Malaysia, but it's going to take strong enforcement.

Just like with labor, trade agreements also have to do more to promote environmental protections. By setting and enforcing high standards, the U.S. can protect American jobs from countries that take a hands-off approach to environmental protection. The Trans-Pacific Partnership must put an end to subsidized and illegal fishing that threatens our oceans and stop trade in stolen timber and wood products in countries like Malaysia and Vietnam. The TPP also has to target illegal trafficking in wildlife. When

it comes to environment, strong enforcement is a prerequisite for a Trans-Pacific Partnership agreement that can pass Congress.

Finally, agreements must be ambitious, opening foreign markets and helping U.S. workers, farmers, manufacturers and service providers increase exports. And trade agreements need to be equally ambitious on footwear and apparel. They need to reflect those industries as they are in this century – not as they were in the last one.

Trade agreements also need to be part of a broader framework, including Trade Adjustment Assistance, that moves exports more efficiently to foreign markets and gives more Americans a chance to climb the economic ladder. There are people who argue that the benefits of trade deals have only gone to some. I argue that if we work to get better, more modern agreements that reflect the lessons of history, we can get trade deals that expand the winners' circle and help revitalize the middle class.

So you've just gotten a short summary of what I think a modern trade deal should look like. I want to wrap up with a couple of comments about how all of this should move through Congress, what negotiations should look like and the issues I think are also very much on your mind with respect to what's ahead.

When it comes to trade talks, in my town hall meetings, people want to know what's being negotiated. In my view the public has a right to know what the policy choices are. For its part, Congress has a constitutional responsibility to tell the President and the U.S. Trade Representative what they need to accomplish in trade deals, which it has traditionally done by passing trade promotion authority, or "fast-track." I believe what's needed to accomplish these things is different from a fast-track, or a "no-track," and this afternoon I'd like to call it a "smart-track."

A smart-track will hold trade negotiators more accountable to the Congress, more accountable to the American people, and help ensure that trade agreements respond to their concerns of our people and their priorities, and not just to special interest groups. It will include procedures to get high-standard agreements through Congress, and procedures that enable Congress to right the ship if trade negotiators get off course. But to get better trade agreements, there must be more transparency in negotiations. The Congress cannot fulfill its constitutional duty on trade if the public doesn't know what's at stake or how to weigh in.

The public needs to know that somebody at USTR is committed to shedding more light on trade negotiations and ensuring that the American people have a strong voice in trade policy – a voice that is actually heard.

Going forward in the days and weeks ahead, I am going to work with my colleagues and stakeholders on a proposal that accomplishes these goals and attracts more bipartisan support. As far as I'm concerned, substance is going to drive the timeline.

Some would like to lay blame for lack of support for the TPA proposal recently introduced in Congress at the doorstep of the White House. The president and Ambassador Froman are, frankly, having a difficult time selling a product that members are not thrilled about. Policy matters, and arbitrary timelines won't work. Instead of casting blame, our time would be better spent rolling up our sleeves and getting to work on policies that expand the winners' circle for our people. Expanding the winner's circle is going to mean that Americans see a trade agreement that they actually want to pass. That will build more bipartisan support for the president's trade priorities.

I've been the chairman of the Senate Finance Committee for 22 working days. You've got almost all the answers that have been around for 22 working days. I've spent a lot of time over the past few weeks listening to what committee members have to say about trade and their priorities. They've been sharing their views and suffice it to say there are some strong feelings. I can tell you what unites members of the Finance Committee is a strong desire to strengthen our economy, increasing our competitiveness in tough global markets, creating more good-paying jobs, and in a phrase you'll hear me talk a lot about because it applies to trade, it applies to tax policy: economics policy that gives everybody in America a chance to get ahead. That's my view of what trade and our economic policy ought to be about and when done right, trade policy can accomplish that. I'm sure everybody in this room shares that view.

<http://www.atlantic-community.org/-/back-to-square-one-for-ttip-a-green-agenda-for-free-trade>

April 10, 2014

## **Back to Square One for TTIP: a Green Agenda for Free Trade**

**Dieter Janecek, the Green Party's Spokesperson for Economic Policy in the German parliament, describes an alternative TTIP agenda. A free trade agreement based on high ecological and social standards, and informed by the values the USA and the EU share in common, could have an influential impact on global trade. The interest of the common good should be a prominent part of any agreement of this kind, with as many stakeholders as possible being involved.**

### **Free trade is not a strategy of subjugation**

No, free trade does not mean the strong having the right to ensure their economic interests always prevail in every corner of the world. The fundamental, liberal idea of free trade put forward by Adam Smith and David Ricardo was cosmopolitan in nature: Trade on the basis of a liberal order and human rights as a counternarrative to imperialism and the despotism of the nation state. The promise of free trade was posited on the assumption that it would result in a more efficient division of labour, a higher degree of specialisation and, above all, greater prosperity thanks to rising productivity.

About 250 years later, the reality is that free trade has not been able to deliver its promises of prosperity for all. The deepening integration of the world economy and rapid global growth have seen inequality increase as well. The unilateral dismantling of trade barriers and policies of isolationism, on the one hand, and the deterioration of social and ecological standards as a result of competition to offer the lowest production costs, on the other, have shattered many people's confidence in free trade. What we have experienced has been, above all, free trade that has advantaged the prosperous industrialised countries. While we in Germany profit from low customs tariffs on highly specialised industrial goods, the EU pumps vast subsidies into its agricultural sector and pursues an aggressive export policy at the expense of the developing countries.

However, free trade does not inevitably have to lead to an asymmetrical distribution of benefits and the erosion of previously protected standards. Innovations, intelligent production methods and the know-how they require are, of course, always decisive factors in who manufactures what products and where. Nevertheless, this does not mean that states are unable to define what standards ought to apply for these products and their manufacturing processes. With the Transatlantic Trade and Investment Partnership (TTIP), an attempt is now being made to combine the two most significant economic areas on the planet into a common free trade area. Between them, the USA and the EU represent just over 10% of the world's population, but generate about 50% of global economic output. Without question, this is of significance geopolitically. The consequences for third states will also have to be looked at extremely carefully. The immediate implication for free trade, however, is that the world's two most

powerful economic areas are negotiating bilaterally on an equal footing to arrive at a new agreement. And that is a good thing.

What has not been good, though, is the course the negotiations have taken hitherto. They have rightly been criticised for a lack of transparency and the EU's unbalanced negotiating mandate. It is claimed the conduct of the negotiations is not being guided by the common good of employees and consumers, but exclusively by the interests of the parties' export industries. This criticism is necessary and justified in many respects.

### **The 'sustainable economy': a leitmotif for the TTIP**

An even greater impact would be achieved by a fundamental debate about the opportunities the TTIP holds out, combined with demands for the negotiations to start again from square one. A free trade agreement based on high ecological and social standards, and informed by the values the USA and the EU share in common, could have an influential impact on global trade. The interest of the common good should be a prominent part of any agreement of this kind, with as many stakeholders as possible being involved. The first attempts to formulate such an approach have already been made: Last autumn, civil society groups from all over Europe drew up what they called an 'Alternative Trade Mandate', an alternative blueprint for free trade in the 21st century: [www.alternativetrademandate.org](http://www.alternativetrademandate.org).

A Green agenda for the TTIP could do more than encourage acceptance among the population. By reaching consensus on clear ecological, social and democratic parameters, we could stimulate the transition towards a sustainable economy on both sides of the Atlantic, something that would ultimately be seen as a harbinger of hope for global climate protection. The fundamental consideration common to all the proposals made here is that functioning free trade is predicated on markets driven by fair competition. Prices must always internalise the true ecological costs of products and services as well. It is in the interests of the players on a market to pay a minimum wage that prevents the exploitation of social dumping as a means of competition. The Stern report quantified how damaging it is for our economies not to invest fundamentally in energy efficiency and the careful management of resources at an early stage. In our time, the most important question for the future is the resource revolution. Europe will not be able to cope with the challenge it represents unilaterally. It is not utopian to imagine the EU and the USA making joint efforts to address the issue, since this would be an expression of their shared interests: Both economic areas are aspiring to reduce their dependence on imports of raw materials. Both claim to be promoting real competition on the basis of a fair framework for trade.

### **Analysis 1: The raw materials question affects the USA and the EU equally**

For Europe, as a continent with few fossil resources, the conversion to renewable energies and energy conservation is a strategic necessity if it is to insulate itself from the volatility of the international raw materials markets over the long term. Germany purchases one third of its natural gas from Russia. More than two-and-a-half times as much as we can store each year. The USA will be able to rely on its own, large-scale fossil reserves for a limited period, but energy efficiency is still clearly not being paid anywhere near enough attention there, to the detriment of consumers and industry. In Texas, for example, power prices are just a third of those in Germany, but *per capita* consumption is three times higher. The shale gas boom in the USA was hailed as a supposed geopolitical turning point. Yet the latest studies show there can be no

suggestion that fracking is going to bring about reindustrialisation in the USA. The forecasts have proven to be exaggerated. As of 2025, at the very latest, the USA too will have to become more dependent on the dwindling petroleum reserves of the Gulf region again. This has been said by no lesser person than Maria van der Hoeven, the Executive Director of the International Energy Agency. China has already recognised the signs of the times. In a recent government statement, Premier Li Keqiang declared war on environmental pollution. He said China would combat it with the same determination it has shown in fighting poverty within its borders. The Middle Kingdom is now the global market leader in renewable energies and will install 14 GW of photovoltaic capacity this year, almost twice as much as the EU.

### **Analysis 2: The tipping point to energy conservation and renewables has been reached**

Is this the truth that has still not been grasped? The tipping point to the post-fossil transformation that lies ahead of us has already been reached, as is evident from the markets. According to *The Wall Street Journal*, the volumes of oil and gas produced by Chevron, ExxonMobil and Royal Dutch Shell have been constantly declining in the last five years. And this has happened even though these corporations have invested a gigantic US\$500bn in new projects over the same period. In a remarkable talk given in February of this year, Steven Kopits, Managing Director of the consulting company Douglas-Westwood, described how the returns on investments in the exploration of fossil energy carriers are falling dramatically and continuously, while the business case for efficiency technologies, wind power and solar energy is becoming more and more convincing. And we are just at the beginning of the transition process!

### **The resource revolution and the 'fossil-fuel phase-out': a fitness programme for industry**

If the TTIP is intended to make a credible contribution to fair competition, serious negotiations will have to take place about the 'fossil-fuel phase-out'. The high subsidies for the extraction and protection of fossil energy carriers are massively distorting competition and damaging the economies on both sides of the Atlantic. According to figures from the International Energy Agency, an unbelievable US\$523bn was spent around the world on petroleum, coal and gas in 2011, approximately six times as much as on climate-friendly technologies. And the trend is moving upwards. The German Federal Government's 2014 Subsidy Report lists the €1.172bn of assistance for hard coal, the extraction of which is uneconomic in Germany, as the largest of the subsidies paid out from the federal budget. Meanwhile, the costs for the final storage of nuclear waste are being burdened onto future generations for the time being.

Nevertheless, we in Germany have successfully got the first stage of the efficiency revolution underway. Thanks to technological developments encouraged by the Renewable Energy Sources Act (EEG), it has been possible for the unit costs of photovoltaics and wind power to be slashed. The world economy is profiting from this today. However, we will only bring about a real resource revolution that will take us towards a climate-friendly economy if truly equal competition between fossil and renewable energy carriers is fostered. Zero marginal costs for fuel inputs – that is the prospect that makes renewables so attractive, irrespective of all the ideological conflicts. A clear commitment to these technologies would be needed in any free trade agreement between the USA and the EU.

### **Greater competitiveness with the top-runner approach and emissions trading**

At the end of the 1990s, Japan introduced what is known as the top-runner approach for its

industry, under which the highest efficiency standards are always established as the benchmarks for the development of products and technologies. Technologies that do not meet these standards are gradually withdrawn from sale. Its concentration on the highest possible levels of efficiency should also have a major influence on any transatlantic free trade agreement.

The use of ecological standards to inspire innovation is a tradition that goes back a very long way in Germany. How competitive would our chemicals industry be today if it had not been for the decades of tough conflicts with environmental campaigning groups? What kinds of vehicles would the automotive industry still be producing today if we had not put in place different parameters for the sector by introducing emissions certificates and levying ecotaxes? Why do we not tackle environmental goods first when it comes to customs liberalisation? Germany holds a 15% share of the global market for environmental technologies. California is regarded as a pioneer of the 'green economy'. Emissions trading with CO<sub>2</sub> certificates is on the rise in many US states. The EU has just upgraded its emissions trading system with back-loading and is discussing how it is to continue in operation from 2016 on with the target of reducing greenhouse gas emissions 40% by 2030 relative to 1990. Noticeably stricter regulations will apply for the automotive industry as of 2020 in both economic areas. We are therefore travelling in the right direction, but not fast enough yet, and the various systems and instruments are not being coordinated consistently. On both sides of the Atlantic, however, actors have recognised that it is more sustainable to rationalise the consumption of resources than companies' staffing levels. In consequence, ecological considerations are advancing a social agenda.

### **Learning from the USA: the green economy will only function if we have sustainable financial markets**

Let us not hold any illusions: Without the comprehensive re-regulation of the financial markets, many of these ideas will remain but fine aspirations. It is essential to break with the principle that, 'The debts belong to all of us, the assets to the select few.' Fair competition can only function on the basis of a regulated market, and the catastrophic experiences that ensued from the global financial and economic crisis after 2007 are forcing us to act. However, the idea that Europe stands for 'high' standards and the USA for 'low' standards is revealed to be an absurdity when we look at the regulation of the financial markets.

After all, it is first and foremost the Europeans who are standing in the way of meaningful reforms, prime among them the British and the German Federal Finance Minister Wolfgang Schäuble. In the most recent BASEL III negotiations, it was decided that the 'leverage ratio' should set below 3%, but the USA is demanding 6% as a first step, with 10% aspired to as a prospect for the future. BASEL III permits off-balance-sheet special-purpose vehicles and will therefore encourage once again a lack of transparency about the risks that are being taken. The USA has a system of the firewalls between commercial and investment banking that minimises the exposure to risk because the two areas of business have to be accounted for separately, even within the same institution. This rules out the possibility that state assistance will be extended to high-risk investment banking operations. The liability principle is making a come-back in the banking industry, something the EU is resisting. However, there will not be a 'sustainable economy' without sustainable financial markets.

**Summary: Time for an alternative TTIP mandate**

The EU and the USA should jointly recognise the opportunities offered by an alternative TTIP mandate that is focussed on the levelling of unequal competitive conditions in transatlantic trade. Fair competition will consign our wasteful fossil economy to the history books. Any country that wishes to remain competitive at the global level will have to manage its economy sustainably. A clear framework of regulatory policy would mean:

- Competition founded on ecologically correct prices
- Introducing the top-runner approach for industry
- Retaining and expanding social standards
- Making provision for future raw materials shortages

Regulating financial markets in such a way that they perform their functions providing services to consumers and business.

These would be the main elements of a positive agenda for free trade that would meet with broad acceptance and achieve greater prosperity for all in the end. Are these ideas merely castles in the air? Not if the actors finally examine the framework of the real economy to ascertain whether it is fit for the future and draw their own conclusions from what they find. The USA and the EU would certainly have plenty of shared interests.

*Dieter Janecek is a Member of the German Bundestag and the Green Party's Spokesperson for Economic Policy. This article was originally published on Dieter Janecek's personal website and reappears here with kind permission from the author.*

April 15

## Europe wants its cheese names back, and some Mainers agree

**The EU says Parmesan, Gorgonzola and others are special to certain regions, and some Maine cheese-makers support the idea.**

By Whit Richardson [wrichardson@pressherald.com](mailto:wrichardson@pressherald.com)  
Staff Writer

If negotiators for the European Union have their way, shoppers in the United States may need to familiarize themselves with a host of new names for such common cheeses as feta and Gorgonzola. While large cheese-makers are battling the proposed restriction, many of Maine's cheese-makers already respect their Old World brethren's claim and market their cheese with other names.

At issue is whether EU cheese-makers have the right to protect the names of their specialty cheeses from being marketed in the United States as Parmesan, Roquefort, Gorgonzola, Gruyère and other easily recognized names. These are also called "geographical indications," or GIs.

The labeling issue is being discussed by trade representatives negotiating the Transatlantic Trade and Investment Partnership, the next summit of which is planned for May. The U.S. dairy industry is strongly opposing the restriction, but Maine's artisanal cheese-makers are surprisingly considerate of the Europeans' position.

"I completely agree with the Europeans that we should not use their cheese names. They have spent centuries developing their distinctive regional styles, and we should not steal them, or try to reproduce them," Caitlin Hunter, head cheese-maker at Appleton Creamery, a small creamery outside Camden, said in an email.

Hunter creates unique names for all her cheeses. Even if it would be easier to call her bloomy rind soft cheese a Camembert, she believes only cheese made in Normandy, France, from the milk of Normand cows who ate Normand grass should be called Camembert. Instead, she calls it "Camdenbert."

“It’s all about the taste of place – terroir – and I want my customers to taste the milks and cheeses of Maine, not Europe,” she said.

Heather Donahue, head cheese-maker at Balfour Farm in Pittsfield, agreed that names of some traditional cheese styles should be reserved for European producers. But when she heard the EU would also like to restrict the use of the term “feta,” which is a Greek cheese not tied to any particular region of that Mediterranean country, she had another opinion.

“Not cool,” she said last week after making a batch of feta, which she and her husband sell at farmers markets around the state.

Terms like “feta” are so generic at this point they shouldn’t be restricted, Donahue said. “There’s a difference between a very specific cheese and a style of cheese (such as feta),” she said.

Descriptions like “feta” help cheese-makers market their products to new customers, who are more willing to buy an artisanal cheese if it’s called something familiar, Donahue said.

“It makes it easier for the seller and the customer if there’s a common language of cheese terms to use,” she said. “If a customer is familiar with feta from the grocery store and they buy the same brand all the time and happen to come to a farmers market, you can say this is a feta-style cheese and they’ll get it.”

Roger Waite, an EU spokesman, said the proposed restrictions are about protecting traditional European producers who are preserving an ages-old heritage of cheese-making.

“We have seen a wide range of European products build up excellent reputations on the basis of quality, traditions, regional products and savoir faire,” Waite said in an email. “What the EU is seeking with the system of GIs is that consumers are not misled, or that others free-ride on the good reputation developed by the producers of the original product.”

Maine is a hotbed of artisanal cheese-making. With roughly 73 licensed cheese-makers, Maine has more of them than any state except New York, said Eric Rector, executive director of the Maine Cheese Guild and owner of the Monroe Cheese Studio. Maine's cheese-makers, however, only produce about 1 million pounds of cheese a year, which is the annual production of any one of Wisconsin's giant cheese-makers, Rector said.

Tyler Renaud, a cheese-maker at Silvery Moon Creamery in Westbrook, said that although renaming cheeses is doable, it does create more work for marketing products.

"If it comes down to it ... it will take a huge amount of consumer education when we do rename them," he said. "People recognize the (common labels), and the second you put a different name on it, you have a cheese you need to educate your customer base on."

At the root of the controversy is who determines what is generic. Some argue that Parmesan should only come from Parma, Italy, while others argue the term has become generic (think Kraft Foods and its ubiquitous green, cylindrical Parmesan containers) and shouldn't be restricted.

The EU has had some success in negotiating trade restrictions on common cheese names with other countries. In its trade deal with South Korea, for example, the EU secured restrictions on the use of the names asiago, feta, fontina and Gorgonzola unless they were produced by traditional cheese-makers in Europe. The deal also meant that any U.S. cheese-makers that export feta, for example, to South Korea can no longer do so using that name.

Last year, the EU negotiated a deal with Canada, although it has yet to be finalized. Canada agreed to place restrictions on its cheese-makers who make feta. Existing cheese-makers are "grandfathered," but any new cheese-makers have to use terms such as "feta-like" or "feta-style."

The EU, however, isn't fighting to restrict use of the terms "Camembert" and "Brie," which Waite conceded are generic by this point.

A group of U.S. senators, including Sen. Angus King, last month sent a letter to U.S. Trade Representative Michael Froman stating their opposition to the EU's proposal and

urging U.S. negotiators to “work aggressively” to counter it. The U.S. Dairy Export Council estimates that production of roughly \$4.2 billion worth of cheese by U.S. companies could be affected if the EU is successful.

Trevor Kincaid, a spokesman for the U.S. Trade Representative’s office, wouldn’t confirm specific demands by the EU, but did say the U.S. does not agree with the EU’s position on traditional cheese names.

“The United States and the EU have different points of view over the scope and level of intellectual property protection to be provided for products like cheese, including trademarks and the use of generic food terms that are used commonly by businesses and the public,” he said in a prepared statement. “Our conversations are in the early stages, but we are committed to increasing opportunity for U.S. businesses, farmers and workers through trade.”

Rector believes Maine cheese-makers are empathetic toward their European brethren because of similarities protecting the Maine lobster brand or Maine blueberries. Donahue, at Balfour Farm, does make a Brie-like cheese, but calls it Marcy. Hunter, at Appleton Creamery, makes her Camdenbert. Silvery Moon Creamery makes a style of cheese based on a Manchego, but calls it Moonchego.

“After all, Gouda, Brie, Parmesan, Camembert and many other protected cheese names actually refer to a geographic region, the same way that ‘Maine’ does when used to modify ‘maple syrup,’ ‘lobster,’ ‘blueberries,’ ‘potatoes,’ etc.,” Rector said in an email. “The use of those terms in the name of a product made outside the region defies logic.”

“Wasn’t ‘champagne’ once a generic name for sparkling wine from any producer at one time? Now that U.S. sparkling wine producers have stopped using that name for their products, have they really been harmed because they can’t use that protected name? I don’t think so,” Rector said. “Consumers now understand that Champagne is a sparkling wine from a specific region in France made in a specific manner, and other sparkling wines are not made in Champagne that way.

“Why would feta and Parmesan be any different?” he said. “You say ‘generic term’ and I say ‘lazy marketer.’ ”

Editorial | New York Times

## This Time, Get Global Trade Right

By THE EDITORIAL BOARD APRIL 19, 2014

<http://www.nytimes.com/2014/04/20/opinion/sunday/this-time-get-global-trade-right.html?hp&rref=opinion> (On line version has data charts)

Many Americans have watched their neighbors lose good-paying jobs as their employers sent their livelihoods to China. Over the last 20 years, the United States has lost nearly five million manufacturing jobs. In that same time, however, the prices that Americans pay for basic goods like T-shirts and televisions have fallen. The cost of clothing is down 8.2 percent since 1993, as “made in China” and “made in Bangladesh” labels have crowded out “made in U.S.A.” on the shelves of the local mall.

There is a national ambivalence about our trade of goods and services with the rest of the world, which has more than doubled in the last two decades. Americans want the benefits of trade — and they are potentially big and quite real, including opening up new markets to American cars and software — but they’re increasingly anxious about the downside, which includes closed factories and lower wages. The country needs to pursue new trade agreements, but this time we need to get the agreements right.

This page has long argued that removing barriers to trade benefits the economy and consumers, and some of those gains can be used to help the minority of people who lose their jobs because of increased imports. But those gains have not been as widespread as we hoped, and they have not been adequate to assist those who were harmed. As the Obama administration negotiates two big trade agreements — one with 11 countries along the Pacific Ocean and the other with the European Union — it is appropriate to take stock of what we have learned in the 20 years since the passage of the North American Free Trade Agreement and use that knowledge to design better agreements.

To gain the support of a divided Congress and public, the administration must ensure that new agreements are much stronger than Nafta and other pacts. President Obama, who criticized the agreement with Canada and Mexico as a candidate in 2008, promised that his negotiations would avoid a race to lower costs and standards by requiring that countries adhere to common regulations in areas like labor rights, environmental protection and patents. Living up to that promise should be one of his highest priorities.

If done right, these agreements could improve the ground rules of global trade, as even critics of Nafta like Representative Sander Levin, Democrat of Michigan, have argued. They could reduce abuses like sweatshop labor, currency manipulation and the senseless destruction of forests. They could weaken protectionism against American goods and services in countries like Japan, which have sheltered such industries as agriculture and automobiles.

The Pacific agreement, known as the Trans-Pacific Partnership, could also encourage China, which is not part of the talks, to reconsider its currency and labor policies to avoid being at a disadvantage. (The participants are Vietnam, Malaysia, Japan, Australia, Canada, Mexico,

Singapore, New Zealand, Chile, Peru and Brunei.) And a pact with the European Union could harmonize overlapping regulations to reduce the cost of doing business and increase competition. Both pacts could aid American foreign policy by strengthening alliances in Asia and Europe.

**WELCOMING BUSINESS, NOT THE PUBLIC** One of the biggest fears of lawmakers and public interest groups is that only a few insiders know what is in these trade agreements, particularly the Pacific pact.

The Obama administration has revealed so few details about the negotiations, even to members of Congress and their staffs, that it is impossible to fully analyze the Pacific partnership. Negotiators have argued that it's impossible to conduct trade talks in public because opponents to the deal would try to derail them.

But the administration's rationale for secrecy seems to apply only to the public. Big corporations are playing an active role in shaping the American position because they are on industry advisory committees to the United States trade representative, Michael Froman. By contrast, public interest groups have seats on only a handful of committees that negotiators do not consult closely.

That lopsided influence is dangerous, because companies are using trade agreements to get special benefits that they would find much more difficult to get through the standard legislative process. For example, draft chapters from the Pacific agreement that have been leaked in recent months reveal that most countries involved in the talks, except the United States, do not want the agreement to include enforceable environmental standards. Business interests in the United States, which would benefit from weaker rules by placing their operations in countries with lower protections, have aligned themselves with the position of foreign governments. Another chapter, on intellectual property, is said to contain language favorable to the pharmaceutical industry that could make it harder for poor people in countries like Peru to get generic medicines.

Another big issue is whether these trade agreements will give investors unnecessary power to sue foreign governments over policies they dislike, including health and environmental regulations. Philip Morris, for example, is trying to overturn Australian rules that require cigarette packs to be sold only in plain packaging. If these treaties are written too loosely, big banks could use them to challenge new financial regulations or, perhaps, block European lawmakers from enacting a financial-transaction tax.

**SEEKING THE REAL SOURCE OF JOB LOSS** Could these agreements lead to further job losses and exacerbate income inequality in the United States? Many critics are legitimately concerned about more outsourcing of jobs, and there is no doubt that trade, along with automation and financial deregulation, has contributed to income inequality.

But it's important to remember that our trade with trade-agreement countries, like Mexico, is much more balanced than our trade with China. Those countries buy more American goods and services than they would without an agreement, sending money and jobs back in this direction.

A study published last year blamed increased imports from China for 44 percent of the decline in manufacturing employment from 1990 to 2007. People who lost those jobs were more likely to stop seeking work or to find lower-wage jobs in other industries, suggesting that government programs to retrain workers hurt by trade are inadequate. A second paper by the same scholars

concluded that the negative impact of imports from Mexico and Central American nations with which the United States has agreements were “economically small and statistically insignificant.”

It’s easy to point the finger at Nafta and other trade agreements for job losses, but there is a far bigger culprit: currency manipulation. A [2012 paper](#) from the Peterson Institute for International Economics found that the American trade deficit has increased by up to \$500 billion a year and the country has lost up to five million jobs because China, South Korea, Malaysia and other countries have boosted their exports by suppressing the value of

**HOW TO WRITE A BETTER AGREEMENT** The trade agreements the Obama administration is negotiating provide a chance for the United States to press countries to stop manipulating their currencies. The administration appears to be afraid that raising the issue could scuttle the talks. It’s time the administration stiffened its spine.

The president also needs to make clear to America’s trading partners that they need to adhere to enforceable labor and environmental regulations. This would level the playing field for American workers and improve the lives of tens of millions of workers in developing countries.

The Obama administration also needs to do much more to counter the demands of corporations with those of the public interest. Consumer and workers groups should have been on the same industry advisory committees. And Mr. Froman, the trade representative, must make clear that these agreements will allow countries to adopt regulations without the threat of a lawsuit from powerful businesses. On patents, the agreements should not cut off developing countries’ access to lifesaving generic medicines.

In recent months the debate about trade, and the Pacific agreement in particular, has become increasingly polarized. Senior Democrats like the Senate majority leader, [Harry Reid](#), and the House minority leader, [Nancy Pelosi](#), have come out against granting the president trade promotion authority, under which Congress agrees to vote up or down on agreements without amendments.

To a large extent, the administration has only itself to blame. By keeping secret so much information about trade negotiations, which have ceased to be purely about trade matters like tariffs and quotas, the government has made itself a target for criticism. Mr. Obama and Mr. Froman argue that their critics have misunderstood or misrepresented their intentions. But that is precisely why the president should provide answers to the questions people have raised about these agreements. It is time for him to make a strong case for why these new agreements will be good for the American economy and workers.

But it’s important to remember that our trade with trade-agreement countries, like Mexico, is much more balanced than our trade with China. Those countries buy more American goods and services than they would without an agreement, sending money and jobs back in this direction.

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## **WHY TRADE PROMOTION AUTHORITY IS ESSENTIAL FOR U.S. AGRICULTURE AND THE TRANSATLANTIC TRADE AND INVESTMENT PARTNERSHIP**

**April 2014**

A Transatlantic Trade and Investment Partnership (T-TIP) agreement will remove obstacles that have hampered U.S. agricultural exports to the European Union (EU).

### **FARMERS AND RANCHERS DEPEND ON EXPORTS**

U.S. agricultural producers depend on exports, which generate approximately 20 percent of their farm income. America's farmers and ranchers are the most productive in the world, but foreign market expansion is critical to their continued success.

### **U.S. AGRICULTURAL EXPORTS TO EUROPE NEED A BOOST**

The EU imported nearly \$135 billion of agricultural products from global sources in 2013, up more than 150 percent from 2000. Yet U.S. agricultural exports to the EU grew by only 82 percent during this period while our exports to the world grew by 181 percent. U.S. agricultural exports to the EU are not keeping pace with either EU market growth or with overall U.S. export growth.

The United States faces increased international competition in the EU. This is partly because the EU has aggressively pursued bilateral preferential trade agreements with other countries. U.S. market share for agricultural products in the EU has fallen from 15 percent in 2000 to 9 percent in 2013.

The EU's purchases of many key U.S. commodities and products have fallen as non-tariff barriers have been erected and competition from other international suppliers has increased. Between 2000 and 2013, U.S. exports of:

- Grain and feed fell from 4.3 million metric tons to 2.2 million metric tons;
- Oilseeds and products fell from 12 million metric tons to 5.3 million metric tons;
- Poultry meat and products fell from 332,000 metric tons to 77,000 metric tons; and
- Fresh fruit fell from 187,000 metric tons to 88,000 metric tons.

A successful T-TIP would eliminate tariff barriers, resolve disagreements over existing unwarranted non-tariff barriers and reduce costs associated with regulatory differences.

## **TARIFF BARRIERS PUT U.S. AGRICULTURAL EXPORTS TO EUROPE AT A DISADVANTAGE**

The EU's average agricultural tariff is 30 percent, while the average U.S. agricultural tariff is only 12 percent.

The impact of high EU agricultural tariffs on U.S. exports is exacerbated by the fact that other countries have preferential tariff access. The EU has already concluded free trade agreements with 35 countries and announced negotiations with 12 more, giving key competitors like Canada an advantage over U.S. exporters.

T-TIP provides an opportunity to knock down EU tariffs on key U.S. exports such as meat, dairy products, rice and processed foods.

## **NON-TARIFF BARRIERS UNFAIRLY HINDER U.S. AGRICULTURAL EXPORTS TO THE EU**

The EU's non-tariff barriers to U.S. agricultural products must also be addressed in the negotiations.

- Long delays in reviews of biotech products create barriers to U.S. exports of grain and oilseed products.
- U.S. meat exports are blocked by a number of barriers such as a ban on the use of antimicrobial treatments.
- Burdensome and complex certification requirements hinder access for many U.S. processed foods, animal products and dairy products.

The U.S. government is proposing strong regulatory provisions that would build on World Trade Organization commitments and improve transparency and ensure that regulatory actions have a sound basis.

## **TPA STRENGTHENS OUR NEGOTIATORS**

Trade Promotion Authority signals to our European trading partners that Congress and the Administration stand together on the high standards our negotiators are seeking at trade talks. Trade Promotion Authority will help U.S. negotiators get the best deal possible.

*For more information about Trade Promotion Authority and its importance to U.S. agriculture, please contact FAS Legislative Affairs at (202) 720-7115 or [LPA@fas.usda.gov](mailto:LPA@fas.usda.gov).*

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<http://www.bbc.com/news/business-27107354>

4/24/14

## Obama, Abe and a high-stakes trade deal

By Linda Yueh

Japanese Prime Minister Shinzo Abe and US President Obama are looking to iron out their differences over the ambitious Trans-Pacific Partnership trade deal

Trade deals don't usually take centre stage at summits among world leaders. But the Trans-Pacific Partnership (TPP) is at the forefront of US President Barack Obama's first state visit to Japan.

Both leaders hope it will serve their own purposes: it is how President Obama can make his so-called "Asia Pivot" more concrete than just an aspiration, and how Japanese Prime Minister Shinzo Abe can put some substance to the structural reforms within his ambitious plan dubbed "Abenomics".

Firstly, the US and Japan are the main negotiators of the TPP, which includes 10 other nations from around the Pacific Rim: Brunei, Malaysia, Vietnam, Singapore, Australia, New Zealand, Canada, Mexico, Chile and Peru.

These countries account for nearly 60% of global GDP and over a quarter of world trade.

In other words, it would create the biggest free trade area in the world if successfully concluded, and it's estimated it would add over \$200bn (£119bn) per year to world GDP by 2025.

The US calculates that the TPP would add \$305bn in exports per year globally, with nearly half accounted for by an increase in US exports by an additional \$123.5bn.

### The Pivot

#### "Start Quote

The TPP is estimated to raise Japanese per capita GDP by about 1.5%, which would nearly double the slow pace of expansion the country has experienced in the past two decades"

End Quote

So, if this were solely an economic matter, excluding China - the biggest market in Asia - wouldn't be sensible. Yet, the TPP does just that.

As the US continues to be involved in crises in the Middle East and Ukraine - including negotiating yet another free trade agreement with the EU - there is little to show thus far for the Asia Pivot that had been described as the centrepiece for Obama's second term.

President Obama's Asia Pivot isn't supposed to be solely about geo-politics, but also a deeper rebalancing towards fast-growing Asia to boost America's economy. Securing preferential access to Asia's markets benefits US companies over Chinese firms that won't be part of the market-opening measures of the TPP.

This way, excluding China doesn't look just like politics or even containment, but rather that the world's second largest economy doesn't yet have the market-based economy, such as a flexible exchange rate or open capital accounts, to be part of the new free trade area.

The end result of excluding China is the same, but the framing looks more appealing.

## **The second opening of Japan**

Japan first opened to the West in the 1800s, which ushered in a period of growth

For Japan, the stakes are even higher.

The long-awaited "third arrow" of Abenomics - or the structural reforms to increase competitiveness that ultimately are what raises growth - has been somewhat lacking.

In an **op-ed piece**, headlined "The Second Opening of Japan", Prime Minister Abe says that the Pacific Rim economies encompassed by the TPP is a growth centre which "will continue to propel Japan's economy for the foreseeable future".

The TPP is estimated to raise Japanese per capita GDP by about 1.5%, which would nearly double the slow pace of expansion the country has experienced in the past two decades.

It would also raise per capita growth to over 2%, essentially lifting the country out of its long stagnation.

## **The two giants and the farmers**

Japan has faced significant opposition from farmers over its plans to join the TPP

There are certainly high expectations, but it doesn't mean that the process will be smooth sailing or that the TPP will be concluded any time soon.

### **"Start Quote**

The TPP could help to provide political cover for Mr Abe's intended economic reforms"

End Quote

Of the nations negotiating the TPP, the only one that doesn't already have a free trade agreement (FTA) with the US is Japan. So, the two nations - in addition to being the main players — are the key and also the main obstacles.

One academic has described the TPP negotiations as being between "two giants and the rest".

The reason why there hasn't been an FTA between the world's biggest and third largest economies - or even when Japan was the second largest - is because of protectionism of key sectors.

In Japan, five "sacred" agricultural products of rice, beef/pork, dairy, wheat, and sugar are protected. For example, Japan has a 778% tariff on imported rice.

Conversely, the US protects its car market - and the Japanese are demanding more access.

## **Reform agenda**

These are perennial issues, but the TPP could help to provide political cover for Mr Abe's intended economic reforms.

He is trying to abolish a policy which has been in place since 1971, that keeps rice prices high and has cost the economy an estimated 8 trillion yen (\$78bn). The TPP could even force Japan to cut its tariff on imported rice.

Of course, agriculture in the US isn't without its share of problems. The Americans are also looking to reform their own farm bill which is set to cost \$1 trillion over a decade.

The top 10% of the largest farm businesses receive 75% of the government subsidies, while average farm household incomes exceed the average by a whopping 25%.

It's not hard to see why agricultural subsidies are often called subsidies for the wealthy.

## **Tough sell and positioning**

So far, trade negotiations have come to an impasse, raising the possibility that there won't be a big announcement during the Obama-Abe summit.

But it is in the economic interests of both the Americans and the Japanese to get an agreement done.

By premising so much of the Asia Pivot and Abenomics on the TPP, the stakes are certainly high.

As the politics are also overlaid with geo-politics vis-a-vis China, it will not only be a tough sell but a tricky one to position.

Huffington Post

[http://www.huffingtonpost.com/2014/04/24/trans-pacific-partnership-companies-tpp\\_n\\_5202060.html](http://www.huffingtonpost.com/2014/04/24/trans-pacific-partnership-companies-tpp_n_5202060.html)

## Why Corporations Are Freaking Out About Obama's Big Trade Deal

Posted: 04/24/2014 8:00 am EDT Updated: 04/24/2014 11:03 am EDT

WASHINGTON -- Steve Biegun is not exactly a left-wing radical. During the Bush years, he served as an adviser to Secretary of State Condoleezza Rice and Senate Majority Leader Bill Frist, a Republican from Tennessee. When John McCain named Sarah Palin as his presidential running mate in 2008, the campaign brought on Biegun to help the new vice presidential contender bone up on conservative foreign policy.

But as the current head of Ford Motor Co.'s international lobbying operations, Biegun now finds himself allied with environmental activists, labor unions, and some of the most progressive Democrats in Congress -- all raising strong objections to President Barack Obama's proposed Trans-Pacific Partnership trade deal, or TPP.

"When I came here, we supported every trade agreement, and not a single one worked for us," Biegun told HuffPost in March. "I don't know how you ask somebody who puts in a hard day at an automotive plant to support a free trade agreement that allows another country to cheat them. Because that's what it is. It's cheating."

Biegun is talking about currency manipulation, particularly by Japan, the world's third-largest economy. By lowering the value of the yen, the Japanese government can make its own goods cheaper than those of international competitors, without harming the living standards of Japanese workers. Currency cleverness is a major reason why the U.S. exported at total of less than 50,000 cars to Japan during Obama's entire first term, even though Japan doesn't impose tariffs on U.S. vehicles. Without language to prevent currency manipulation, Ford won't support the TPP.

"Japanese companies make good cars," Biegun says. "But they're not *that* good."

It's not unusual for major corporations to wage trade battles in Washington. It's unusual for them to lose -- especially with backing from unions and a bipartisan congressional coalition that includes a majority of members of the president's own party. And a currency policy doesn't seem to be going anywhere. Rep. Sandy Levin (D-Mich.) the top Democrat on the House Ways and Means Committee -- the critical trade panel -- has prevented streamlining the TPP through Congress, based on currency considerations. And last week, Rep. Michael Michaud (D-Maine) sent a letter to the administration seeking action on currency manipulation. His office said he hasn't heard back, and doesn't expect to.

As Obama travels to Asia to shore up support for the TPP, something strange is happening on Capitol Hill. Business groups accustomed to winning in Washington are seeing their interests trumped by foreign policy considerations that at times appear confused or incoherent.

"Geopolitics is an overriding consideration in a lot of these things," says Biegun. "Do we want Japan to have a fully restructured and open economy that is beneficial to American exporters ... or do we just want Japan to know we love them by turning our automobile market into another form of foreign aid?"

Trade pacts are typically a hybrid of economic policy and state diplomacy. But the Obama administration's quest for the diplomatic symbolism of a TPP deal now seems increasingly divorced from its economic consequences.

It's not just a car thing. On Monday, 64 members of Congress sent a letter to the top U.S. trade negotiator urging him to get better TPP terms for American farmers, after [Japanesemedia](#) reports [indicated](#) that the U.S. would let Japan keep high tariffs on wheat and rice. U.S. agriculture is [dominated](#) by behemoths like Monsanto, Tyson and Cargill, but most of those companies work with smaller farmers in hundreds of congressional districts. As a result, the list of signatures on the letter spans the full House ideological spectrum, from liberal firebrand Rep. Alan Grayson (D-Fla.) to tea partier Rep. Steve King (R-Iowa).

"We are concerned Japan, a member of TPP, has not yet made a comprehensive offer on market access," the letter reads. "We now seek assurances from you that the U.S. will not close TPP negotiations ... unless Japan has agreed to eliminate tariff and non-tariff trade barriers to agriculture."

The Office of the U.S. Trade Representative told HuffPost it would respond to the members of Congress who wrote the agriculture letter, and referred questions about currency issues to the Treasury Department, which declined to comment.

For 25 years, conventional Washington wisdom has held that good diplomacy includes free trade deals like the North American Free Trade Agreement and the World Trade Organization treaties. These pacts, the thinking goes, discourage military conflict by making nations dependent on each other for economic prosperity, and by transferring economic power from governments to corporations.

This perspective isn't unique to Obama or to Democrats. Rep. Paul Ryan (R-Wis.) once helped shepherd a free trade pact with Bahrain through Congress, despite the country's notorious human rights abuses. Ryan's rationale was that expanding trade with the U.S. would encourage democracy in Bahrain.

"It's the carrot approach," [Ryan said](#) in 2009. "This is a way to help expand democratic capitalism, because through each of these trade agreements we require things like the rule of law and forcible contracts, women's rights, advancements towards openness, transparency and democracy."

Today, Bahrain remains a human rights hellhole, albeit one with tax-free access to U.S. markets. But a more frightening consequence of this foreign policy framework was raised in January, when Japanese Prime Minister Shinzo Abe addressed the World Economic Forum in Davos, Switzerland.

Abe compared the current relationship between China and Japan to the state of play between the U.K. and Germany in 1914, before the outbreak of World War I. In the case of the U.K. and Germany, Abe said, countries that had very deep economic ties ended up going to war with each other.

"The system we have now ... has seen massive consolidation at almost every level," says Barry Lynn, a senior fellow at the nonpartisan New America Foundation. "When you go down the supply chain, you see massive consolidation, ... so if you have a physical disaster, a natural disaster, an epidemic or a political problem that breaks the flow of trade, then the whole system doesn't work."

In other words, international economic codependence may discourage some small conflicts. But the network of foes and allies doesn't guarantee peace in a crisis, and the web of trade relationships makes military conflicts and diplomatic standoffs more complex.

Under Obama, the U.S. has been more aggressive than under any other U.S. president about trade enforcement -- particularly with China, bringing multiple important cases before the WTO. And the administration has made no secret about making the TPP a central tenet of Obama's "Pivot to Asia," intended to counterbalance the economic and political power that China now exercises.

Meanwhile, a dispute between Japan and China over which nation should control a few uninhabited islands in the South China Sea has resurrected a mutual hostility that dates back to World War II. Japan is by far the biggest fish in the pond for TPP economic policy, with an annual economic output higher than every other country involved in the talks combined, excluding the U.S. With the China-Japan tensions unresolved, the Obama administration appears to be letting Japan get what it wants from TPP.

"You'll see the foreign policy community always applauding free trade agreements," Biegun says. "That should be a hint, it's not about trade. The foreign policy community is about giving gifts to other countries, helping friends and allies."

It's a dynamic familiar to progressive critics of Obama's negotiations with congressional Republicans, who say the president's eagerness to secure a bipartisan deal has made him unable to defend important policy priorities of the Democratic Party.

But for critics of the past quarter-century of trade policy, the current state of TPP talks is more frustrating. The administration seems to be doubling down on the foreign policy failures that helped fuel today's quagmire.

"All those people's livelihoods were traded away a generation ago for peace and prosperity," Lynn says. "But what has actually happened is that they have traded away peace and prosperity and taken us to the brink."

<http://www.ft.com/cms/s/0/4afbfb2-cc3e-11e3-bd33-00144feabdc0.html?siteedition=uk#axzz2zhUQg0Az>

Financial Times

April 25, 2014 11:02 am

# Obama warns South Korea over treatment of US exporters

By Simon Mundy in Seoul

US President Barack Obama on Friday opened a visit to Seoul with an apparent warning to South Korea that its treatment of US exporters risks jeopardising its hopes of entering a pan-Pacific trade deal.

A growing number of US exporters have complained of an alleged failure by South Korean customs authorities to respect the South Korea-US trade agreement that came into force in March 2012.

Some US companies are undergoing investigations into the “country of origin” status of their products, which could force them to repay millions of dollars in tariffs if they are deemed ineligible to benefit from the trade deal.

In a written interview published in the JoongAng Ilbo newspaper, Mr Obama said he would discuss with South Korean President Park Geun-hye “issues we need to address” to allow the proper functioning of the agreement.

“We’re working . . . on bilateral issues to make sure that South Korea could eventually meet the high standards of the TPP [Transpacific Partnership],” Mr Obama said. “In fact, one of the best ways to show that South Korea could do so is by working with us to fully implement the US-Korea Free Trade Agreement.”

Mr Obama travelled on Friday from Tokyo to Seoul, where he was due to hold a meeting with Ms Park before a joint press conference and working dinner.

Sources in Washington say that the White House had not initially planned to include South Korea in this visit to Asia. It reportedly did so only after warnings that a visit to Japan and not South Korea could further complicate relations between the three countries, as Seoul bristles at what it deems Japan’s refusal to take responsibility for wartime atrocities.

South Korea has repeatedly expressed interest in joining the TPP: a prospective trade grouping of 12 nations that is the object of negotiations led by the US. “It’s difficult to see a new candidate joining the negotiations at this time,” Mr Obama said.

His remarks follow a warning about incomplete implementation of the trade agreement from vice-president Joe Biden during a December visit to Seoul. The US government is under pressure from critics who say that the trade deal with South Korea has not helped the US economy, and that this bodes ill for the TPP, which includes many similar measures.

Korea’s trade ministry declined to comment on Mr Obama’s remarks.

People close to the situation say that customs authorities are investigating whether McDonald's can prove its french fries are made from US-grown potatoes, while exporters of agricultural products, aerospace parts and petrochemicals are also being probed.

"The documentation being requested is completely out of line with international norms," Amy Jackson, chief executive of the American Chamber of Commerce in Seoul, said in November.

However, the authorities have started to allay these concerns by giving positive findings in investigations into companies including Toyota and an exporter of orange juice.

In his interview, Mr Obama also noted speculation about a fourth nuclear test by North Korea, after satellite photography indicated possible preparations at the Punggye-ri test site.

"Pyongyang will gain absolutely nothing from another nuclear test except to deepen its own isolation from the global community," he said.

### **German MEP Doubts TTIP Deal Before 2017, Urges Rethink Of Agenda**

Posted: April 24, 2014

A leading European Parliament Green Party lawmaker this week voiced strong doubts that U.S.-EU trade talks will conclude during President Obama's term in office and warned that the negotiating agenda must be overhauled if the trade deal is to be approved by the next European Parliament.

Reinhard Buetikofer warned that the U.S. and EU must shift away from a focus in the Transatlantic Trade and Investment Partnership (TTIP) on smoothing out longstanding regulatory differences, and toward constructive cooperation on issues like "e-mobility," or electric vehicles and clean transportation. "If it's not reframed, it's going to hit the wall," he said in an April 23 interview with *Inside U.S. Trade* in Washington.

Buetikofer, who also gave a public speech at the Johns Hopkins University campus in Washington, said the broad scope of the trade talks and the political calendars on either side of the Atlantic make it impossible for TTIP to conclude before 2017. President Obama's term ends in January of that year.

He based his predictions on TTIP on the widely held observation that Obama is unlikely to secure renewal of Trade Promotion Authority (TPA) before the November midterm elections. He also speculated that if Republicans take control of the Senate -- a strong possibility -- they would be loathe to hand Obama TPA and thereby give him the ability to score a political win by closing out a major trade deal.

"Why would they hand a sitting Democratic president the great opportunity of showing off he's able to deliver a major trade deal? [Trade is] a core issue that the Republicans have always tried to cash in on. Why would they hand it over to their Democratic opposition?" Buetikofer stressed. Buetikofer is a German member of the European Parliament who participates in the Transatlantic Legislators' Dialogue, and drafted a highly critical position paper on TTIP that was adopted by the European Green Party in February.

On the EU side, the European Commission will see a "changing of the guard" at the end of this year after its current five-year term ends in October, which will likely slow the progress of the negotiations into 2015, Buetikofer said. Then the U.S. presidential elections will take place in 2016, and heightened political sensitivity around that time makes it unlikely that the trade deal will be concluded then, he said.

Buetikofer said the European Commission entered into the talks hoping for a much quicker timeframe for concluding in 2014 or 2015 at the latest. But he said EU officials now recognize this is not possible, and that he believes similar sentiments prevail in the White House -- although he cautioned that he had not been told this directly.

"Increasingly I'm hearing voices over here and over there that [officials] are rethinking their timeframe. And so I think that's not an exceptional perception any more," he said.

"I haven't heard [U.S. Trade Representative] Mike Froman talking about one tank of gas that much lately," the European lawmaker added, referring to an analogy Froman frequently invoked early in the TTIP negotiations, saying that he hoped to finish them "on one tank of gas."

In a related development, some U.S. private-sector sources have speculated that there is a recognition in the White House that TTIP will not be concluded during Obama's term and therefore it is a lesser priority for the administration than the Trans-Pacific Partnership negotiations.

**Buetikofer said he believes there is a "clear-cut majority" among the EU public** and the European Parliament who generally support the idea of TTIP. But he said there are persisting fears about the specifics of the deal's objectives that could lead to its failure. He cited a recent poll by the Pew Research Center and Bertelsmann Foundation that found Americans and Germans have particular distrust for each others' regulatory standards (*Inside U.S. Trade*, April 18).

Buetikofer said he believes that there are three overlapping -- and sometimes contradictory -- agendas revolving around TTIP: a "common sense" agenda of working cooperatively to create jobs through trade; a strategic U.S.-EU alliance agenda; and what he called the "corporate lobbyist dreams-come-true" agenda.

He characterized the latter as multinational companies seeking to accomplish everything they have failed to do over the last 25 years and watering down EU regulatory safeguards, such as its system for approving genetically modified organisms. Buetikofer said the latter narrative is dominating the public's perception of TTIP in the EU, and made clear that he also worries about the possible implications of that agenda.

"Realistic people would start from the assumption that there must be good reason why all these wishes haven't come true over such a long period. And maybe if you want to harvest the low-hanging fruit from the first agenda, and promote the geopolitical agenda, it might not be the wisest approach to let several corporate interests take the whole TTIP hostage, [and] hijack the process for their narrow means and goals," Buetikofer said. "But that's what's happening, and that is what is dominating European perceptions."

He predicted the new parliament -- which will be constituted in July after the elections in May -- will likely usher in around 100 populist members out of a total 751 seats, many of whom are certain to be "economic nationalists" opposed to trade liberalization.

That contingent, combined with the radical left and a strengthened Socialists & Democrats group, which has also been critical of TTIP as currently framed, increases the risk that TTIP could be voted down by the legislature, he said.

Buetikofer is running for reelection and hinted that he may seek a seat on the parliament's International Trade Committee. In the last parliament, he sat on the Industry, Research and Energy Committee and was a substitute member on the Committee on Foreign Affairs.

The Greens group was the fourth-largest political party in the last parliament, after the conservative European People's Party, the Socialists & Democrats, and the Alliance of Liberals and Democrats for Europe.

**The Council of State Governments**

**Knowledge Center**

# **From the Expert: A Transatlantic Partnership for Tomorrow's World**

Wednesday, March 5, 2014 at 09:38 AM

By **Vital Moreira**, Chair of European Parliament's Committee on International Trade

The Transatlantic Trade and Investment Partnership represents an extraordinary opportunity to stimulate economic growth and job creation in both the European Union and the United States. Not only that, this ambitious venture has the potential to reshape our bilateral trade and investment relations and to develop global rules on trade for years to come.

There is, therefore, more at stake than just a regular free trade agreement. This 12-nation agreement with the trans-Pacific region and the European Union is expected to be a game changer.

The EU and the U.S. have the largest and the most integrated economic relationship in the world, but there is still great scope for exploiting its full potential. First of all, we still need to dismantle traditional tariff barriers and to make headway on market access issues in other areas, such as public procurement, services and investment. We already have very low tariff arrangements in place, but a number of tariff peaks remain.

Second, our main focus in the negotiations has to be to tackle the so-called "behind the border" barriers, such as differences in regulations, standards and certifications.

Third, we need to work together on developing global rules and standards in a number of areas where they do not exist or are insufficient. For example, sustainable development, customs and trade facilitation, competition and state-owned enterprises, raw materials and energy, small and medium-sized enterprises and transparency.

This partnership makes a lot of sense and both parties have a great deal to win with an ambitious trade and investment agreement, but negotiations will not be easy. As close as we are, some well-known differences of interests, of public visions and constitutional mismatches exist. Just take public procurement as an example: The EU will look for substantially enhanced access to the U.S. market, both at the federal and at state levels, as U.S. companies do not face the same level of market constraints at the state level in the EU.

Political decision-makers, stakeholders and the public in general need, first and foremost, to be aware of the huge benefits and opportunities offered by this agreement and then to commit themselves, throughout the negotiations, in order to reach a successful conclusion of the agreement. It is also important to remain realistic; not all regulatory divergences between the EU and the U.S. can be eliminated at a stroke. The partnership should be designed as a "living agreement" that will evolve over time into greater regulatory convergence.

The most sensitive issues around EU-U.S. trade talks and consultation with stakeholders, such as the one recently raised in the EU on investor-to-state dispute settlement, need to be addressed in an open and convincing way. Both sides have been clearly stating that the agreement is not about deregulation and it is not intended to lower levels of food safety or consumer protection. This means there will be no compromise whatsoever on the existing high levels of protection and that each side will maintain the right to regulate environmental, safety and health issues.

The Transatlantic Trade and Investment Partnership has a broader dimension than a normal free trade agreement and public support will be crucial to make this initiative a reality. The partnership is a two-way street, a give-and-take, but there are two things this agreement cannot change: our constitutions and the minds of our citizens. Sensitivities and differences, profound as they might be, should not get in the way of the big-picture benefits that will result from these negotiations.

Ultimately, with the Transatlantic Trade and Investment Partnership, we will work together for growth and jobs, as well as for asserting a common transatlantic leadership in tomorrow's world.

Boston Globe 3/12/14

## EU seeks to halt use of famed cheese names for US foods

By **Mary Clare Jalonick**

| ASSOCIATED PRESS  
MARCH 12, 2014

**Kraft would have to stop using the label Parmesan on its pasta topping if Europe gets its way in ongoing trade talks.**

WASHINGTON — Would Parmesan by any other name be as tasty atop your pasta? A ripening trade battle might put that to the test.

As part of trade talks, the European Union wants to ban the use of such European names as Parmesan, feta, and Gorgonzola on cheese made in the United States.

The argument is that the American-made cheeses are shadows of the original European varieties and cut into the sales and identity of the European cheeses. The Europeans say Parmesan should come only from Parma, Italy, not from those familiar green cylinders US companies sell. Feta should be only from Greece, even though feta isn't a place. The European Union argues it "is so closely connected to Greece as to be identified as an inherently Greek product."

So, a little "hard-grated cheese" for your pasta? It doesn't have quite the same ring as Parmesan.

US dairy producers, cheesemakers, and other food companies are fighting the idea, which they say would hurt the \$4 billion domestic cheese industry and confuse consumers.

"It's really stunning that the Europeans are trying to claw back products made popular in other countries," says Jim Mulhern, president of the National Milk Producers Federation, which represents dairy farmers.

The European Union would not say exactly what it is proposing or whether it will be discussed this week at a new round of talks on an EU-US free trade agreement.

European Commission spokesman Roger Waite would say only that the question "is an important issue for the EU."

That's clear from recent agreements with Canada and Central America, where certain cheese names were restricted unless the cheese came from Europe. Under the Canadian agreement, for example, new feta products manufactured in Canada can only be marketed as feta-like or feta-style, and they can't use Greek letters or other symbols of Greece.

The European Union is expected to make similar attempts to restrict marketing of US-made cheeses, possibly including Parmesan, Asiago, Gorgonzola, feta, fontina, Muenster, Neufchatel, and Romano.

And it may not be just cheese. Other products could include bologna, Black Forest ham, and Valencia oranges.

The trade negotiations are important for the EU because Europe is trying to protect its share of agricultural exports and pull itself out of recession. The ability to exclusively sell some of the continent's most famous and traditional products would prevent others from cutting into those markets.

A bipartisan group of 55 senators wrote to US Trade Representative Michael Froman and Agriculture Secretary Tom Vilsack this week, asking them not to agree to any such EU proposals.

Companies that mass-produce cheese are also fighting. Kraft Foods Group says cheese names are considered generic in the United States. "Such restrictions could not only be costly to food makers, but also potentially confusing for consumers," spokesman Basil Maglaris says.

**USTR Newsletter; March 14, 2014**

**March 4** - United States Trade Representative Michael Froman issued the following statement regarding President Obama's 2014 Trade Policy Agenda that was delivered to Congress. USTR is the lead agency responsible for the development and implementation of the President's Trade Policy Agenda. USTR also sends the Annual Report on trade developments over the past year, including in the World Trade Organization.

**"President Obama's trade strategy for 2014 is driven by a commitment to create jobs, promote growth, and strengthen the middle class through the creation of new export opportunities for American farmers, workers, and businesses,"** said Ambassador Froman. **"In the coming year, USTR will continue to execute the President's trade vision that relies on opening markets, leveling the playing field for American workers and producers, and fully enforcing our trade rights around the world."**

Complete Text of USTR 2014 Trade Policy Agenda and 2013 Annual Report:

<http://www.ustr.gov/sites/default/files/2014%20Trade%20Policy%20Agenda%20and%202013%20Annual%20Report.pdf>

# New York Times

March 15, 2014

## On the Wrong Side of Globalization

By **JOSEPH E. STIGLITZ**



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[The Great Divide](#) is a series about inequality.

Trade agreements are a subject that can cause the eyes to glaze over, but we should all be paying attention. Right now, there are trade proposals in the works that threaten to put most Americans on the wrong side of globalization.

The conflicting views about the agreements are actually [tearing at the fabric of the Democratic Party](#), though you wouldn't know it from President Obama's rhetoric. In his State of the Union address, for example, he blandly referred to "new trade partnerships" that would "create more jobs." Most immediately at issue is the Trans-Pacific Partnership, or TPP, which would bring together 12 countries along the Pacific Rim in what would be the largest free trade area in the world.

Negotiations for the TPP began in 2010, for the purpose, [according to the United States Trade Representative](#), of increasing trade and investment, through lowering tariffs and other trade barriers among participating countries. But the TPP negotiations have been taking place in secret, forcing us to rely on [leaked drafts](#) to guess at the proposed provisions. At the same time, Congress [introduced a bill](#) this year that would grant the White House filibuster-proof fast-track authority, under which Congress simply approves or rejects whatever trade agreement is put before it, without revisions or amendments.

Controversy has erupted, and justifiably so. Based on the leaks — and the history of arrangements in past trade pacts — it is easy to infer the shape of the whole TPP, and it doesn't look good. There is a real risk that it will benefit the wealthiest sliver of the American and global elite at the expense of everyone else. The fact that such a plan is under consideration at all is testament to how deeply inequality reverberates through our economic policies.

Worse, agreements like the TPP are only one aspect of a larger problem: our gross mismanagement of globalization.

Let's tackle the history first. In general, trade deals today are markedly different from those made in the decades following World War II, when negotiations focused on lowering tariffs. As tariffs came down on all sides, trade expanded, and each country

could develop the sectors in which it had strengths and as a result, standards of living would rise. Some jobs would be lost, but new jobs would be created.

Today, the purpose of trade agreements is different. Tariffs around the world are already low. The focus has shifted to “nontariff barriers,” and the most important of these — for the corporate interests pushing agreements — are regulations. Huge multinational corporations complain that inconsistent regulations make business costly. But most of the regulations, even if they are imperfect, are there for a reason: to protect workers, consumers, the economy and the environment.

What’s more, those regulations were often put in place by governments responding to the democratic demands of their citizens. Trade agreements’ new boosters euphemistically claim that they are simply after regulatory harmonization, a clean-sounding phrase that implies an innocent plan to promote efficiency. One could, of course, get regulatory harmonization by strengthening regulations to the highest standards everywhere. But when corporations call for harmonization, what they really mean is a race to the bottom.



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.

These high stakes are why it is especially risky to let trade negotiations proceed in secret. All over the world, trade ministries are captured by corporate and financial interests. And when negotiations are secret, there is no way that the democratic process can exert the checks and balances required to put limits on the negative effects of these agreements.

The secrecy might be enough to cause significant controversy for the TPP. What we know of its particulars only makes it more unpalatable. One of the worst is that it allows corporations to seek restitution in an international tribunal, not only for unjust expropriation, but also for alleged diminution of their potential profits as a result of regulation. This is not a theoretical problem. Philip Morris has already tried this tactic against Uruguay, claiming that its antismoking regulations, which have won accolades from the World Health Organization, unfairly hurt profits, violating a bilateral trade treaty between Switzerland and Uruguay. In this sense, recent trade agreements are reminiscent of the Opium Wars, in which Western powers successfully demanded that China keep itself open to opium because they saw it as vital in correcting what otherwise would be a large trade imbalance.

Provisions already incorporated in other trade agreements are being used elsewhere to undermine environmental and other regulations. Developing countries pay a high price for signing on to these provisions, but the evidence that they get more investment in return is scant and controversial. And though these countries are the most obvious victims, the same issue could become a problem for the United States, as well. American corporations could conceivably create a subsidiary in some Pacific Rim country, invest in the United States through that subsidiary, and then take action against the United States government — getting rights as a “foreign” company that they would not have had as an American company. Again, this is not just a theoretical possibility: There is already some evidence that companies are choosing how to funnel their money into different countries on the basis of where their legal position in relation to the government is strongest.

There are other noxious provisions. America has been fighting to lower the cost of health care. But the TPP would make the introduction of generic drugs more difficult, and thus raise the price of medicines. In the poorest countries, this is not just about moving money into corporate coffers: thousands would die unnecessarily. Of course, those who do research have to be compensated. That’s why we have a patent system. But the patent system is supposed to carefully balance the benefits of intellectual protection with another worthy goal: making access to knowledge more available. [I’ve written](#) before about how the system has been abused by those seeking patents for the genes that predispose women to breast cancer. The Supreme Court ended up rejecting those patents, but not before many women suffered unnecessarily. Trade agreements provide even [more opportunities](#) for patent abuse.

The worries mount. One way of reading the leaked negotiation documents suggests that the TPP would make it easier for American banks to sell risky derivatives around the world, perhaps setting us up for the same kind of crisis that led to the Great Recession.

In spite of all this, there are those who passionately support the TPP and agreements like it, including many economists. What makes this support possible is bogus, debunked economic theory, which has remained in circulation mostly because it serves the interests of the wealthiest.

Free trade was a central tenet of economics in the discipline's early years. Yes, there are winners and losers, the theory went, but the winners can always compensate the losers, so that free trade (or even freer trade) is a win-win. This conclusion, unfortunately, is based on numerous assumptions, many of which are simply wrong.

The older theories, for instance, simply ignored risk, and assumed that workers could move seamlessly between jobs. It was assumed that the economy was at full employment, so that workers displaced by globalization would quickly move from low-productivity sectors (which had thrived simply because foreign competition was kept at bay through tariffs and other trade restrictions) to high-productivity sectors. But when there is a high level of unemployment, and especially when a large percentage of the unemployed have been out of work long-term (as is the case now), there can't be such complacency.

Today, there are 20 million Americans who would like a full-time job but can't get one. Millions have stopped looking. So there is a real risk that individuals moved from low productivity-employment in a protected sector will end up zero-productivity members of the vast ranks of the unemployed. This hurts even those who keep their jobs, as higher unemployment puts downward pressure on wages.

We can argue over why our economy isn't performing the way it's supposed to — whether it's because of a lack of aggregate demand, or because our banks, more interested in speculation and market manipulation than lending, are not providing adequate funds to small and medium-size enterprises. But whatever the reasons, the reality is that these trade agreements do risk increasing unemployment.

One of the reasons that we are in such bad shape is that we have mismanaged globalization. Our economic policies encourage the outsourcing of jobs: Goods produced abroad with cheap labor can be cheaply brought back into the United States. So American workers understand that they have to compete with those abroad, and their bargaining power is weakened. This is one of the reasons that the real median income of full-time male workers is [lower than it was](#) 40 years ago.

American politics today compounds these problems. Even in the best of circumstances, the old free trade theory said only that the winners could compensate the losers, not that they would. And they haven't — quite the opposite. Advocates of trade agreements often say that for America to be competitive, not only will wages have to be cut, but so will taxes and expenditures, especially on programs that are of benefit to ordinary citizens. We should accept the short-term pain, they say, because in the long run, all will benefit.

But as John Maynard Keynes famously said in another context, “in the long run we are all dead.” In this case, there is little evidence that the trade agreements will lead to faster or more profound growth.

Critics of the TPP are so numerous because both the process and the theory that undergird it are bankrupt. Opposition has blossomed not just in the United States, but also in Asia, where the talks have stalled.

By leading a full-on rejection of fast-track authority for the TPP, the Senate majority leader, Harry Reid, seems to have given us all a little respite. Those who see trade agreements as enriching corporations at the expense of the 99 percent seem to have won this skirmish. But there is a broader war to ensure that trade policy — and globalization more generally — is designed so as to increase the standards of living of most Americans. The outcome of that war remains uncertain.

In this series, I have repeatedly made two points: The first is that the high level of inequality in the United States today, and its enormous increase during the past 30 years, is the cumulative result of an array of policies, programs and laws. Given that the president himself has emphasized that inequality should be the country’s top priority, every new policy, program or law should be examined from the perspective of its impact on inequality. Agreements like the TPP have contributed in important ways to this inequality. Corporations may profit, and it is even possible, though far from assured, that gross domestic product as conventionally measured will increase. But the well-being of ordinary citizens is likely to take a hit.

And this brings me to the second point that I have repeatedly emphasized: Trickle-down economics is a myth. Enriching corporations — as the TPP would — will not necessarily help those in the middle, let alone those at the bottom.

[HTTP://WWW.MAINEBIZ.BIZ/ARTICLE/20140318/NEWS0101/140319960/1092?UTM\\_SOURCE=ENews&UTM\\_MEDIUM=DAILY%2BREPORT&UTM\\_CAMPAIGN=TUESDAY](http://www.mainebiz.biz/article/20140318/news0101/140319960/1092?utm_source=ENews&utm_medium=daily%2Breport&utm_campaign=tuesday)

MARCH 18, 2014

## Trade judge recommends \$675K fine for DeLorme

A federal trade judge has recommended that the Yarmouth-based mapping and GPS company DeLorme pay a \$675,000 civil penalty for practices that she ruled induce infringement on the satellite-tracking patent of a Virginia company.

The legal news service [Law 360](#) reported Administrative Law Judge Dee Lord, of the International Trade Commission, ruled that DeLorme InReach LLC and parent DeLorme Publishing Co. Inc. induced infringement by selling InReach 1.5 units containing imported technology that violated a patent held by BriarTek IP Inc.

Lord's ruling concluded DeLorme did not sell products that directly infringed on BriarTek's patent and did not induce infringement through its InReach SE product.

Peter Brann, DeLorme's attorney, told the news service the company plans to file an objection to the ruling, arguing both the induced infringement ruling and the amount of the civil penalty.

John Fuisz, BriarTek's attorney, said his client was pleased with the ruling but questioned why DeLorme's InReach SE product was not included as a violation.

The full determination in the case remains under seal, pending redaction requests from both parties.

<http://us5.campaign-archive1.com/?u=a6208b84fc02ac1ffef5a7b9e&id=c6f36c5144&e=b9dc15b5dc>

## FOR IMMEDIATE RELEASE

# New Study Debunks Mining Company “Falsehoods” Regarding El Salvador

March 18, 2014

(Ottawa/Sydney/Washington) The President-elect of El Salvador, [Salvador Sanchez Ceren](#), [has publicly committed to prohibit](#) new mining during his administration, just as his predecessors have done since 2008. OceanaGold should respect the democratic process in El Salvador, abandon its acquisition of Vancouver-based Pacific Rim Mining, and drop its lawsuit against the government of El Salvador for not having permitted a mine, according to international civil society organizations. A [new study debunks eight falsehoods](#) the company has used to try to justify mining in El Salvador and undermine public debate and policymaking.

Canadian-Australian firm OceanaGold acquired Pacific Rim Mining in November 2013. Up against stiff local and national opposition in El Salvador, Pacific Rim has been trying to get at gold deposits in northern El Salvador for about a decade.

In 2009, Pacific Rim launched what is now a [\\$301 million lawsuit against El Salvador](#) in a World Bank arbitration tribunal, arguing that the government must grant the company the permit to begin its El Dorado gold project. [OceanaGold, having bailed out Pacific Rim](#) from near bankruptcy in November 2013, aims either to strike a deal with the Salvadoran government or to continue fighting the suit.

But OceanaGold is making a shaky bet. The facts are:

1. Pacific Rim did not meet the regulatory requirements necessary to obtain a mining permit in El Salvador, relying instead on political lobbying.

2. Pacific Rim never undertook adequate studies to understand, much less mitigate, potential adverse impacts from the El Dorado project, especially on water supplies.
3. There is broad opposition to mining in El Salvador that extends to the highest echelons of the Catholic Church.
4. Pacific Rim's activities in Cabañas have generated conflict, aggravated divisions, and raised the stakes around current and potential economic benefits from mining. This can only have contributed to threats and violence, which have yet to be fully investigated.
5. Pacific Rim's willingness to opt for political lobbying and local patronage, rather than meet regulatory requirements and respect communities, could have fueled corruption.
6. Any profits from the El Dorado project would mainly be returned to the company and its shareholders.
7. The company is using investor-state arbitration rules to subvert a democratic, nationwide debate over mining in El Salvador, a matter that should not be decided by a World Bank tribunal.
8. OceanaGold operates an open-pit gold-copper project in the Philippines that illustrates the costs of mining that Salvadorans do not want to bear.

These facts respond to eight “falsehoods” from Pacific Rim/OceanaGold that have been carefully debunked in a new report published by the Blue Planet Project, the Council of Canadians, the Institute for Policy Studies, MiningWatch Canada and Oxfam International: Debunking Eight Falsehoods by Pacific Rim Mining/OceanaGold in El Salvador, [available online here](#).

<http://www.businessweek.com/articles/2014-03-20/in-trade-talks-its-countries-vs-dot-companies>

Politics & Policy

## In Trade Talks, It's Countries vs. Companies

By [Peter Coy](#), [Brian Parkin](#), and [Andrew Martin](#) March 20, 2014

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Beginning in the 1950s, trade negotiators evolved an elegant solution to a vexing problem: the risk that poor countries would seize the oil fields, mines, and factories of Western corporations that operated within their borders. Fearful of nationalization or other harsh treatment, multinationals were holding back on investment. Everyone lost.

The answer was to include language in treaties specifying that disputes between investors and governments would be settled by independent arbitrators, not courts in the country where a disagreement arose. That gave corporations confidence that their projects were safe and helped unleash trillions of dollars' worth of cross-border investment. Today there are about 3,000 treaties between countries that provide for such arbitration.

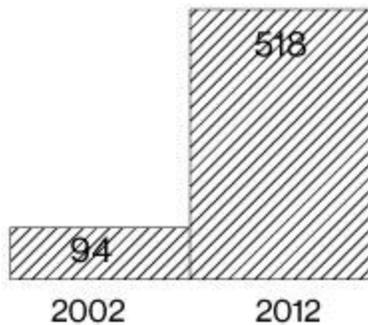
Yet that fix is now the subject of a bitter disagreement between corporations and governments that's impeding progress on two of the biggest free-trade treaties ever, both involving the U.S.: the Trans-Pacific Partnership (TPP) and the Transatlantic Trade and Investment Partnership (TTIP).

[Story: Farewell to the Age of Free Trade](#)

The problem is that to many people, arbitration looks profoundly undemocratic. Countries that sign the treaties give away a lot: The arbitration panels are unelected tribunals of three experts (usually lawyers, one chosen by each side and one picked by mutual consent or a third party) that are empowered to overrule a nation's highest authorities. The panels have come under attack from environmental groups, labor unions, and developing nations including Venezuela, Ecuador, and South Africa.

## Rising Complaints

Cumulative investor-state arbitration cases worldwide



Data: United Nations Conference on Trade and Development

Opponents point to several disputes currently in arbitration where corporations are invoking treaties for protection from local laws. Philip Morris International ([PM](#)) has brought a case in Hong Kong challenging Australia's plain-packaging law for cigarettes. The tobacco company says the law prevents it from marketing its brand, in violation of a treaty between Australia and Hong Kong. Sweden's Vattenfall, which operates nuclear plants in Germany, is seeking compensation for the country's planned phaseout of electricity generation from nuclear power, which it says breaks the countries' bilateral investment treaty. Lone Pine Resources, a U.S. company that has licenses to produce natural gas from beneath the St. Lawrence River in Quebec, wants to be compensated by Canada for a moratorium on fracking in the province.

Lori Wallach, director of Global Trade Watch, a Ralph Nader organization, has called the arbitration system "a quiet, slow-moving coup d'état." Democratic Senator Sherrod Brown of Ohio, a prominent arbitration critic, said in an e-mail that the "mere threat of costly litigation" can have a chilling effect on legitimate regulation, such as on tobacco.

### [Video: The Benefits of a Transatlantic Free Trade Pact](#)

To see how arbitration can squeeze a country, consider the case of a lead and zinc smelting operation in South America called Doe Run Perú. The Peruvian government demanded a costly waste cleanup. U.S. billionaire Ira Rennert, who owned Doe Run Perú for more than a decade through Renco Group, said the government's escalating cleanup demands forced the unit into bankruptcy in violation of the U.S.-Peru trade promotion agreement of 2006. Renco asked a panel of arbitrators to force Peru to pay it \$800 million. It also said the country, which once owned the operation, should be liable for any damages arising from a pending lawsuit in federal court in St. Louis alleging that it sickened more than 700 Peruvian children. The case is ongoing.

The voices of opposition are becoming harder to ignore. In January, in response to criticism of the arbitration clauses now standard in nearly every agreement, the European Commission announced a halt to negotiations with the U.S. on the arbitration provisions of TTIP, the ambitious effort to open more trade and investment between the U.S. and the European Union.

The commission reaffirmed it was committed to including arbitration in the treaty, but said it wanted a 90-day break for “public consultation” to hear people’s views. A high-profile campaign by opponents could complicate talks long after the listening period ends.

For the U.S. government and other backers of arbitration, a bigger blow came in mid-March when the German government—which has been a staunch supporter of investor-state dispute settlements—said it decided to push for excluding it from TTIP. “Special investment protection rules are not necessary in an accord between the USA and EU,” the German economy ministry said in a statement. It said the rules were unnecessary because “both partners have adequate legal protection” for foreign investors in their courts. The Germans said they’d OK a treaty if the final text addresses their concerns on arbitration.

26 MARCH 2014

## Concerns about TTIP not just in Europe: interview with US State Legislator, Sharon Treat

Access to affordable medicines, protection of high labour and environmental standards are all at risk under TTIP says Sharon Treat, which she believes is a deal for international corporations that simply don't want to play by the rules.

SIMON MCKEAGNEY, EDITOR

Sharon Treat is a Member of the House of Representatives for the US State of Maine. She has warned against wholehearted support for the bilateral trade agreements that the US is currently negotiating; one with the EU, the Transatlantic Trade and Investment Partnership (TTIP), and another with 11 nations in the Pacific region, the Trans-Pacific Partnership (TPP). Both trade deals pose significant risks for US states and their ability to legislate in the interest of the public good.

In Europe, impressions are forming which suggest that TTIP is solely an attack on EU regulations by the US. This is not true - corporate interests on both sides of the Atlantic are calling for the removal of regulations. In fact, many people in the US are as worried about the implications of TTIP as Europeans. Here we speak to Sharon about some of the concerns that US citizens and state representatives have.

### **1) Obama visits Brussels today and TTIP will most likely be high on the agenda. What, in your opinion should the a US- EU trade deal strive to do?**

We have many smaller manufacturers of specialty products such as high-tech fabrics and fancy jams made from Maine blueberries and other local products. I'd love to see an agreement that helps these smaller manufacturers reach EU markets, just as I'd love to see EU products from similar small manufacturers for sale in my local stores. Selling products abroad can be complicated and we should develop mechanisms to assist smaller entities so that they can compete. What I don't want to see is an agreement that overturns valid public health and safety and environmental rules that are considered "non-tariff barriers" by big international corporations that already do lots of business back and forth across the Atlantic with little difficulty.

### **2) Proponents suggest that this will be a key opportunity to set a global standard for international trade. Do you see this happening with TTIP?**

The USTR frequently asserts that TTIP (and the similar TPP agreement) will set a "high standard" and be a "21st Century agreement." What does this mean? The average person on the street might think it means that such a trade agreement would protect high labor and environmental standards and promote the affordability of medicines. They would be wrong. In international trade-speak, "high standard" means aiming for the most restrictive patent rules that delay access to affordable generic medicines and getting rid of rules and regulations that big businesses would rather not comply with like requiring GMO labeling and regulating endocrine disruptors in consumer products.

**3) It is the 20th anniversary of the North America Free Trade Agreement (NAFTA) this year. We heard a lot about the future benefits when it was being negotiated in the early 90s. Have these benefits come to fruition?**

Not where I live, which has seen wave after wave of plant closures. And the national data backs up my on-the-ground experience.

**4) As a state legislator, you have mentioned in the past your concerns that TTIP could have an impact on a variety of health-related issues, from smoking prevention measures, to access to generic medicines. Can you explain why TTIP could impact the health sector?**

Philip Morris at this the is very moment is suing Australia pursuant to an obscure trade agreement with Hong Kong over its tobacco plain packaging rules, rules that have already been upheld as constitutional by Australia's highest court, in part on grounds that the company's intellectual property – its trademark – has been expropriated.

In the province of Quebec, Canada, the company Lone Pine is using NAFTA to challenge a recent law establishing a moratorium on fracking underneath the St. Lawrence Seaway until that government can review the environmental issues and develop appropriate protections. Lone Pine asserts its “property” has been expropriated and that the Quebec Parliament didn't follow fair processes in passing the law – even though the company doesn't even have a permit to frack under the St. Lawrence.

As envisioned by industry supporters and trade negotiators on both sides of the Atlantic, TTIP will include these same investor provisions that allow governments to be sued for millions of dollars by international corporations that simply don't want to play by the rules. With respect to generic medicines, the intellectual property provisions that are being sought in the TPP and most likely will be pursued for TTIP will extend patents – monopoly pricing – on drugs and newer biologic medicines and delay access to less expensive generic versions. There are also proposals that are intended to restrict government actions that reduce or cap pharmaceutical prices in government health programs.

**5) One of the EU's key 'offensive interests' in TTIP is to remove what they call 'discriminatory laws' that hinder European companies from bidding for procurement offers in US states. These laws are known under TTIP as "localisation barriers to trade". Why are these laws important for US states, and should they be a removed in TTIP?**

In our state of Maine, which is a rather low-income state with limited economic opportunity (especially now that our textile and shoe factories have almost all moved offshore following NAFTA and other trade agreements), a bright spot is local food initiatives. Our land use and procurement policies are encouraging young people to take up farming, and developing new markets for farmers to sell their produce to schools, hospitals, and other institutions. We have enacted a GMO labeling law similar to that in effect in EU countries, and policies that encourage organic and niche farming. We have also enacted procurement laws – in effect for over a decade – which do not permit the purchase by our state government of products made pursuant to unfair labor practices, or where discrimination is permitted.

We have decided as a society here in Maine, that we do not want our taxpayer dollars spent on products produced under bad working conditions. Recent trade agreements entered into by the U.S. government have given sub-central governments in the U.S. the option of being bound by some or all of the procurement chapters in those agreements. We would support that approach, which would allow us to continue to support our local farm-to-table food initiatives (which are also improving the health of our residents!) while extending TTIP procurement to those products that meet our procurement standards.

**6) Other issues, such as climate change have been mentioned as possible losers under a EU - US trade deal. Could you highlight one or two of your other concerns?**

Fossil fuel subsidies are embedded in the policies of countries on both sides of the Atlantic, and while trade agreements such as the WTO have been used to successfully challenge renewable, low-carbon policies like Ontario, Canada's feed-in tariff law, these same provisions are not used to limit fossil fuel subsidies. If this issue is not addressed in TTIP, it is expected that the agreement will lead to significantly increased carbon emissions. Our policies addressing climate change are likely to be undermined by TTIP (and other trade agreements) unless we take action to address these backwards incentives and promote positive climate policies instead.

## **U.S. Trade Deficits Have Grown More Than 440% with FTA Countries, but Declined 16% with Non-FTA Countries**

The aggregate U.S. goods trade deficit with Free Trade Agreement (FTA) partners is more than five times as high as before the deals went into effect, while the aggregate deficit with non-FTA countries has actually fallen. The key differences are soaring imports into the United States from FTA partners and lower growth in U.S. exports to those nations than to non-FTA nations. Incredibly, the U.S. Chamber of Commerce website [states](#), “For those worried about the U.S. trade deficit, trade agreements are clearly the solution - not the problem.” Their pitch ignores the import surges contributing to growing deficits and job loss, while their export “data” is inflated, using tricks described below.

The aggregate U.S. trade deficit with FTA partners has *increased* by more than \$147 billion (inflation-adjusted) since the FTAs were implemented. In contrast, the aggregate deficit with all non-FTA countries has *decreased* by more than \$130 billion since 2006 (the median entry date of existing FTAs). Two reasons: a sharp increase in imports from FTA partners and significantly lower export growth to FTA partners than to non-FTA nations over the last decade. Using the Obama administration’s net exports-to-jobs [ratio](#), the FTA trade deficit surge implies the loss of about 800,000 U.S. jobs. Trade with Canada and Mexico (our first and third largest trade partners, respectively) contributed the most to the widening FTA deficit. Under the [North American Free Trade Agreement \(NAFTA\)](#), the U.S. deficit with Canada ballooned and the small U.S. surplus with Mexico turned into a nearly \$100 billion deficit. The trend persists under new FTAs - two years into the [Korea FTA](#), the U.S. trade deficit with Korea has jumped more than 51 percent. Reducing the massive trade deficit requires a new trade agreement model, not more of the same.

### **U.S. Export Growth Falters under FTAs**

Growth of U.S. exports to countries that *are not* FTA partners has exceeded U.S. export growth to countries that *are* FTA partners by 30 percent over the last decade. Between 2003 and 2013, U.S. goods exports to FTA partner countries grew by an annual average rate of only 4.9 percent. Goods exports to non-FTA partner countries, by contrast, grew by 6.3 percent per year on average. Since 2006, when the number of FTA partner countries nearly doubled with the implementation of the Central America Free Trade Agreement (CAFTA), the FTA export growth “penalty” has only increased. Since then, average U.S. export growth to non-FTA partner countries has topped average export growth to FTA partners by 47 percent.

## Corporate FTA Boosters Use Errant Methods to Claim Higher Exports under FTAs

Members of Congress will invariably be shown data by defenders of our status quo trade policy that appear to indicate that FTAs have generated an export boom. Indeed, to promote congressional support for new NAFTA-style FTAs, the U.S. Chamber of Commerce and the National Association of Manufacturers (NAM) have funded an entire body of research designed to create the appearance that the existing pacts have both boosted exports and reversed trade deficits with FTA partner countries. This work relies on several methodological tricks that fail basic standards of accuracy:

- **Ignoring imports:** U.S. Chamber of Commerce studies regularly omit mention of soaring imports under FTAs, instead focusing only on exports. But any study claiming to evaluate the net impact of trade deals must deal with both sides of the trade equation. In the same way that exports are associated with job opportunities, imports are associated with lost job opportunities when they outstrip exports, as dramatically seen under FTAs.
- **Counting “re-exports:”** NAM has misleadingly claimed that the United States has a manufacturing surplus with FTA nations by counting as U.S. exports goods that actually are made overseas - not by U.S. workers. NAM’s data include “re-exports” - goods made elsewhere that are shipped through the United States en route to a final destination. Determining FTAs’ impact on U.S. jobs requires counting only U.S.-made exports.
- **Omitting major FTAs:** The U.S. Chamber of Commerce has repeatedly claimed that U.S. export growth is higher to FTA nations than to non-FTA nations by simply omitting FTAs that do not support their claim. One U.S. Chamber of Commerce study omitted all FTAs implemented before 2003 to estimate export growth. This excluded major FTAs like NAFTA that comprised more than 83 percent of all U.S. FTA exports. Given NAFTA’s leading role in the 443 percent aggregate FTA deficit surge, its omission vastly skews the findings.
- **Failing to correct for inflation:** U.S. Chamber of Commerce studies that have claimed high FTA export growth have not adjusted the data for inflation, thus errantly counting price increases as export gains.

- **Comparing apples and oranges:** The U.S. Chamber of Commerce has claimed higher U.S. exports under FTAs by using two completely different methods to calculate the growth of U.S. exports to FTA partners (an unweighted average) versus non-FTA partners (a weighted average). This inconsistency creates the false impression of higher export growth to FTA partners by giving equal weight to FTA countries that are vastly different in importance to U.S. exports (e.g. Canada, where U.S. exports exceed \$251 billion, and Bahrain, where they do not reach \$1 billion), despite accounting for such critical differences for non-FTA countries.

**Chart: U.S. Trade Deficit Rises by \$147 Billion with FTA Partners, Falls by \$131 Billion with Rest of the World**

FTA Partner	Entry Date	Pre-FTA Trade Balance	2013 Balance	Change in Balance Since FTA
Israel*	1985	(\$1.00)	(\$14.80)	(\$13.80)
Canada	1989	(\$23.60)	(\$81.20)	(\$57.60)
Mexico	1994	\$2.50	(\$96.00)	(\$98.50)
Jordan	2001	\$0.30	\$0.80	\$0.50
Chile	2004	(\$1.90)	\$5.80	\$7.70
Singapore	2004	\$0.80	\$9.00	\$8.20
Australia	2005	\$7.30	\$14.50	\$7.20
Bahrain	2006	(\$0.10)	\$0.30	\$0.40
El Salvador	2006	(\$0.20)	\$0.30	\$0.50
Guatemala	2006	(\$0.50)	\$0.90	\$1.40
Honduras	2006	(\$0.70)	\$0.60	\$1.30
Morocco	2006	\$0.10	\$1.30	\$1.20
Nicaragua	2006	(\$0.70)	(\$1.80)	(\$1.10)
Dominican Republic	2007	\$0.60	\$2.50	\$1.90
Costa Rica	2009	\$1.20	(\$5.40)	(\$6.60)
Oman	2009	\$0.60	\$0.40	(\$0.20)
Peru	2009	(\$0.20)	\$0.70	\$0.90
Korea	2012	(\$15.20)	(\$23.00)	(\$7.80)
Colombia	2012	(\$9.90)	(\$4.90)	\$5.00
Panama	2012	\$7.70	\$9.70	\$2.00
<b>FTA TOTAL:</b>		<b>(\$33.20)</b>	<b>(\$180.30)</b>	<b>(\$147.10)</b>
<b>Non-FTA TOTAL:</b>	[2006]	<b>(\$818.20)</b>	<b>(\$687.60)</b>	<b>\$130.60</b>
<b>FTA Deficit INCREASE: 443%</b>				
<b>Non-FTA Deficit DECREASE: 16%</b>				
<i>Source: U.S. International Trade Commission. Units: billions of 2013 dollars. (*Measured since 1989 due to data availability.)</i>				



<http://www.ustr.gov/about-us/press-office/blog/2014/March/Facts-Investor-State%20Dispute-Settlement-Safeguarding-Public-Interest-Protecting-Investors>

# **The Facts on Investor-State Dispute Settlement: Safeguarding the Public Interest and Protecting Investors**

03/27/2014 - 9:00am

As the Obama Administration promotes trade and investment agreements, we work closely with Congress, stakeholders, and the public to ensure that our trade agenda advances our economic interests and reflects our values. One of our core values is promoting the rule of law. In our agreements, we want to ensure that the United States and partner countries are able to regulate in the public interest as they see fit.

We also seek to ensure that Americans investing abroad are provided the same kinds of basic legal protections that we provide in the United States to both Americans and foreigners doing business within our borders. One element we use to achieve that goal is investor-state dispute settlement (ISDS). ISDS creates a fair and transparent process, grounded in established legal principles, for resolving individual investment disputes between investors and states.

There are a lot of myths out there suggesting that ISDS somehow limits our ability – or our partners’ ability – to regulate in the interest of financial stability, environmental protection, or public health. Some have even suggested that a company could sue a government just on the grounds that the company isn’t earning as much profit as it wants.

These assertions are false.

The United States promotes provisions in our trade agreements that protect our right to regulate in the public interest while promoting higher standards in many partner countries in areas ranging from labor and environment to transparency to anti-corruption.

Over the last 50 years, nearly 3,200 trade and investment agreements among 180 countries have included investment provisions, and the vast majority of these agreements have included some form of ISDS. The United States entered its first bilateral investment treaty (BIT) in 1982, and is party to 50 agreements currently in force with ISDS provisions. The United States has been a leader in developing carefully crafted ISDS provisions to protect the ability of governments to regulate, to discourage non-meritorious claims, and to ensure a high level of transparency.

Our approach to ISDS has helped establish higher global standards and strengthen arbitration procedures through clearer legal rules, enhanced safeguards, and transparency throughout the ISDS process. As a country that plays by the rules and respects the rule of law, the United States

has never lost an ISDS case. In our current negotiations, we are working to expand upon this approach to ISDS, in ways spelled out in the Model BIT that the Obama Administration released in 2012 following an extensive period of public comment and consultation.

Here are eight facts you should know about ISDS provisions under U.S. trade agreements. These provisions are different – and stronger – than the provisions in many other investment agreements in which the United States is not a participant. It's important to understand how U.S. agreements differ from other agreements that do not meet the same standards.

1. **Provide basic legal protections for American companies abroad that are based on the same assurances the United States provides at home.**

Investment protections are intended to prevent discrimination, repudiation of contracts, and expropriation of property without due process of law and appropriate compensation. These are the same kinds of protections that are included in U.S. law. But not all governments protect basic rights at the same level as the United States. Investment protections are intended to address that fact. Our agreements provide no new substantive rights for foreign investors. Rather, they provide protections for Americans abroad that are similar to the protections we already provide Americans and foreigners alike who do business in the United States.

2. **Protect the right of governments to regulate in the public interest.**

The United States wouldn't negotiate away its right to regulate in the best interest of its citizens, and we don't ask other countries to do so either. Our investment rules preserve the right to regulate to protect public health and safety, the financial sector, the environment, and any other area where governments seek to regulate. U.S. trade agreements do not require countries to lower their levels of regulation. In fact, in our trade agreements, we require our partners to effectively enforce their environmental and labor laws and to take on new commitments to increase environmental and labor protections.

3. **Do not impinge on the ability of federal, state, and local governments to maintain (or adopt) any measure that they deem necessary.**

Under our investment provisions, no government can be compelled to change its laws or regulations, even in cases where a private party has a legitimate claim that its basic rights are being violated and it is entitled to compensation.

4. **Do not expose state or local governments to new liabilities.**

Under our Constitution and laws, investors frequently exercise their rights in U.S. courts. For example, in recent years, the U.S. government has defended hundreds of cases in U.S. courts under the Constitution's "takings clause," which requires compensation for expropriations. State and local governments have likewise defended many such claims. By contrast, the United States has only been sued 17 times under any U.S. investment agreement and has never once lost a case. In some instances, we have

even received compensation for having had to defend against a case in the first place. In any disputes arising under our trade agreements, the federal government assumes the cost of defending the United States, even if they relate to state and local issues.

**5. Provide no legal basis to challenge laws just because they hurt a company's profits.**

Our investment rules do not in any way guarantee a firm's rights to any profits or to its projected financial outcomes. Rather, they only provide basic rights – like non-discrimination and compensation in the event of an expropriation – that are already consistent with U.S. law. Our investment rules seek to promote standards of fairness, not protect profits.

**6. Include strong safeguards to deter frivolous challenges to legitimate public interest measures.**

The United States has proposed additional safeguards that include stricter definitions than are in most investment agreements of what is required for successful claims, as well as mechanisms for expedited review and dismissal of frivolous claims, payment of attorneys' fees, consolidation of duplicative cases, and transparency. These are some of the strongest safeguards in any of the nearly 3,200 investment agreements around the world.

**7. Ensure fair, unbiased, and transparent legal processes.**

The United States is committed to ensuring the highest levels of transparency in all investor-state proceedings. Investment arbitration hearings under recent U.S. trade and investment agreements, as well as all key documents submitted to investor-state tribunals and tribunal decisions, are public. Recent U.S. trade and investment agreements also give NGOs and other non-parties to a dispute the ability to participate by filing *amicus curiae* or "friend of the court" submissions, similar to non-parties' ability to make filings in U.S. courts.

**8. Ensure independent and impartial arbitration.**

Investor-state arbitration is designed to provide a fair, neutral platform to resolve disputes. The arbitration rules applied by tribunals under our agreements require that each arbitrator be independent and impartial. These rules permit either party in a dispute to request the disqualification of an arbitrator and the appointment of a new arbitrator if necessary to ensure the independence and impartiality of all tribunal members.

The United States has been a leader in developing ISDS provisions that protect the ability of governments to regulate, discourage frivolous claims, and ensure a high level of transparency. Through extensive work with stakeholders, legislators, and the public we will continue to ensure that the United States remains at the forefront of innovative trade policy.

# Friends of the Earth Blog

## Don't fast track a polluters' bill of rights

Posted Jan. 24, 2014 / Posted by: Bill Waren

Friends of the Earth opposes the “Bipartisan Congressional Trade Priorities Act” (HR 3830/S 1900), so-called “Fast Track” legislation sponsored by Representative Dave Camp (R-Mich.) and Senator Max Baucus (D-Mont.). The Camp/Baucus bill would undercut the constitutional authority of Congress over trade policy and would be used to rush the environmentally hazardous Trans Pacific and Trans Atlantic trade deals past Congress, without amendment or significant debate. The Camp/Baucus bill would amount to a major power shift from Congress to the executive, undermining the founders’ intention to provide checks and balances in our government through the separation of powers.

If approved, The Camp/Baucus bill would expedite, without proper consideration, congressional approval of a massive and controversial trade deal, the Trans Pacific Partnership, as well as a similar deal on the same model now being negotiated with the European Union, the Transatlantic Trade and Investment Partnership (or the Trans Atlantic free trade agreement as it is sometimes called). These trade agreements would allow big corporations and wealthy financiers to sue for millions in compensation for the cost of complying with environmental and other public interest regulations. More generally, the TPP and TTIP (TAFTA) deals could trump sensible safeguards related to food safety, toxic chemicals, and global warming, among many others

### TPP & TTIP threaten sound environmental policy

TPP and TTIP would allow foreign investors to seek awards of money damages from business-friendly tribunals in compensation for the cost of complying with environmental and consumer regulations -- even the “cost” of lost opportunities for future profits. Mining, oil drilling and infrastructure construction, like ports and pipelines, are all frequent topics of litigation under existing international investment agreements. For example, La Oroya, Peru, is one of ten most polluted places on earth. Renco, a U.S. company, has repeatedly failed to meet its contractual and legal deadlines to clean up the pollution caused by its metallic smelter at La Oroya. Renco has sued Peru before an international investment tribunal, seeking \$800 million in damages for the cost of complying with Peru’s environmental and mining laws.

Climate measures are also put at risk by the TPP and TTIP investment chapters. A wide array of energy policies could be challenged, conceivably including TPP attacks on any decision to stop construction of the Keystone XL pipeline. In the same way, local efforts to block fossil fuel export terminals in the U.S. might well be challenged before tribunals at the World Bank or the Permanent Court of Arbitration, applying investor rights under TPP or TTIP.

Other provisions in the agreements would undercut essential environmental and climate initiatives. Regulatory coherence and other chapters of the TPP and TTIP encourage inappropriate use of cost-benefit analysis, inhibiting government regulators from applying the “precautionary principle” when assessing the safety of toxic chemicals, food imports and genetically engineered products, among others. Overbroad concepts of “discrimination” could

lead to TTIP challenges to the European Fuel Quality Directive for its unequal treatment of tar sands oil from North America based on its threat to the climate. Regulatory constraints on high carbon exports of oil and liquefied natural gas could run afoul of prohibitions on export controls in international trade law.

The privatization of nature would also be encouraged. As just one example, a leaked version of the TPP chapter on intellectual property provides international legal protections for patents on plants and animals, giving corporations monopolies over the use of parts of the genetic code that are our common natural and human heritage. Corporate control of water resources is another threat.

### **Fast track undermines the constitutional authority of Congress**

Under the Camp/Baucus bill, the TPP and TTIP could be pushed through Congress under rules providing for mandatory and expedited floor votes in the House and Senate, without amendment. Congress would have no authority to approve or veto selection of negotiating partners, even with countries like Vietnam that are repeat violators of labor, human rights and environmental standards. The president and U.S. Trade Representative would also be authorized to finalize the legal text of the TPP and TTIP, regardless of whether negotiating objectives identified by Congress have been satisfied. Congressional negotiating objectives are unenforceable in the Camp/Baucus bill.

Also, the Camp/Baucus bill would empower the executive branch to write domestic legislation implementing trade deals and push it through Congress under fast track rules. Large swaths of federal law would be rewritten and a multitude of state laws would be preempted based on the mere allegation by the U.S. Trade Representative that they are inconsistent with the TPP or TTIP. The likely result would be a roll back of environmental safeguards and other public interest measures at both the federal and state levels.

### **Fast Track can be stopped**

People power is the way to stop the Camp/Baucus bill or any similar Fast Track legislation that may be introduced in the future. Concerned citizens can make a difference by reaching out to friends and neighbors, communicating to the local press and local elected officials, and by sitting down with their members of Congress to talk about the threat that Fast Track poses to the environment and democracy itself.

- See more at: <http://www.foe.org/news/blog/2014-01-dont-fast-track-a-polluters-bill-of-rights#sthash.uTTFPvnY.dpuf>

## Commentary: Trade agreements need meaningful congressional review, congresswoman says

**Rep. Chellie Pingree believes it is not advisable to fast track two very broad and complicated agreements through Congress.**

By Chellie Pingree

WASHINGTON — When the North American Free Trade Agreement was signed 20 years ago, there were many promises of how it would create jobs for U.S. workers, strengthen our trade and lower prices for consumers.

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### ABOUT THE AUTHOR

*Chellie Pingree, a Democrat, represents Maine's 1st District in the U.S. House of Representatives.*

Unfortunately, those promises have not come to pass, but some of our worst fears have. In Maine, it has severely weakened manufacturing and has led to the loss of thousands of good-paying jobs. And across the country it has contributed to growing income inequality.

After all that, our country still imports more than we export by about \$40 billion. With NAFTA's track record, it's clear that we need to give trade agreements the utmost review and careful consideration before entering into them, if we do so at all. That's why I have become so worried with recent proposals to fast-track two of these agreements through Congress.

The president's trade representative is currently negotiating two very broad and complicated trade agreements, with Asian-Pacific countries and European Union members, respectively, all with little consultation with Congress and no public disclosure.

I am deeply worried about losing the opportunity to review and consider important nontrade policy provisions that are included in these agreements, since the administration will ask for congressional approval of legal authority to "fast-track" these agreements through the ordinary legislative process.

Under the Constitution, Congress has the exclusive authority to set the terms of trade. Starting in 1974, Congress gave that authority to the executive branch by enacting trade promotion authority, also known as “fast track.” Fast track authority allows the executive branch to negotiate trade agreements on its own, without congressional input or oversight.

Once an agreement has been finalized, it also greatly curtails the normal legislative process in order to expedite congressional approval of the agreement. The deal is put on a “fast track” and provided only a limited amount of time for consideration in the committees of jurisdiction before it is automatically discharged to the floor where debate is limited and we have no ability to amend it.

If these agreements stuck to simply removing taxes on foreign goods, or tariffs, fast track authority would make sense. But, as we saw with NAFTA, modern free trade agreements involve much more than the removal of tariffs.

Modern free trade agreements aim at removing what are called “nontariff barriers” in member countries. That category includes a wide swath of laws and regulations affecting many parts of the economy – from labor and agriculture to natural resources and the environment. In the past, these agreements have resulted in a race to the bottom on rules for workers, consumers and the environment.

The two agreements currently in negotiation include chapters on all of those nontrade policies and more.

Negotiations on the European agreement, known as the Trans-Atlantic Trade and Investment Partnership, are just beginning, and it promises to be the largest trade agreement in history. Negotiations on the Asian agreement, known as the Trans-Pacific Partnership, are in their final stages.

Unfortunately, it seems that these agreements will continue the practices of the past.

The administration’s existing fast track authority expired in 2007. Anticipating the introduction of legislation re-authorizing fast track authority, in October, I joined more than 150 House Democrats in sending a letter to the administration asking that Congress be fully engaged in the final approval process of these agreements.

“Twentieth Century ‘Fast Track’ is simply not appropriate for 21st Century agreements and must be replaced. The United States cannot afford another trade agreement that replicates the mistakes of the past,” we wrote. “We can and must do better.”

I place great value on policies to expand foreign markets for U.S. goods, but strongly believe that Congress should retain its constitutional authority to weigh the policy issues contained in these agreements.

I’ve been a longtime supporter of policies and programs, like the Maine International Trade Center and the U.S. Export-Import Bank, that promote access to foreign markets for Maine companies in order to increase exports from our state and positively affect our trade balance.

However, if the TPP and TTIP trade agreements are going to get expedited consideration, it should come only after Congress has been meaningfully consulted, and after Congress, not the administration, has verified that legal protections for the environment, consumers and workers (to name a few) will not be compromised.

— *Special to the Press Herald*



Citizen Trade  
FOR IMMEDIATE RELEASE  
Monday, January 27, 2014

Contact: Arthur Stamoulis, (202) 494-8826 or [media@citizenstrade.org](mailto:media@citizenstrade.org)

## **SOTU: President's Base Opposes Fast Track for TPP**

*Over 550 Labor, Environmental, Family Farm & Community Groups Send Letter to Congress Opposing Fast Track Legislation*

WASHINGTON, DC — Over 550 labor, environmental, family farm and other organizations traditionally associated with President Barack Obama's political base sent a letter to Congress today opposing Fast Track legislation for the Trans-Pacific Partnership (TPP) and other pending trade agreements. The letter comes just a day before the President's annual State of the Union address. Corporate interests that fought the president's re-election are lobbying for him to use the speech to call on Congress to enact Fast Track authority for the TPP. The President's political base and many congressional Democrats stand in united opposition, emphasizing that the TPP threatens to exacerbate American income inequality.

"Income inequality and long-term unemployment are serious problems that the job-killing TPP would only worsen," said Arthur Stamoulis, executive director of Citizens Trade Campaign, which organized the letter. "Calling for Fast Track in the State of the Union would undercut positive proposals to battle growing income inequality and create middle class jobs which are expected to be the central focus of the President's speech. As short-sighted as such a call would be, even more short-sighted would be for Congress members on either side of the aisle to answer it, as they're the ones who would be dealing with the political repercussions this November."

The 564-organization letter urges Congress to oppose "The Bipartisan Congressional Trade Priorities Act" (HR 3830/S 1900), legislation which would revive the 2002 Fast Track "trade promotion authority" mechanism that expired in 2007. The bill was introduced on January 9 without a Democratic sponsor in the House by Ways & Means Committee Chair David Camp (R-MI), and by outgoing Finance Committee Chair Max Baucus (D-MT) and Ranking Member Orrin Hatch (R-UT) in the Senate.

"After decades of devastating job loss, attacks on environmental and health laws and floods of unsafe imported food under our past trade agreements, America must chart a new course on trade policy," the letter reads. "To accomplish this, a new form of trade authority is needed that ensures Congress and the public play a much more meaningful role in determining the contents of U.S. trade agreements... [The Camp-Baucus bill] is an abrogation of not only Congress' constitutional authority, but of its responsibility to the American people. We oppose this bill, and urge you to do so as well."

Among the signers are labor unions like the AFL-CIO, American Federation of State, County and Municipal Employees (AFSCME), American Federation of Teachers, International Brotherhood of Teamsters, United Autoworkers (UAW), United Brotherhood of Carpenters, United Steelworkers (USW) and Service Employees International Union (SEIU); environmental

organizations like [350.org](http://350.org), Friends of the Earth, Greenpeace, League of Conservation Voters, National Resources Defense Council (NRDC), Rainforest Action Network and the Sierra Club; family farm organizations like the National Family Farm Coalition, National Farmers Union and the Western Organization of Resource Councils; consumer groups like Food & Water Watch, Organic Consumers Association, National Consumers League and Public Citizen; and hundreds of others.

During last year's State of the Union address, President Obama claimed that the TPP would "boost American exports." He made similar claims in his 2011 State of the Union speech with respect to the Korea-U.S. Free Trade Agreement, urging Congress to pass that pact. U.S. exports to Korea *declined* ten percent in the first year of that agreement, while American-job-displacing imports from South Korea increased. The 37 percent increase to the U.S. trade deficit with Korea in the pact's first year equated to a loss of 40,000 U.S. jobs.

Trade negotiators have missed repeated self-imposed deadlines for completing the TPP, and more than three-quarters of House Democrats and a bloc of Republican House members have signed letters expressing their opposition to Fast Track for the agreement.

"Americans cannot afford a 'NAFTA of the Pacific.' Fast Track would ensure that the Obama administration's proposals for the TPP are never exposed to public scrutiny until after the pact is signed, amendments are prohibited and changes become all but impossible," said Stamoulis.

"Rubber stamping such a far-reaching agreement sight unseen is no way for Congress to create public policy."

A PDF copy of today's letter opposing Fast Track can be found online at: [http://www.citizenstrade.org/ctc/wp-content/uploads/2014/01/FastTrackOppositionLtr\\_012714\\_Congress.pdf](http://www.citizenstrade.org/ctc/wp-content/uploads/2014/01/FastTrackOppositionLtr_012714_Congress.pdf)

###

January 27, 2014

**Re: Please Oppose "The Bipartisan Congressional Trade Priorities Act" (HR 3830 / S 1900)**

Dear Member of Congress:

The undersigned organizations urge you to oppose "The Bipartisan Congressional Trade Priorities Act" (HR 3830 / S 1900). This legislation would revive the outdated and unsound 2002 "Fast Track" Trade Promotion Authority mechanism.

Indeed, the legislation replicates the broad delegation of Congress' constitutional authorities that was provided in the 2002 Fast Track, undermining Congress' ability to have a meaningful role in shaping the contents of trade agreements.

The legislation includes several negotiation objectives not found in the 2002 Fast Track. However, the Fast Track process that this legislation would reestablish ensures that these objectives are entirely unenforceable. If this bill were enacted, the president could sign a trade agreement before Congress votes on it — whether or not the negotiating objectives have been met. It would also allow the executive branch to write legislation not subject to committee markup that would implement the pact and alter existing U.S. laws so that they come into compliance with the rules of the trade agreement. Additionally, if HR 3830 were enacted, trade pact implementing legislation would be guaranteed House and Senate votes within 90 days, with all floor amendments forbidden and a maximum of 20 hours of debate.

Fast Track was designed in the 1970s when trade negotiations were focused on cutting tariffs and quotas. Today's pending "trade" agreements, such as the Trans-Pacific Partnership (TPP) and Transatlantic Trade and Investment Partnership (TTIP), are much broader — setting binding policy on Congress and state legislatures relating to patents and copyright, food safety, government procurement, financial regulation, immigration, healthcare, energy, the environment, labor rights and more. Such a broad delegation of Congress' constitutional authorities is simply inappropriate given the scope of the pending "trade" agreements and the implications for Congress' core domestic policymaking prerogatives.

After decades of devastating job loss, attacks on environmental and health laws and floods of unsafe imported food under our past trade agreements, America must chart a new course on trade policy. To accomplish this, a new form of trade authority is needed that ensures that Congress and the public play a much more meaningful role in determining the contents of U.S. trade agreements. Critically, such a new procedure must ensure that Congress is satisfied with a trade agreement's contents before a pact can be signed and subjected to any expedited procedures.

HR 3830 / S 1900 is an abrogation of not only Congress' constitutional authority, but of its responsibility to the American people. We oppose this bill, and urge you to do so as well.

Sincerely,



# OFFICE OF THE ATTORNEY GENERAL

## For Immediate Release:

January 28, 2013

## Contact:

Tim Feeley, 626-8887

### **Attorney General Mills calls for trade deal to protect Maine's anti-tobacco efforts**

*AG Mills is working to amend the Trans-Pacific Partnership Agreement to preserve ability tobacco regulation by state and local governments – joins effort with 42 state Attorneys General.*

(AUGUSTA) Attorney General Janet T. Mills is troubled by a provision in a proposed international trade agreement that would negatively impact the ability of Maine and other states to protect the public health by regulating tobacco products. Attorney General Mills is calling on the United States Trade Representative to amend a provision that would treat tobacco products like any other product for sale. This provision could open state policies regulating tobacco products to challenge by other countries and ignores the devastating health affects tobacco has on Maine people.

AG Mills is concerned that a provision in the Trans-Pacific Partnership that would treat tobacco like any other product could open the landmark 1998 Tobacco Master Settlement Agreement [MSA], or even Maine's smoke-free workplace law, to challenge by other countries in a legal framework outside of the United States' normal proceedings. The MSA and other state and federal laws place major restrictions on the ability of tobacco companies to market their products and authorize states to enact a number of regulations to impact the sale, taxation and use of tobacco products.

"The MSA severely limited the ability of Big Tobacco to market their deadly products to children in America," said Attorney General Janet T. Mills. "Maine has a strong record of protecting the public health by using a broad strategy to keep products out of the hands of kids and to shield people from second-hand smoke. Despite the great strides Maine has made in cutting smoking rates, too many kids and adults in Maine are impacted by tobacco. We cannot allow our ability to protect the public health to be undermined by a trade agreement."

The American Lung Association's 2014 State of Tobacco Control notes that 20.3% of Maine's adults and 15.2% of Maine youth are smokers. Nearly 2,235 Maine residents die per year due to tobacco-related illness – including 744 smoking-attributable lung cancer deaths and 660 smoking-attributable respiratory disease deaths. Overall, the American Lung Association estimates that tobacco use costs Maine's economy more than \$1 billion a year.

Attorney General Mills joined 42 state attorneys general in sending the letter to Ambassador Michael Froman, the United States Trade Representative responsible for negotiating the Trans-Pacific Trade Agreement. The Attorneys General expressed their collective opposition to any proposals that undermine the ability of states to regulate tobacco or that subject those regulations to challenge under standards and forums that would not be available under United States law.





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James McPherson

January 27, 2014

Ambassador Michael Froman  
Office of the United States Trade Representative  
600 17th Street, N.W.  
Washington, D.C. 20208

Dear Ambassador Froman:

The undersigned Attorneys General write to request that the United States Trade Representative act to preserve the ability of state and local governments to regulate tobacco products to protect the public health. This request is prompted by the negotiations currently underway with respect to the Trans-Pacific Partnership agreement (TPP), but it applies generally to all international trade and investment agreements that the United States is considering or will consider entering into. In particular, we request that any such agreement explicitly provide that it does not apply to trade or investment in tobacco or tobacco products.

While discussion of the TPP's impact on tobacco regulation has focused primarily on regulation by federal agencies under such legislation as the 2009 Family Smoking Prevention and Tobacco Control Act, states and localities also engage in regulation of tobacco products to protect their citizens and their treasuries from the toll of death and disease that those products cause. Indeed, a full decade before the Tobacco Control Act, state Attorneys General entered into the Master Settlement Agreement (MSA) (as well as earlier settlements in four states) with the major tobacco companies, and a number of other domestic and foreign companies are now also parties to the MSA. As a result of the MSA, States enacted new statutes and regulations to enforce certain of the Agreement's terms. The public health achievements in the MSA should not be subject to backdoor attacks on the very legislation used to make those gains.

In addition to the legislation relating to the MSA, existing state and local tobacco regulation includes such areas as tobacco marketing that targets children; taxation; licensing; the minimum age for purchase of tobacco products; Internet sales; advertising (including health) claims and promotional methods; retail display; fire safety standards; minimum prices; and indoor smoking restrictions. Such regulation is specifically recognized and preserved by Congress in the Tobacco Control Act, and plays an important role in combating the health and financial consequences of tobacco use.

An example of this kind of state regulation is the recently settled case that Vermont brought against R.J. Reynolds Tobacco Company, alleging that advertisements for the company's Eclipse cigarette falsely claimed, among other things, that the cigarette "may present less risk of cancer, chronic bronchitis, and possibly emphysema." The trial court held that this claim was

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Re: Attorney General TPP Letter to USTR

deceptive because it was not sufficiently supported by competent and reliable scientific evidence, and therefore violated the MSA and the Vermont consumer fraud statute. The Court enjoined any similar future claims. The parties have settled the case, leaving the trial court's judgment and permanent injunction in place.

As the chief legal officers of our states, we are concerned about any development that could jeopardize the states' ability to enforce their laws and regulations relating to tobacco products.

Experience has shown that state and local laws and regulations may be challenged by tobacco companies that aggressively assert claims under bilateral and multilateral trade and investment agreements, either directly under investor-state provisions or indirectly by instigating and supporting actions by countries that are parties to such agreements. Such agreements can enable these tobacco companies to challenge federal, state, and local laws and regulations under standards and in forums that would not be available under United States law.

A recent example of such a challenge is a NAFTA investor arbitration brought by Grand River Enterprises Six Nations Ltd., a Canadian cigarette manufacturer that challenged certain MSA-related laws in 45 states – laws that have been upheld in every challenge to them in a United States court, including several by Grand River itself. The NAFTA challenge was rejected by an arbitration panel, but only after extensive litigation that consumed significant state and federal time and resources to defend. Other examples include Indonesia's successful challenge to the Tobacco Control Act's ban on flavorings as applied to clove cigarettes, and tobacco companies' challenges to cigarette package warnings in Uruguay, Australia, and Thailand. In sum, provisions in agreements that set forth vague standards and that are left to arbitration panels to interpret can undermine public health regulation by reducing the certainty and stability necessary to such regulation.

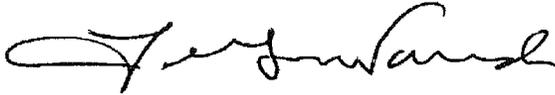
Unfortunately, the "Elements of Revised TPP Tobacco Proposal" that the Trade Representative announced this past August would not adequately protect state and local regulation from these potential adverse consequences of the current draft TPP agreement. As we understand from publicly available information, the August USTR proposal has two elements: first, an "understanding" that a general exception in the TPP agreement for "matters necessary to protect human life or health" applies to "tobacco health measures," and second, a requirement that there be non-binding consultations between the respective public health officials of the concerned parties before formal consultations are initiated with respect to any challenged measure. The USTR proposal, however, fails to recognize the unique status of tobacco as a harmful product; would not eliminate the need for arbitration to determine whether a measure falls within the exception; and in any event would apparently apply only to the TPP trade provisions and thus would have no impact on investor-state arbitration that the tobacco industry uses as a tool to challenge and stymie legitimate measures that countries (including their federal, state, and local governments) adopt to reduce tobacco use.

Based on the history to date with respect to such challenges to regulatory authority, we believe that the only way to avoid the damage to public health posed by a multilateral agreement like the TPP is to carve tobacco out of the agreement entirely, as the Government of Malaysia and others have proposed. Any "slippery slope" argument against such a carve-out should be rejected. Tobacco is the only product that, when used as intended, causes fatal diseases in many of its

Re: Attorney General TPP Letter to USTR

users without providing any nutritional or other health benefits. It kills 440,000 Americans every year and, at present rates, will kill more than one billion people worldwide in this century. There is no policy justification for including tobacco products in agreements that are intended to promote and expand trade and investment generally.

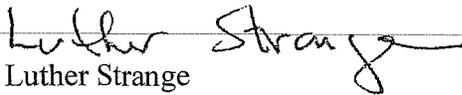
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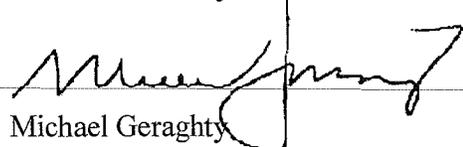
Lawrence Wasden  
Idaho Attorney General



William H. Sorrell  
Vermont Attorney General



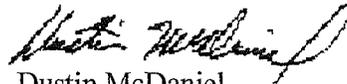
Luther Strange  
Alabama Attorney General



Michael Geraghty  
Alaska Attorney General



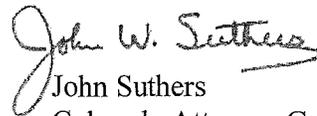
Tom Horne  
Arizona Attorney General



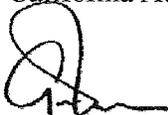
Dustin McDaniel  
Arkansas Attorney General



Kamala Harris  
California Attorney General



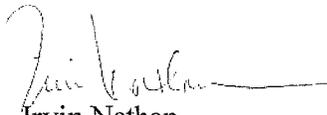
John W. Suthers  
Colorado Attorney General



George Jepsen  
Connecticut Attorney General



Joseph R. "Beau" Biden III  
Delaware Attorney General



Irvin Nathan  
District of Columbia Attorney General



Samuel S. Olens  
Georgia Attorney General



Lenny Rapadas  
Guam Attorney General



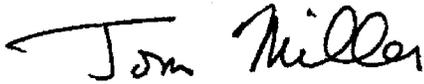
David Louie  
Hawaii Attorney General



Lisa Madigan  
Illinois Attorney General



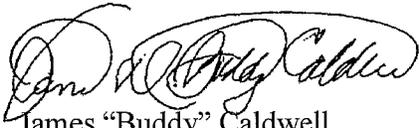
Greg Zoeller  
Indiana Attorney General



Tom Miller  
Iowa Attorney General



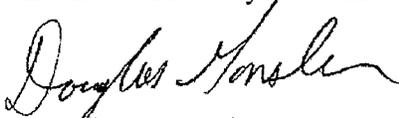
Derek Schmidt  
Kansas Attorney General



James "Buddy" Caldwell  
Louisiana Attorney General



Janet Mills  
Maine Attorney General



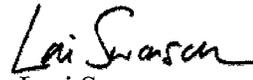
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Maryland Attorney General



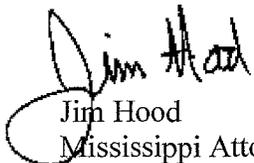
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Massachusetts Attorney General



Bill Schuette  
Michigan Attorney General



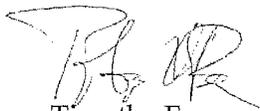
Lori Swanson  
Minnesota Attorney General



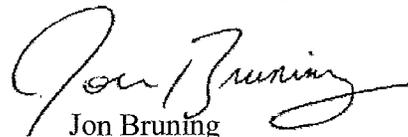
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Mississippi Attorney General



Chris Koster  
Missouri Attorney General



Timothy Fox  
Montana Attorney General



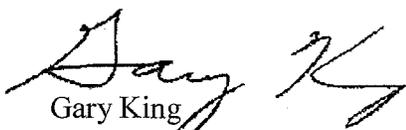
Jon Bruning  
Nebraska Attorney General



Catherine Cortez Masto  
Nevada Attorney General



Joseph Foster  
New Hampshire Attorney General



Gary King  
New Mexico Attorney General



Eric T. Schneiderman  
New York Attorney General

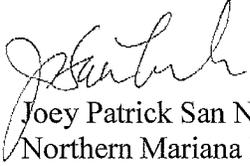
Re: Attorney General TPP Letter to USTR



Roy Cooper  
North Carolina Attorney General



Wayne Stenehjem  
North Dakota Attorney General



Joey Patrick San Nicolas  
Northern Mariana Islands Attorney General



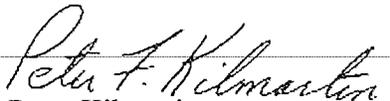
Scott Pruitt  
Oklahoma Attorney General



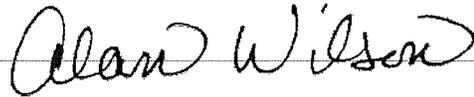
Ellen Rosenblum  
Oregon Attorney General



Kathleen Kane  
Pennsylvania Attorney General



Peter Kilmartin  
Rhode Island Attorney General



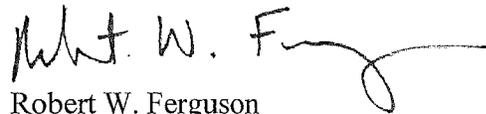
Alan Wilson  
South Carolina Attorney General



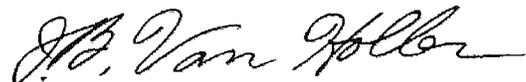
Marty J. Jackley  
South Dakota Attorney General



Sean Reyes  
Utah Attorney General



Robert W. Ferguson  
Washington Attorney General



J.B. Van Hollen  
Wisconsin Attorney General



Peter K. Michael  
Wyoming Attorney General



BNA 1-29-14

Congress

## **Timing of TPA Depends on Obama, Says Former Chief of Staff to USTR**

### **Cato Scholar Says Jettison Investor-State Dispute Settlement**

**Key Development:** Timothy Keeler says the timing of Congress passing Trade Promotion Authority is anyone's guess at this point, but the president must be willing to spend substantial political capital to get it done quickly.

**Next Step:** Bipartisan Congressional Trade Priorities Act of 2014 is before Senate Finance Committee.

By Brian Flood

Jan. 29 — The largest factor in when Congress will pass Trade Promotion Authority (TPA), also known as fast-track authority, is the president's willingness to expend political capital, the former chief of staff in the Office of the U.S. Trade Representative (USTR) said Jan. 29.

"Anybody who tells you they know what the timing is, is lying at this point," Timothy J. Keeler said at a panel discussion hosted by the Global Business Dialogue in Washington.

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Keeler emphasized that "the timing is as much connected with questions about the administration's—and the president's—commitment to getting it done as anything else. If they want to get it done, then they're going to have to expend a lot of political capital, and I would think it's in their interest to get it done sooner rather than later, but the timing depends on when they make the big push."

Keeler also said that TPA authorization may be slowed by the transition of the chairmanship of the Senate Finance Committee. Current chairman Max Baucus (D-Mont.) has been nominated as the next U.S. ambassador to China (19 ITD, 1/29/14).

Baucus, along with Senate Finance's ranking member Orrin Hatch (R-Utah), was a co-sponsor of the Bipartisan Congressional Trade Priorities Act of 2014, which would renew the fast-track authorization process. The bill would require up-or-down votes on the implementation of trade pacts and would direct the administration to pursue specific negotiating objectives and delineate the role of Congress in any negotiations (12 ITD, 1/17/14).

Ambassador Alan Wolff, the former U.S. Deputy Special Representative for Trade Negotiations, agreed that the president must get directly involved, in particular to prevent congressional "log-rolling" that would lead to more economic sectors excluded from trade agreements. He said he hoped that U.S. Trade Representative Michael Froman would position the president and his cabinet officers to engage more energetically.

Wolff also said that he hoped the ranking members and chairmen of the relevant congressional committees will act as key players in the discussion, "as opposed to the leadership, who are further from the issues."

Dan Ikenson, director of the Cato Institute's Herbert A. Stiefel Center for Trade Policy Studies, said that the administration's handling of foreign trade negotiations has been deft but that its domestic negotiations have been wanting.

“The question remains as to whether the president is willing to stand up to some of his traditional domestic constituencies that supported him and to stand with Republicans in Congress,” Ikenson said. So far, he said, there is reason to remain skeptical of the president's commitment to this issue. His remarks at the State of the Union Jan. 28 didn't betray any sense of enthusiasm for the trade agenda, Ikenson said, and may have alienated Republicans on Capitol Hill with its emphasis on administrative action to bypass congressional gridlock.

### *Scare Tactics*

The administration's silence on the importance of trade agreements has allowed certain myths, perpetuated by the “shrill scare tactics” of groups on the political left, to flourish, Ikenson said. Those myths include that trade is an “us versus them” endeavor, trade deficits are necessarily a bad thing, free trade only benefits big businesses and the wealthy, trade agreements have led to a race to the bottom in regulatory standards worldwide and globalization and free trade caused manufacturing in the U.S. to decline, he said.

Ikenson said a few Republicans in Congress want to deny President Obama any success, but the bulk of opposition to TPA comes from Democrats, who fear that labor and environmental provisions in prospective trade deals like the Trans-Pacific Partnership and the Transatlantic Trade and Investment Partnership are not strong enough, among other complaints.

Critics see such provisions as means to circumvent domestic lawmaking and regulatory procedures and to give large multinational corporations the means to “run roughshod” over domestic law, Ikenson said.

To that end, the surest way to garner enough congressional support for trade agreements would be to jettison the investor-state dispute settlement system, he said. Investment abroad is a risky proposition, but multinational corporations are equipped to deal with such risks, he added.

Cutting out investor-state dispute settlement provisions would “address so many of the arguments, and certainly most of the rhetoric, that comes from the left,” Ikenson said.

From USTR newsletter, 1/31/14

**Statement by U.S. Trade Representative Michael Froman on the Bipartisan Congressional Trade Priorities Act of 2014**

January 9 - U.S. Trade Representative Michael Froman issued the following statement today regarding the introduction in Congress of the Bipartisan Congressional Trade Priorities Act of 2014:

**"I welcome the introduction of the Bipartisan Congressional Trade Priorities Act. We expect to have a robust conversation on the Hill about how trade agreements should be negotiated and the role of Congress in that process. We're eager to engage directly with Members of the Finance and Ways and Means Committees and with all of Congress to pass Trade Promotion Authority legislation that has broad, bipartisan support.**

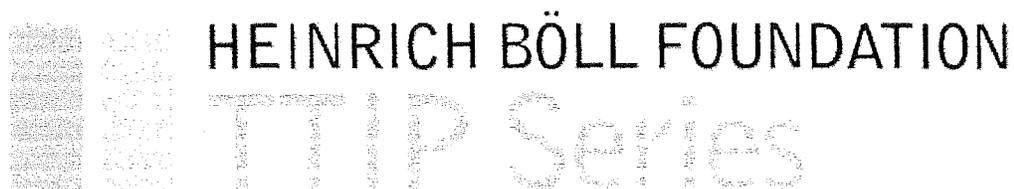
**"We need to open markets, support U.S. jobs, increase exports of products Made in America and ensure a level playing field for Americans to compete in the global economy. Trade Promotion Authority will help us accomplish that goal.**

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TTIP SERIES

## Investor-state dispute settlement under TTIP - a risk for environmental regulation?



February 5, 2014

Christiane Gerstetter and Nils Meyer-Ohlendorf

### Executive Summary

[CLICK HERE](#) to view the full report (pdf, 25 pages)

The Transatlantic Trade and Investment Partnership (TTIP) could include rules on investment protection, including so called investor– state dispute settlement (ISDS). ISDS is a system that allows private investors to sue a host state for the alleged violation of an international investment treaty concluded between that host state and the investor's country of origin. The EU Commission's negotiating mandate for TTIP and the US model bilateral investment treaty both indicate a preference for including ISDS in TTIP.

There are a number of clauses routinely contained in investment treaties that have the potential to restrict the right of governments to take environmental measures: the requirement of "fair and equal treatment" for investors, a prohibition on "(indirect) expropriation", and the so-called umbrella clause. All of them are often broad and vague in wording, and; the case law interpreting them is not consistent.

Although investment tribunals never invalidate environmental regulations, nor have any similar direct impact on national environmental policies, they have – in some cases – awarded considerable compensatory payments to investors for a violation of the above clauses. The inclusion of any of these norms in TTIP would not automatically prevent the US or the EU adopting environmental measures in the future, nor would they necessarily have to pay compensation to investors whenever doing so. However, the results of ISDS proceedings are unpredictable. Some arbitration tribunals have taken a restrictive approach to governments' regulatory freedom; others have deemed government regulation not to violate investment law. These uncertainties result in

considerable risks for environmental regulation which are exacerbated by the fact that investment-related provisions tend to be interpreted broadly in ISDS proceedings.

There are no strong arguments for including ISDS rules in TTIP. Both the US and the EU have highly evolved, efficient rule of law legal systems. There is no evidence that investors have ever lacked appropriate legal protection through these systems. There is no bilateral investment treaty between the US and any of the old EU Member States, and yet US and EU investors already make up for more than half of foreign direct investment in each others' economies. This demonstrates that investors seem to be satisfied with the rule of law on both sides of the Atlantic.

ISDS provides foreign investors with an additional judicial remedy that is not available to domestic competitors; this additional avenue of legal redress discriminates against domestic companies and has the potential to distort competition. Furthermore, the sheer size of foreign direct investment could lead to a considerable number of investment disputes. As a consequence, large numbers of disputes that normally would be adjudicated in domestic courts would be subject to international arbitration, bypassing domestic judges that have been elected or appointed by elected officials.

However, in the event that provisions on ISDS are nonetheless included in TTIP, this paper provides suggestions on how to formulate such provisions in order to mitigate the risk to environmental regulations.

## Inside U.S. Trade 2/6/14

### USTR Calls All-Day Briefing For Cleared Advisers On TPP For Next Week

Posted: February 6, 2014

In an apparent effort to defuse mounting criticism that the Obama administration is being too secretive about the Trans-Pacific Partnership (TPP) negotiations, the Office of the U.S. Trade Representative on short notice has called an all-day briefing for all cleared advisers on Feb. 11, according to sources familiar with a memo sent by USTR announcing the meeting.

The briefing to discuss TPP "landing zones" will begin at 8 a.m. and go until 6:30 p.m. at a location to be announced, according to sources familiar with the memo. The memo acknowledges that the briefing is on short notice, and apologizes if that means out-of-town advisers cannot attend, sources said.

The meeting would bring together all existing advisory committees for a joint session in the morning, when a long list of key TPP topics will be dealt with in short intervals. For example, the memo says the issue of state-owned enterprises will be addressed in a 15-minute segment, as will the complicated issue of rules of origin, sources said.

In the afternoon, the groups will meet separately, and will continue their briefings with USTR officials moving between these sessions, according to these sources.

The announcement comes after AFL-CIO President Richard Trumka rejected USTR's most recent claims to members of Congress that labor unions have been adequately consulted on the TPP. Trumka did so in a Feb. 4 letter to members of the House and Senate, taking issue with letters sent by USTR's congressional affairs office to various lawmakers, including Rep. John Carney (D-DE) .

Assistant USTR for Congressional Affairs Hun Quach said in a Jan. 15 letter to Carney that she was responding to his question "on the Administration's efforts to ensure transparency in our trade agreements," according to a copy obtained by *Inside U.S. Trade*. She said she wanted to inform him that cleared advisers on advisory committees "provide advice to the President regarding proposals before text is finalized and tabled in trade negotiations."

The letter did not address the fact that labor advisers are only represented by one committee, the Labor Advisory Committee for Trade Negotiations and Trade Policy (LAC), and do not sit on any of the 16 industry advisory committees, a point that Trumka highlighted in his Feb. 4 letter. But the USTR letter does note that all advisory committees are provided with the "same access to U.S. proposals."

Criticism of administration secrecy around the TPP was also highlighted in an opinion piece in the Feb. 5 edition of the *The New York Times*, which cites incoming Finance Committee Chairman Ron Wyden (D-OR) as saying that there must be "fundamental

changes" to USTR's approach to transparency and congressional consultation if the president's trade agenda is to advance.

One source familiar with the memo said this briefing to cleared advisers gives USTR the ability to further deflect criticism over TPP secrecy by saying it has devoted an entire day to brief on every single issue under consideration in the TPP.

**The Trumka letter criticized the current advisory system for both substantive and procedural reasons.** His substantive complaints echo those of LAC chairman Tom Buffenbarger, the president of the International Association of Machinists & Aerospace Workers, who said last year that, because USTR is unwilling to share more than initial U.S. negotiating proposals, advisers are curtailed in providing useful advice on U.S. bargaining positions in trade agreements.

In a June 20 response to Buffenbarger, USTR said it values the views of the LAC and its members and have found them to be critical in developing U.S. negotiating positions.

"In that regard, we share with the LAC and other cleared advisors our negotiating proposals and have made available, as you mention, negotiators to discuss in detail the state of play of any aspect of an ongoing negotiation, including any information regarding the proposals of other governments that might affect our bargaining positions," USTR said.

"Nonetheless, we can always do better. In that regard, we welcome the opportunity for further engagement with the LAC members and liaisons on this issue, including the most effective ways to integrate the input of the LAC and labor representatives into the work of [Industry Trade Advisory Committees]," USTR said.

But Trumka's letter revives the charges that LAC members do not have access to the full negotiating texts, or to information regarding USTR priorities and choices. Therefore, they "cannot effectively influence the inevitable trade-offs in ways that would build the middle class and protect our democratic system," Trumka said.

He said this problem is compounded because advisers are curtailed in their ability to share information with union members or the larger public. Therefore, they cannot use the "traditional tools that civil society uses to offset the power of economic elites: education, organization, and mobilization of the public."

He also said the best illustration that the LAC has not been a "valuable tool" to create people-centered trade agreements is the substance of the deals that have been negotiated based on what Trumka calls a failed model of trade. That model has skewed the benefits of trade to economic elites and "exacerbated trade deficits, wage suppression, the dismantling of our manufacturing sector and income inequality."

Procedurally, Trumka noted that labor unions sit only on the LAC, but not the industry advisory committees. "Although in that capacity labor representatives have access to certain aspects of USTR negotiations, it is important to distinguish between 'access' and meaningful participation and influence," Trumka said in the letter.

The LAC has nominally the same access to initial U.S. negotiating proposals as the ITACs, but it meets less frequently than those committees, which meet an average of six times a year, Trumka said. Members of one ITAC have the opportunity to participate in multiple ITACs as well as in ad hoc working groups on such issues as government procurement, he said.

In contrast, the LAC meets two times a year and its members have not been invited to serve on ITACs related to their industries or sit on ad hoc working groups, Trumka said.  
-- *Jutta Hennig*

*Inside U.S. Trade - 02/07/2014, Vol. 32, No. 6*



POLITICO

**USTR cancels TPP briefing over presence of media**

2/10/14 12:42 PM EST

U.S. Trade Representative Michael Froman's office had planned to brief Vermont state lawmakers on the state of the Trans-Pacific Partnership negotiations last week.

But when the official from Froman's office discovered that two Vermont State House reporters would be listening in, the briefing was quickly called off, The Associated Press reported.

Reps. Mike Yantachka, Kathy Keenan and Jim McCullough told Rebecca Rosen, the director of intergovernmental affairs and public engagement for the U.S. trade representative's office, that they wouldn't eject reporters from the room despite USTR's insistence that no media members be present. "We don't have a closed-door policy here," Yantachka said, according to The Associated Press's account.

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Rosen then called off the conversation and said she'd follow up on whether her office would agree to the lawmakers' terms.

Vermont lawmakers have criticized U.S. trade negotiations over pacts such as the Trans-Pacific Partnership, arguing that they could undercut states' ability to regulate the environment, drug pricing, food labels and more. The state legislature approved a resolution last year urging the USTR to respect state sovereignty.

— *Eric Bradner*

## USTR TPP Briefing To Cleared Advisers Reveals Major Outstanding Issues

Posted: February 12, 2014

In a closed-door briefing yesterday (Feb. 11), the Office of the U.S. Trade Representative provided cleared advisers some new details on the Trans-Pacific Partnership (TPP) negotiations, but indicated that negotiators still face a large number of major outstanding issues, such as rules on intellectual property (IP), state-owned enterprises (SOE) and labor rights, according to informed sources.

One source said the sheer magnitude of outstanding issues as well as the fact that they encompass a whole host of sectors makes it difficult to see how TPP countries could conclude the talks at the Feb. 22-25 ministerial meeting in Singapore.

Other sources said that, in light of the information conveyed, it would be a stretch to imagine the TPP negotiations could be concluded by President Obama's trip to Asia in April. The White House announced on Feb. 12 that Obama will travel to Japan during that trip, where he will discuss TPP and other issues with Japanese Prime Minister Shinzo Abe.

Sources said they do not sense a lot of momentum going into the Singapore ministerial meeting. In particular, they noted that closed-door negotiations between the U.S. and Japan on market access for autos and agriculture which have taken place since the December ministerial do not appear to have yielded much progress.

But one source said USTR officials tried to convey a different message at the meeting: that there is a lot of momentum behind the negotiations and that they are moving toward closure. This source said USTR officials were adamant that they plan to make progress on a wide range of outstanding issues in Singapore, to the extent that the meeting felt like a public relations exercise designed to create momentum.

In opening remarks at the all-day meeting, USTR Michael Froman indicated that the U.S. will be working hard to bring the TPP talks to conclusion, sources said. Two sources said Froman appeared to convey the message that TPP countries are close to reaching a deal, but another source said he did not come away with the sense that success is around the corner.

This source said the briefing did not yield any new information about what would be the next steps for the TPP negotiations following the upcoming ministerial meeting.

But other sources said Froman is clearly pushing to conclude the negotiations in the near term because he knows that after Obama's April visit, there will be no real deadline for wrapping them up.

Striking a deal in the near term would require dropping a lot of key U.S. demands -- potentially on issues such as cross-border data flows -- and would require a careful calculation on what

industry priorities need to be met to have sufficient support for getting a deal approved by Congress, sources said.

These sources said they are convinced that Froman has a clear understanding of what a final TPP package must look like to reach the balance between scaling back U.S. demands and retaining sufficient support among the U.S. private sector.

Some key U.S. demands have already fallen by the wayside, one informed source said. For example, the Malaysian government has made clear to the U.S. that it will not drop its policy of extending preferences to ethnic Malays in such areas as government procurement. The U.S. has accepted that stance and is looking for offsetting concessions from Malaysia, according to this source.

One private-sector source following the TPP said that striking a deal is more complicated than the U.S. deciding to drop a demand. For example, this source said, even if the U.S. may agree to back off its demand that Japan open its agriculture market, that may not be acceptable to Australia. Without additional access to Japan's agriculture market, Australia may not be willing to make tough concessions on the TPP rules that the U.S. is advocating, such as free cross-border data flows.

One issue where the Australian government has dropped the outright opposition of its predecessor is the investor-state dispute settlement (ISDS) mechanism, sources said. But Australian negotiators have not yet spelled out what other concessions they would need to see to accept ISDS, they said. In addition, other TPP participants, including Mexico, oppose application of ISDS to the financial services sector.

Separately, one informed source said USTR has been very eager to engage members of Congress on TPP, with Froman meeting with members to discuss the negotiations. In the congressional debate, TPP has been lumped into the debate on whether Congress should extend fast-track negotiating authority to President Obama.

**At the Feb. 11 briefing, USTR officials did provide some additional details on the negotiations** for the TPP labor chapter, sources said. Specifically, one source said USTR indicated it is willing to incorporate some proposals put forth by Australia and Canada about consultations that would have to precede a dispute settlement case over labor obligations.

At the same time, USTR assured stakeholders that it would be able to achieve full dispute settlement in the labor chapter, including the right to impose trade sanctions in labor disputes, even though Canada has tabled an alternative proposal that would not allow trade sanctions, according to this source. This source said the Canadian proposal appears to have gained support from other TPP countries such as Australia and New Zealand, but USTR stressed at the meeting that it would be able to deliver full dispute settlement for the labor chapter.

Despite providing some additional details on the labor chapter at the briefing, one participant said USTR officials failed to mention a number of provisions in the labor text to which union representatives have raised objections.

In the area of SOEs, U.S. negotiators revealed they have made changes to the definition of an SOE in a way that reflects demands of other countries but still achieves the U.S. goal of

disciplining the commercial operations of SOEs to ensure these companies can fairly compete with private-sector firms. But some sources said that, despite the change, USTR negotiators made clear that a lot of issues remain open on SOEs even though there has been substantive engagement over the last six months.

One of those outstanding issues is whether the new SOE disciplines will apply to state-owned firms at all levels of government, or only to SOEs owned by the central government, as the U.S. has proposed, one source said. USTR officials made clear that some countries are still objecting to the U.S. position, but expressed confidence that the U.S. will ultimately prevail, according to this source.

**Froman's opening remarks to the cleared advisers were followed by rapid-fire briefings lasting 15 to 30 minutes each focusing on individual TPP issues.** Participants were not allowed to ask questions during those briefings, which lasted until 12:30 pm, sources said.

However, cleared advisers were allowed to ask questions and make comments during the afternoon session, which consisted of one-hour individual meetings of advisory committees that were attended by U.S. negotiators for specific TPP chapters.

These included a joint meeting of all Industry Trade Advisory Committees as well as a joint meeting of the Agricultural Policy Advisory Committee for Trade and all Agricultural Technical Advisory Committees. Also meeting were the Intergovernmental Policy Advisory Committee on Trade; Labor Advisory Committee; Trade Advisory Committee on Africa; and Trade and Environment Policy Advisory Committee, according to an agenda obtained by *Inside U.S. Trade*.

The issues covered during the morning briefings were labor; environment; electronic commerce; financial services; IP and transparency for drug reimbursement programs; SOEs; rules of origin; dispute settlement for sanitary and phytosanitary issues; market access for goods and agriculture; and investment, non-conforming measures and ISDS, according to the agenda.

# The Trans Pacific Partnership is in trouble on Capitol Hill. Here's why.

BY ED O'KEEFE

The Washington Post | The Fix (Blog)

February 19 at 2:55 pm

President Obama is meeting Wednesday with the leaders of Mexico and Canada and a major new trade pact with Asian countries is among several important topics of discussion.

The trade agreement, known as the Trans Pacific Partnership, has been in the works for nearly a decade and would more closely align the economies of the U.S., Canada, Mexico and nine other countries in South America and Asia. The deal would eliminate tariffs on goods and services and generally harmonize dozens of regulations that can often complicate doing business across borders. (Everything you need to know about the Trans Pacific Partnership, explained by The Post's Lydia DePillis, can be read here.)

**Figure 1. Trans-Pacific Partnership Countries**  
(2012)



(Image courtesy of the Congressional Research Service.)

The White House is eager to finish the talks with its would-be trading partners and has been pushing to earn the authority to bypass Congress and quickly approve the deal. But most Democratic lawmakers don't want to give Obama "fast track" trade authority to quickly negotiate and approve the deal.

The resistance could complicate things for Obama on two fronts. First, any sign of serious opposition in Washington will make countries involved in the talks nervous that the American president can't seal the deal back home. But second -- and more importantly for The Fix's purposes -- Obama has to balance his desire to get a deal with the political needs of congressional Democrats, dozens of whom run the risk of losing their seats in November.

Already, Senate Majority Leader Harry M. Reid (D-Nev.) and House Minority Leader Nancy Pelosi (D-Calif.) are opposed to moving forward with granting Obama fast-track authority.

"Everyone would be well-advised just to not push this right now," Reid said late last month. He's generally opposed to large global trade agreements.

Pelosi doesn't oppose the concept of fast-track, but said last week that she is against a bipartisan measure introduced by Sens. Max Baucus (D-Mont.), Orrin G. Hatch (R-Utah) and Rep. Dave Camp (R-Mich.) that would give Obama the authority.

Resistance from Reid and Pelosi usually would be enough to at least ease the White House push. But Obama and Vice President Biden have also been directly confronted on the issue in recent weeks by rank-and-file members. During a closed-door meeting at the White House, Obama took two questions on the subject, while Biden faced a grilling on the subject at the House Democratic policy retreat last week.

At the White House, Obama heard an earful from Reps. Marcy Kaptur (D-Ohio) and Alan Grayson (D-Fla.), two outspoken liberals with close ties to the labor movement and other liberal constituencies.

Kaptur said she had a simple request for Obama: Let Congress and the public see the details of the TPP before Congress is asked to give him fast track authority.

"He did not say yes," she said in a recent interview. "That means that we would be faced with a fast-track vote that would lock our ability to amend without even knowing what's in the agreement. I can't do that. Not when we have \$9 trillion of accumulated trade deficit, which is the reason for our budget deficit, because we're losing middle-class jobs in our country and we've outsourced millions of our jobs, a third of our manufacturing base is gone."

Grayson said he wanted to remind Obama that the U.S. faces hundreds of billions of dollars in trade deficits with other countries.

In response, Obama "didn't give me any sense that, any reason to believe that these free trade agreements that are being negotiated now are going to be any different than the ones we've negotiated in the past," Grayson said in a recent interview. "They've consistently, and almost to an unbelievable extent, exacerbated our trade problems. I told the president specifically this: That what's actually happening is that we're buying goods and services from foreigners and creating jobs in their countries and they are not buying our goods nor our services. What they are doing is buying our assets and driving us deeper and deeper into debt. So we lose twice, we lose because those jobs go overseas and because we go deeper and deeper into debt."

Despite the Democratic opposition, White House Press Secretary Jay Carney said Tuesday that "we're going to continue to press" for fast-track authority.

But if Obama pushes too hard, he risks upsetting rank-and-file Democrats and key liberal support groups in the labor and environmental communities that always have concerns with major international trade deals. Upsetting those groups might prompt them to sit on their hands or not spend as much money backing Democratic candidates in November.

But if Obama doesn't push hard enough for fast-track, he risks upending an historic trade deal that would help advance his administration's long-sought "pivot" to Asia and upending similar trade talks underway with European countries.

That's why for now, at least, the White House's push for fast-track trade authority has slowed to a crawl on Capitol Hill.



# [TPP STATE OF PLAY AFTER SALT LAKE CITY 19-24 NOVEMBER 2013 ROUND OF NEGOTIATIONS

This document is excerpts from internal government commentary on the state of the TPP negotiations. Extracts have been selected and minor editing of the material has been undertaken to protect the identity of the author country.

Wording in square brackets has been added for clarification.

Key to abbreviations: Countries are identified in text by the following: AU= Australia, BN=Brunei, CA=Canada, CL=Chile, JP=Japan, MX= Mexico, MY= Malaysia, NZ=New Zealand, PE=Peru, SG=Singapore. Other key terms: CN=chief TPP negotiator, ISDS=investor-state dispute resolution, MFN = most-favoured nation, NCM=non-conforming measure, IP=intellectual property, SLC = Salt Lake City, SOE=state owned enterprise, TBT=technical barriers to trade]

## [Overview and Process]:

...As an overview, it should be mentioned that the U.S. is exerting great pressure to close as many issues as possible this week. However the Chapters that were reviewed by the CNs [Chief Negotiators] today did not record much progress. This pressure will increase with every passing day...

...[U.S. Chief] met with all twelve countries and said that they were not progressing according to plan. One country remarked that up until now there had not been any perceivable substantial movement on the part of the U.S., and that is the reason for this situation. The intensity of the meetings, both at level of the CNs as well as the technical groups, increased during the last two days as expected. The pressure to conclude as many issues before Singapore increased. The results are mediocre, although there was a little more progress in the following areas: access for goods (text), e-commerce, Investment, TBT and Public Procurement (text)...

...Before entering into specific detail in some areas of negotiation, it is noted that the scenario for Singapore seems uncertain given the number of outstanding issues that still remain. The aforementioned, even leaving aside the more complex issues (IP, SOEs and Environment), demonstrates a situation that makes it very difficult to think of a complete closure in December. Some suggested the need to prepare different scenarios, in order to not suffer surprises that affect the process. This involves being prepared for a partial closure scenario or even a failure in December...

## [Intellectual Property]:

...Intellectual Property Group to review the work that had developed during the previous days in SLC. This work is reflected in the Non Paper from the Chair (USA) which includes "landing zones" in each of the pending Chapter issues .... Some countries reinserted their positions or brackets on all these issues in order to display a more objective assessment in each one of them .... In general, the "landing zones" from the Chair showed a solution coming from the U.S. position. Therefore, it was crucial for other countries to reinsert their positions to avoid losing their positions in a text that can be used by the United States, later, to try to reach agreement....

...As a general consideration, the meeting served to confirm the large differences that continue in most areas of the chapter, which introduces serious doubts as to what will happen in Singapore. Clearly this Non Paper cannot be presented for consideration by the Ministers. What the U.S. aims for is that the Ministers adopt directives or

guidelines on which the Group can then continue working to reach a conclusion. Similar to what happened in SOEs, implicitly, it is admitted that it will not be possible to conclude this issue in Singapore. However, countries must be prepared for attempts deployed by the U.S. to force closure of different areas of the Chapter during that time...

...In IP, the CNs got together with the Chair and Leads to organise work for the coming days. With respect to the Non Papers / Landing Zones, ... they should not supplant the positions of the countries and it does not seem right ... to not have a clear attribution of the positions. The Chair aims to reduce the number of the 119 outstanding issues. It was agreed that there will be ongoing communication with CNs and daily updates about the progress of the Group. The United States indicated that the idea is to leave the most important or sensitive for Singapore....

...In connection with the discussion of pharmaceuticals, U.S. and JP presented their non paper to the rest of the delegations... It is worth noting that delegations AU, SG and CL made interventions pointing out that there were elements and language from the proposal that they recognized from their respective standards from bilaterals with U.S., but that in the majority of these obligations, these were above the agreed standard. In this context, none of the three delegations indicated that they were in conditions to go beyond its bilateral....

... In this context, delegations made comments on the submitted text and presented language to be able to reflect the standards from their respective bilaterals or legislation...

...Singapore said to the rest of the small Group that it will work on the basis of ideas of the U.S., which means it is leaving the Group. In the same vein, Canada has also been receiving high-level pressure to not file a counterproposal. Finally, the Australian position is unclear and begins to show some weakness in its support of the small Group. In conclusion, cracks in the Group cohesion were noticed...

#### **[Transparency Annex on Medicines]:**

...Some bad news was that the United States revived the Transparency Annex on Medicines now in a revised version that it had worked on with Australia and Japan. Some countries expressed annoyance for the way that they resubmitted a text that had been strongly rejected in the past... The U.S. reiterated that it does not apply to all countries and was asked to put a footnote that says that. That's where it was left...

#### **[Investment]:**

...The most important issue for the majority of members... is the proposal by the U.S. to apply ISDS to Investment Agreements and Investment Authorisations. The United States, as in previous rounds, has shown no flexibility on its proposal, being one of the most significant barriers to closing the chapter, since under the concept of Investment Agreement nearly all significant contracts that that can be made between a State and a foreign investor are included.

...It covers important concessions including mining, administrative or special operating contracts for hydrocarbon exploration, public works concessions (roads, highways, bridges, infrastructure, etc.) and it would override the choice of forum provisions in these contracts...

...Only the U.S. and Japan support the proposal, while the rest expressed their objections to the proposal and have tried to explore ideas to refine the concept and

make some reservations about the choice of forum in contracts, but the U.S. has shown no signs of flexibility...

...A second area where there was a convergence of positions was regarding the application of general exceptions (GATT and GATS) for the Investment Chapter. Although the discussion is not finished, the United States submitted a proposal that the proponents are now analysing. The problems with the proposal are that it partially solves the issue, ie it only responds to the interests of Australia and New Zealand, in the sense that it applies the exceptions to the obligations of National Treatment, MFN and Senior Management and Boards of Directors, through the inclusion of a clarifying footnote in the article on National Treatment and an individual note on the t NCMs [non-conforming measures] of each country...

...For countries such as Chile, Japan, Brunei, Malaysia and Vietnam that support the application of these exceptions to the whole chapter, language has been proposed to be included as a preamble or as objectives of the chapter. This proposal is not sufficient because any preambular language could only be used as an element of interpretation and would not be binding language as currently proposed. In addition, the U.S. noted that the proposed preambular language should be accompanied by additional language that recognises the other underlying objectives of the chapter, that is, the promotion and protection of investments. This would make the preamble have circular language that would lose all the purpose for the Parties wishing to incorporate an exception as a concrete tool that a State can actually use...

...Another of the most contested topics was the scope of the application of Investor-State dispute settlement (ISDS). Only Vietnam maintains its position to apply ISDS only to the post-establishment phase. During this round, Malaysia (MY) and Brunei (BN) agreed to support both pre- and post-establishment for ISDS, subject to the condition that they obtain an annex which would exclude pre-establishment for ISDS for its country (BN) or reserve the right to adopt a screening mechanism in the future (MY). This issue is far from being agreed, given that there are fundamental differences among the members...

**[State-Owned Enterprises (SOEs)]:**

Peru has joined the negotiation. Malaysia said it could join this week. The Group made progress in the discussion of the text...

...Malaysia agreed to negotiate so we have the twelve within the text. The Group made progress in the technical discussion. However, the CNs recognised that the Ministers will not be in a position to agree to the text entirely in Singapore, so we decided that the Group make a list of questions (no more than four) that in a binary way, pose decisions arising around the central issues of the text: sub-national level, disciplines on subsidies or competitive advantages; treatment of exceptions or restricting the scope of application. The idea is that Ministers answer these questions and on that basis the Group works - in Singapore - to reflect those answers in the text. ... this is a huge task, considering the level of immaturity of the negotiations of the text...

...The common factor in other conversations (MX, SG, PE) is the shared idea that this is very far from closed, and there is little room to make progress on a possible meeting in Singapore...

**[Market Access in Goods]:**

On Friday October 25, prior to the SLC round, milestone 3 was met, which involved revealing 95% of the offers. All but Japan complied, as JP had that "right" since it had started only recently the negotiating process... Countries were asked to intensify bilateral negotiations to reach concrete results at the Singapore Ministerial ..

... The panorama with Japan in particular looks very difficult. There should be a high-level instruction to confirm the understanding of the – no exclusions –so that JP (and several other countries) will move...

...On tariff negotiation, Milestone 4 is not fulfilled, because the U.S. prefers to leave it for Singapore where it can know what is the overall package that it would be closing. NZ, CA, CL, AU and PE indicated frustration with the aforementioned and with the continued lack of transparency... CL said it is necessary to have more transparency before Singapore, it is not adequate to learn of the status of offers in Singapore. United States outlined that the use of quotas would be the way to address certain sensitivities of some countries. That would be the way to grant access to Australia in sugar. The CNs gave instructions to intensify bilateral meetings and in those meetings countries to provide more information on the process of their offers. However, there is not much expectation that the situation on this point will improve...

...As for the text, while some provisions were closed, issues on agriculture which the U.S. rejects remain pending. Regarding distinctive products, the U.S. is planning to address this issue through Annexes to the Chapter where products of interest to the countries are recognised...

#### **[Rules of Origin]:**

Very little progress in Sections A and B. Vietnam and Mexico with very little movement in areas of concern to them....

#### **[Specific Rules of Origin]:**

...Much work remains and it is unclear whether we will be able to finish within the set timeframe, especially when you consider that what is left is the most sensitive...

#### **[Textiles] :**

... There was a major crisis after Mexico reported that it was leaving the Short Supply List because their interests have not been addressed by other countries, particularly Vietnam. This implies that Mexico applies the strictest general rule (Yarn Forward) and does not accept cumulation for the 187 products included in the list. Peru reacted strongly because it causes problems in their private sector. ... There was an impression that this from Mexico was "cooked up" by the U.S. previously. This crisis is evolving...

#### **[Sanitary and Phytosanitary Standards]:**

...The only outstanding issue is dispute settlement, where the United States suggested that it can accept the application of the general scheme on the condition that said scheme/regime applies to all Chapters of the Agreement. All delegations except Australia which supports exclusion, were open to seeing the U.S. proposal...

...the U.S. has also reopened several disciplines of the Chapter in the direction of decreasing its level of ambition. This is concerning because the U.S. is not demonstrating flexibility and because we could end up with a Chapter of little value.

**[Temporary Entry]:**

United States continues to state the impossibility of presenting an offer of market access....

**[Environment]:**

Meeting was interrupted because we could not get past the second issue [on] the definition of environmental law....

**[Legal and Institutional]:**

Regarding Exceptions no progress was made and virtually all provisions are pending. In tobacco, United States tabled a new proposal ... Malaysia maintains its proposal, but is considering, seriously, to leave tariffs out of its exclusion.....

**[Financial Services]:**

Inadequate progress. The positions are still paralysed. United States shows zero flexibility...

**[Agricultural Export Subsidies]:**

All TPP countries except the U.S. commit to eliminate them.

**[ITA (Trade in Information Technology Products)] :**

The countries pledge to be part of this multilateral agreement, which involves giving tariff concessions on a list of technology products.









[A=accept R= reject R/P = reserved position]

### TPP: Country Positions (6 November 2013)

Issue	Australia	NZ	US	Peru	Chile	Mexico	Canada	Singapore	Brunei	Malaysia	Vietnam	Japan
Medicines annex	A	R	A	R	R	R	R	R	R	R	R	A
Tobacco exception: group considering the proposals from Malaysia and US	R/P	R/P	A	R/P	R/P	R/P	R/P	R/P	R/P	A	R/P	R/P
Cultural exception	A	A	R	R	A	R	A	R	A	A	A	R
Tax exception: NAFTA focus	A	R	A	A	A	A	A	R	R	R	R	A
Extension of obligations: stronger formulation	R	R	R	A	A	R	R	A	A	A	R	R/P
Extension of obligations: weaker formulation	A	A	R	R	R	A	A	R	R	R	A	R/P
US proposal for entry into force	R	R	A	R	R	R	R	R	R	R	R	R
<b>Intellectual Property Chapter</b>												
Patents: Patentability criteria	A	R	A	A	R	R	R	R	R	R	R	R/P
Patents: Supplementary protection	R	R	A	R	R	R	R	R	R	R	R	R
Patents: Extend protection to new uses (plants, animals, surgical procedures)	R	R	A	R	R	R	R	A	R	R	R	R/P
Pharmaceuticals: linkage	R	R	A	R	R	R	R	R	R	R	R	R
Pharmaceuticals: Data protection	R	R	A	R	R	R	R	R	R	R	R	R
Copyright: TPM	A	R/P	A	A	R	A	R/P	A	R	R	R	R
Copyright: Term of protection (US proposal)	R	R	A	R	R	R	R	R	R	R	R	R
Copyright: Parallel importation	R	R	A	R	R	R	R	R	R	R	R	R
Copyright: ISPs (CL proposal)	R	A	R	A	A	A	A	A	A	A	A	R/P
Observations: New elements of Penal System: Establishment of criminal offenses for unintentional infringements of copyright, related rights and trademarks (QQ.H.7.3)	R	R	A	R	R	R	R	R	R	R	R	R
Observations: New elements of criminal code: Obligations to establish criminal penalties and fines for recordings of public works (camcording) (QQ.H.7.5)	A	R	R	R	R	R	A	R	R	A	R	R
Inclusion of agreements that parties should ratify and implement	A	R	A	R	R	R	R	R/P	R	R	R	R
National treatment: maintain TRIPS	R	A	R	A	A	R/P	R/P	A	A	A	A	A





# Transcript: Chief Negotiators, Dan Mullaney and Ignacio Garcia Bercero Hold a Press Conference Following the Third Round of Transatlantic Trade and Investment Partnership (TTIP) Talks

December 20, 2013  
Department of State  
Washington, D.C.

<http://www.ustr.gov/about-us/press-office/press-releases/2013/December/TTIP-Third-Round-Press-Conference-transcript>

Rep. Treat:

**QUESTION:** Hi. (Inaudible) from (inaudible). First up, just a quick comment before my question, which is: I was a little bit confused on Wednesday about why your briefing of stakeholders that followed their briefing of you was closed to the press, if you were trying to increase transparency.

But my real question is more about the timetable for deciding what you're going to decide. That is, when would you expect to decide on the sectors to reach an agreement on what sectors you're going to do deal with? And when would you – from that point, how much longer would you expect to go to reach it? Are you hoping to reach an agreement this year? Is it something that's going to be taking place next year? Can you give us just sort of the outside and what your timetable is for various elements of this agreement?

**MR. MULLANEY:** Yeah. On the latter question, I don't think – we don't have a timetable for making decisions on specific things. We're trying to move forward and make progress in all of the areas as much as we can. There will come a time, I suspect, we'll be figuring out how we're going to wrap up the issues, but that time is not yet.

On your first question, we had the three hour session with all of the stakeholders and the negotiators and lots of members of the press. So for the – for that three hour session where there was a direct negotiator-stakeholder interaction, the negotiators were there with members of the press and the stakeholders. Our feeling was that the briefing that we gave to the stakeholders on Wednesday afternoon was their opportunity to pose questions to us and have an exchange, and that the opportunity for the press, for us to have a briefing and have questions and answers, would come at the end of the round when we had completed the round during this hour.

**MR. BERCERO:** Can I just say a word on the sectors to clarify? The sectors which I mentioned in answer to a previous question are those sectors where both sides are exploring the possibility of having a specific regulatory commitment. We, of course, in these negotiations we

are discussing very broadly (inaudible) disciplines which are relevant for all sectors. We are looking into many other issues, but (inaudible) sectors is sectors where we are looking concretely, where it's possible to achieve specific regulatory commitments that go beyond and complement, what is being done until it's on that level. It is not a closed list. It is just a list, and we have started to work cooperatively with the involvement of the regulators on both sides. And within each of the sectors, there's a list of issues that we are looking into. As we progress in the discussion, we will see how far it is possible to go under each of the issues, under each of those sectors. I think that's important to bear in mind.

# Public Citizen

## Eyes on Trade

December 13, 2013

### **This Deal Could Make You Sick: A Backdoor for Food Contamination**

Next week, the safety of our food could be up for negotiation.

In case you [missed it](#), negotiators from the European Union and the Obama administration will converge in Washington, D.C. next week for a third round of talks on the [Trans-Atlantic Free Trade Agreement \(TAFTA\)](#). What is TAFTA? A “trade” deal only in name, TAFTA would require the United States and EU to conform domestic financial laws and regulations, climate policies, food and product safety standards, data privacy protections and other non-trade policies to TAFTA rules.

We profiled recently [the top ten threats this deal poses to U.S. consumers](#). One area of particular concern is how TAFTA's expansive agenda implicates food safety. Here's a synopsis.

#### **The EU/U.S. TAFTA Agenda: Deregulation in Disguise**

U.S. and EU TAFTA negotiators, advised by the world's largest agribusinesses, have used coded language in pushing for TAFTA rules that could roll back food safety standards. A leaked EU position paper reveals that EU negotiators are pushing for TAFTA to impose sweeping restrictions on food safety policies by mandating that such measures “must be applied [only to the extent necessary](#) to protect human, animal, or plant life or health.” Such terms would enable foreign governments to second-guess the “necessity” of domestic safety standards. U.S. negotiators have [called](#) for parallel TAFTA restrictions. Some members of Congress have even openly called for TAFTA to do away with “spurious” sanitary regulations, [asking](#) that TAFTA-created tribunals be empowered to rule on the validity of domestic food safety standards challenged by foreign governments.

#### **Food Corporations' TAFTA Agenda: Deregulation without Disguise**

European and U.S. food corporations, in their [formal demands](#) issued to TAFTA negotiators, have been remarkably candid in naming the specific U.S. and EU safety regulations that they would like to see dismantled via TAFTA. Here is their wishlist for food safety rollbacks, as stated by the corporations themselves:

- **Contaminated food:** BusinessEurope, Europe's largest corporate group, states, “Key non-tariff barriers affecting EU exports to the US include the US Food Safety Modernization Act.” The landmark 2011 law authorizes the U.S. Food and Drug Administration to recall contaminated food, a prerogative that European corporations would apparently like to see removed via TAFTA.

- **Questionable meat:** The EU corporations in BusinessEurope also state consternation with U.S. “import restrictions on uncooked meat products.” The loosening of such restrictions would allow more European meat to enter the United States at a time when many European countries are eliminating regular meat inspections – a fact that likely contributed to the 2013 scandal in which [meat exported by the United Kingdom as “beef” was found to be horse meat](#).
- **Chlorinated chicken:** The U.S. meat industry has stated its annoyance that EU consumers and regulators do not wish to eat meat products treated with “hyperchlorination and organic acids,” as spelled out by the North American Meat Association. Europe’s stronger safety standards limit poultry products’ *exposure* to contaminants during slaughter and processing. U.S. rules allow for more possibility of contamination, and then for chicken to be treated with antimicrobial chemicals such as chlorine to kill *E. coli* and other microbes afterward. The corporate group laments that “only the application of water and steam are permitted for use on meat carcasses by the EU.” Yum! Restaurants International, the owner of Kentucky Fried Chicken, has seconded this concern, asking that TAFTA be used to change EU food safety standards so that the company can sell Europeans chlorinated chicken.
- **Weaker U.S. Grade A dairy safety standards:** The U.S. safety standards for Grade A milk have been listed as a TAFTA target by EU agribusinesses. The European Association of Dairy Trade acknowledges that the standards “were devised as a means of addressing the risk of food borne illnesses...” But the industry group then complains that complying with the standards “is both highly cumbersome and expensive.”
- **Ractopamine growth-drug-fed pork:** The American Meat Institute protests that “the EU continues to maintain its unjustified ban on meat produced with beta-agonist technologies, such as Ractopamine Hydrochloride.” Ractopamine is a drug approved in the United States to increase beef, turkey and pork muscle mass. It has been [banned or limited in 160 nations](#) (including EU member countries, Russia, and China) due to potential risks to human and animal health. The National Pork Producers Council has made clear that TAFTA should be the vehicle for erasing the EU ractopamine ban: “U.S. pork producers will not accept any outcome other than the elimination of the EU ban on the use of ractopamine in the production process...”
- **Fruits with higher pesticide residue:** The California Table Grape Commission “is also [concerned about European pesticide maximum residue levels](#) (MRLs)...many of the MRLs established are at levels significantly lower than corresponding U.S. MRLs.” CropLife America, an agribusiness conglomerate that includes [Monsanto, similarly complains](#) that the EU does not allow as much pesticide residue on food as the United States permits – a “trade barrier” to be dismantled via TAFTA. The corporate alliance takes issue with European limits on pesticides that contain “endocrine disrupters” – a type of chemical linked with cancer and birth defects – complaining that European restrictions on such toxins “prevent U.S. agricultural and food products from entering the EU.”

## **Investor Privileges: Agribusinesses Empowered to Attack Food Safety Laws Directly**

U.S. and EU corporations and officials have called for TAFTA to grant foreign firms the power to skirt domestic courts, drag the U.S. and EU governments before extrajudicial tribunals, and directly challenge food safety laws that they view as violations of TAFTA-created foreign investor “rights.” The tribunals, comprised of three private attorneys, would be authorized to order unlimited taxpayer compensation for domestic policies perceived as undermining agribusiness firms’ “expected future profits.” Such [extreme “investor-state” rules](#) have already been included in U.S. “free trade” agreements, forcing taxpayers to pay firms more than \$400 million for toxics bans, land-use rules, regulatory permits, water and timber policies and more. Just under U.S. pacts, more than \$14 billion remains pending in corporate claims against medicine patent policies, pollution cleanup requirements, climate and energy laws, and other public interest policies. The EU is proposing an even more radical version of these rules for TAFTA, offering firms a new tool to roll back food safety rules.

## **Fast Track: Railroading Democracy to Railroad Safeguards?**

How could a deal like TAFTA get past Congress? With a democracy-undermining procedure known as [Fast Track](#) – an extreme and rarely-used maneuver that empowered executive branch negotiators, advised by large corporations, to ram through unfair “trade” deals by unilaterally negotiating and signing the deals before sending them to Congress for an expedited, no-amendments, limited-debate vote. As a candidate, President Obama said he would replace this expedited, anti-democratic process. But now he is asking Congress to grant him Fast Track’s extraordinary authority – in part to sidestep growing public and congressional concern about pacts like TAFTA. We must ensure that Fast Track never again takes effect and instead create an open, inclusive process for negotiating and enacting trade agreements in the public interest.

Posted by Ben Beachy at 4:56pm in [Food & product safety](#) , [TAFTA](#) | [Permalink](#)

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## EU and US both threatened by secret trade talks

16.12.13 @ 09:06

### *Related*

1. By Magda Stoczkiewicz & Erich Pica

BRUSSELS - Negotiations between the United States and European Union for a free trade agreement, which resume this week in Washington, represent one of the biggest threats we have seen in our lifetimes to progress towards our vision of an environmentally sustainable and socially just world on our continents.

The deal – known as the Transatlantic Trade and Investment Partnership (TTIP) – is billed as the biggest bilateral free trade agreement in history.

It is being touted as a means to boost trade and create jobs, but in reality the US already has free trade with Europe, and vice versa. Tariffs are already low and the exchange of goods and services is robust.

Our two organisations are both deeply concerned that the negotiating objectives for an agreement have little to do with free trade and everything to do with corporate power.

TTIP risks being a partnership of those who seek to prevent and roll-back democratically agreed safeguards in areas such as food and chemical safety, agriculture and energy.

What we fear the negotiations really aim for is a massive weakening of standards and regulations which are for the protection of people and our environment.

Such rules are branded ‘trade irritants’ making them seem like an annoying itch for the corporations which have to adhere to them. These companies would therefore like to see them removed, irrespective of the fact that the very reason for these rules’ creation is to protect citizens, consumers and nature.

Friends of the Earth US and Friends of the Earth Europe know what it is to be partners. We believe our governments should be partners too in building a more equitable and sustainable future. But our common analysis is that the TTIP is unlikely to do this.

For the time being we see corporations and financiers as the only partners. And we certainly don’t see citizens as partners when the details of the negotiations are being kept secret from the public.

This week's talks, like the previous rounds, will happen behind closed doors. The negotiating texts will be kept secret from the public but not from the approximately 600 corporate representatives who have been named 'cleared advisors' for the United States.

## **Partnership for profits**

More reason for our fear that this is a partnership for profits, not people or planet, is the provision of an 'investor-state dispute settlement' (ISDS) mechanism – perhaps the most dangerous TTIP negotiating objective.

This would enable corporations to claim potentially unlimited damages in secret courts or 'arbitration panels' if their profits are adversely affected by environmental or consumer regulations.

These investment suits are tried before business-friendly tribunals composed of corporate lawyers, bypass domestic courts and override the will of parliaments. Even expected future profits are compensable.

Under other existing investor-state agreements challenges to environmental policy are already being brought by oil and gas companies, mining operations, the nuclear industry, and pharmaceutical giants which deem that their investment potential and related profits are being damaged by regulatory or policy changes.

We believe there is much for American and European citizens to be concerned about in these trade talks – not least the ISDS.

Also at stake are regulations on genetically engineered products, food safety, toxic chemicals, highly polluting fuels, and many others.

The EU's fuel quality directive, which disadvantages tar sands oil and other fuels with a high carbon footprint, is on US Trade Representative Mike Froman's hit list. And food safety measures have been targeted as trade barriers, including restrictions on imports of beef treated with growth hormones, chicken washed in chlorine and meat produced with growth stimulants.

Friends of the Earth in Europe and the United States are determined to alert policymakers and the people about the deception and danger in the current course of the TTIP negotiations. We are calling for an end to the secrecy.

People, not corporations, should determine the future of the transatlantic economy, including what kind of future we want for our children.

*Magda Stoczkiewicz is director of Friends of the Earth Europe and Erich Pica is president of Friends of the Earth United States.*

- *21 Dec 2013*
- *The Boston Globe*
- *RENÉE LOTH Renée Loth's column appears regularly in the Globe.*

Take trade agreement off fast track

RECENTLY I went over to Radcliffe to hear House minority leader Nancy Pelosi commemorate the first White House report on the status of women. Outside the hall a handful of student activists held up a large banner reading "Stop the TPP." I puzzled: What is TPP? Something . . . Pelosi Pact? Third Party Platform? Terrapin Poaching Project?

When Pelosi took questions, a few audience members stood up, holding more signs. Would Pelosi commit to voting against the TPP? The former House speaker said she had concerns about TPP but avoided making promises. OK, but what is the TPP? And why hadn't I heard anything about it?

Turns out the TPP is the TransPacific Partnership, a massive trade agreement among the United States, Canada, Mexico, and nine other countries mostly in Asia, representing 40 percent of the world economy. Negotiations have been going on for years but are reaching the final stages, and opponents have grown increasingly vocal about the dark powers the agreement would grant to corporations and the damage it could do to global health, environmental, and labor protections. It's been called "NAFTA on steroids," a "corporate coup d'état," and worse.

Like most trade agreements, the pact's ostensible purpose is to lower trade barriers among countries, thereby stimulating economies and creating jobs. But the TPP also covers a broad range of legal and regulatory issues which make it more sweeping than the typical agreement, and much more worrisome.

It doesn't help that the negotiations have been conducted almost completely in secret, or that the Obama administration wants so-called "fast track authority" for the pact's approval, which allows the president to present the completed agreement to Congress for an up-or-down vote, without input from the members. This could come as early as January. In a floor speech earlier this year, Senator Elizabeth Warren opposed the nomination of Michael Froman as US trade representative because he refused to share any of the agreement's developing provisions with the public. "I believe we need a new direction from the trade representative— a direction that prioritizes transparency and public debate," she said.

I was skeptical at first of some of the more florid claims about the TPP. Opponents hail from the edges of both the left and right. Last month WikiLeaks released what it says is the "secret negotiated draft text" of the chapter on intellectual property rights, which makes it sound like we will all be getting NSA chips embedded in our genomes. Michael Brune, president of the Sierra Club, wrote that

"corporations would rise to the level of nations," able to sue any government for interfering with their profits. It seemed implausible that signatories to the deal would allow their own sovereignty to be undermined by corporate rights. That's like Citizens United on steroids.

Then I read a New York Times report about lawsuits being brought by big tobacco companies against the governments of Australia, Uruguay, and several countries in Africa for violating trade agreements by passing laws that place limits on advertising and packaging cigarettes. One company, British-American Tobacco, complained that Australia's antismoking regulations violate its trademark rights, because the country requires cigarettes to be sold in drab packages. That's just the type of "far-reaching, transnational legal enforcement regime" the WikiLeaks release decries. Philip Morris is suing Australia under a different, more limited trade agreement between that country and Hong Kong.

Poorer, developing countries are particularly targeted by Big Tobacco, because governments don't have the resources to fight back. Margaret Chan, director of the World Health Organization, said the trade suits are "deliberately designed to instill fear in countries wishing to introduce tough tobacco control measures."

You don't have to be paranoid to imagine how bad things could get if this kind of legal strategy grew to encompass almost half the world's economy. What kinds of environmental, public health, and civil rights laws might be seen as trade violations by the likes of Halliburton, Chevron, and Monsanto, to name a few? According to Warren and other opponents, these are just three of the 600 corporations (and some non-governmental groups) that have been advising the TPP trade negotiators. Better to slow down fast-track and lift the veil. It looks like the mysterious TPP really stands for Terrible Public Policy.

## **Through trade treaty, U.S. hopes rules that favor its companies will become the norm**

Washington Post

By [Howard Schneider](#), Published: December 24 [E-mail the writer](#)

When Vietnamese officials issued new Internet rules this year, the U.S. tech industry gave a shudder.

The regulations clamp down on political speech, require companies such as Facebook and Google to invest in local computer infrastructure to store information on Vietnamese users, and could force chipmakers to strip standard encryption features from their processors.

As the United States and 11 other nations near a new trade agreement in the Pacific region, it is those sorts of restrictive local standards that have become the chief battleground in a debate that could shape the future of industries considered vital to U.S. economic growth.

Like earlier trade agreements, the TransPacific Partnership involves its share of old-school disputes: whether U.S. sugar subsidies are unfair to sugar farmers in other countries, for example, or whether Japan will fully open itself to buying foreign-made cars.

But the more significant fights — and the reason why the Obama administration has placed such a priority on the agreement — are over issues such as the regulation of the Internet and e-commerce, the rules for the patent and sale of biopharmaceuticals, and the oversight of logistics, consulting, energy management and other service industries where the U.S. holds an edge.

Vietnam may be a small country. But in the fight over the future of the global economy, its efforts to regulate the Internet are symbolic of a fundamental fork in the road, with one path leading to a more restrictive and expensive environment for business and the other toward a freer global flow of commerce.

U.S. government and industry officials hope that if an agreement can be struck with the 12 nations involved — including Vietnam, Japan, major U.S. trading partners such as Canada and Mexico, and small but economically influential states such as Singapore — it will prove broadly influential and set the terms of commerce throughout the rapidly growing Asia-Pacific region.

For many emerging technology and other industries, the global rules for trading and investment have yet to be set, and “the goal here is to have more U.S.-based policies” rather than ones more typically found in countries such as China that try to force companies to invest locally or turn over technology to local partners, said Michelle Wein, a researcher for the Information Technology and Innovation Foundation. “It is about bringing the rest of the world up to the level of the U.S.”

Opponents say there is a flip side to that debate: that fewer local restrictions means less local control. Through some 20 rounds of negotiation, the TPP talks have been criticized as broadly

undemocratic, setting what could become important domestic regulations through diplomatic negotiation rather than through an open legislative process. That may serve the United States well when it comes to generating research jobs in pharmaceutical companies or expanding the reach of Silicon Valley, but it could leave other countries with higher drug prices and less local technology investment, opponents contend.

Similar criticisms are surfacing over a separate agreement between the United States and Europe that is founded on efforts to align health, safety and other regulations between the two economies. Critics worry the treaty will lead to the weakest set of rules becoming the norm.

Negotiations over the TPP are thought to be nearing completion. An initial legislative battle over U.S. trade policy is expected early next year, when Congress will be asked to grant President Obama the same “fast track” authority that allowed his predecessors to negotiate trade treaties and receive a quick up-or-down vote in Congress.

Some influential figures in that debate, including U.S. Rep. Sander M. Levin (D-Mich.), are arguing for the upcoming discussion to be as robust and detailed as possible, in part to diminish concerns that Congress will have no power to amend the TPP treaty itself once a fast track law is adopted.

There will certainly be no shortage of prominent, leading-edge industries lined up to make the case for approval.

Logistics and other service firms see immense potential for the United States if markets throughout Asia can be deregulated, allowing them to overhaul shipping, retail distribution, management and other systems. Biotechnology companies hope the agreement can extend to other nations the 12 years of protection they now have under U.S. law on the research data used in the development of new biopharmaceutical products.

Countries “are just now developing and coming up with their rules” for the patent protection that will be offered to biotechnology compounds and the research needed to prove effectiveness, said Mark Grayson, a spokesman for the Pharmaceutical Research and Manufacturers of America. “This is forward thinking. . . . Biologics is where the value and the research are going.”

The administration may face some unusual challenges. At a public hearing on the treaty with Europe last week, Maine state Rep. Sharon Treat (D) argued that both the proposed pact with Europe and the TPP may run counter to the United States’ constitutional division of power between the state and federal governments. She said she worried, for example, that states would end up with less power to set local water quality or pesticide rules for fear of violating the treaty and being challenged under provisions that let investors sue states through a separate international tribunal rather than in a local court.

Portland Press Herald

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## Outcome of trade talks splits state

**A proposed new international agreement has implications for Maine companies that compete with and sell to Asia.**

By [Kevin Miller kmiller@pressherald.com](mailto:kmiller@pressherald.com)

Washington Bureau Chief

WASHINGTON — Maine companies that sell more than \$600 million worth of products to Pacific nations are awaiting the outcome of secret talks on a new international trade agreement that could affect jobs as varied as fabricating computer chips and processing lobster.

Negotiators from the Obama administration and at least 11 other nations are expected to gather in January to try to complete work on the Trans-Pacific Partnership, aimed at stimulating trade in countries that account for 40 percent of the global gross domestic product.

In Maine, companies that have a stake in the deal disagree on its potential impact – in part because the details are being held in strict confidence by negotiators, as is normally the case when trade agreements are pieced together. But such pacts generally eliminate tariffs and other artificial barriers. That means some Maine companies will enjoy access to new markets, while others face the risk of losing out to foreign competition.

Where Maine businesses fall on that spectrum could depend on what sort of goods they are selling.

New Balance, which manufactures athletic shoes, continues to warn – with support from Maine’s congressional delegation – that eliminating import taxes on footwear made in Vietnam would threaten jobs at production plants in Maine and Massachusetts.

“Our issue remains one of the major sticking points, and frankly we think that is a good thing because it is getting a lot of attention,” said New Balance spokesman Matt LeBretton. “But we don’t know how it is going to play out.”

For those working in Maine’s nearly \$500 million fishing industry, however, the agreement could open up new, largely untapped markets in Asia.

“The European markets have been tough for the past few years, so this is great timing,” said Colleen Coyle, seafood program coordinator with Food Exports USA Northeast.

Most members of Maine’s congressional delegation remain skeptical that the Trans-Pacific Partnership will benefit the state, which has witnessed an exodus of manufacturing jobs amid globalization in recent decades. Those kinds of concerns underscore the political challenges the trade deal could face in Congress.

Sen. Angus King, a former two-term governor, said he has been skeptical of the way the U.S. has negotiated trade agreements in the past, adding, “I don’t think we have struck a particularly good deal for Americans.”

Like other members of the delegation, King voiced particular reservations about the Trans-Pacific Partnership’s impacts on New Balance.

“I wish they would say, ‘We are not going to undercut American jobs in that way’ and make this a non-negotiable item,” King said. “But the (trade) ambassador and the Obama administration have not said that, ... and my experience is if people have good news for you, they generally tell you.”

## **FIVE NEW MARKETS AT STAKE**

The Trans-Pacific Partnership is the latest and perhaps the most ambitious free trade agreement ever negotiated by the United States. Eleven other nations are participating: Canada, Mexico, Australia, Japan, Chile, Malaysia, New Zealand, Peru, Singapore, Vietnam and Brunei. South Korea has also expressed interest in joining the negotiations – as has China to some extent – but the process may be too far along for such major entries.

The United States already has trade pacts with several of the nations, including Canada and Mexico under the still-controversial North American Free Trade Agreement, or NAFTA. Supporters say the new pact could open up another five markets in the Asia-Pacific region, with the addition of Japan, Malaysia, New Zealand, Vietnam and Brunei.

Maine exported \$603 million in goods to the five nations in 2012, according to a state-by-state breakdown by the trade consulting firm Trade Partnership Worldwide, which produced a report showing the benefits of the proposed trade agreement.

Exports of semiconductors and components accounted for \$460 million of the Maine total, according to the report. The remaining 24 percent represented: \$46 million from exports of aerospace products; \$27 million for fisheries and marine products; \$20 million in wood and paper products; \$18 million in pharmaceuticals/medicines; and \$32 million classified as “other.”

“Maine has good trade ties with several of these countries, ... however, Maine producers currently face steep tariffs and other barriers on certain exports to these countries,” according to Trade Partnership Worldwide’s report. It was produced for the Business Roundtable, an association of CEOs from companies with combined revenues of \$7.4 trillion.

The port says trade talks “ will provide an avenue for removing these barriers and increasing Maine exports.”

South Portland is home to two major semiconductor manufacturers – Fairchild Semiconductor and Texas Instruments – that combined employ more than 1,200 workers. Neither company returned requests for comment last week.

However, Texas Instruments listed the trade talks and other open-trade issues at the top of the company’s 2013 public policy priorities, noting that approximately 90 percent of the company’s revenues come from sales outside of the United States. Malaysia is a major purchaser of semiconductors.

## **STAKES HIGH FOR NEW BALANCE**

New England’s multibillion-dollar footwear industry could serve as a case study in the fierce, big-money debate over tariffs.

For months, Massachusetts-based New Balance, which employs nearly 1,300 people in Maine and Massachusetts, has been battling six other New England shoe manufacturers over whether to eliminate import tariffs as part of any trade deal.

Like all other major sneaker companies, New Balance relies on overseas factories – including some in Vietnam – to produce the majority of the brand’s sneakers. But New Balance manufactures or assembles 25 percent of its shoes at three Maine factories –

in Norridgewock, Skowhegan and Norway – or at facilities in Boston and Lawrence, Mass.

As the only major sneaker company still manufacturing domestically, New Balance wants the Obama administration to keep the tariffs on shoes produced in Vietnam's low-wage factories. Adidas, Saucony and the four other New England-based companies that produce shoes overseas but employ thousands of designers, marketers and other workers in the U.S. argued that eliminating the tariffs will lower shoe prices and lead to more jobs in the U.S. as their companies grow.

In August, the six companies publicly invited U.S. Trade Ambassador Michael Froman to visit their company locations after Froman toured New Balance's Norridgewock factory. Froman's predecessor to the job, Ron Kirk, received a similar tour of one of New Balance's three Maine factories in 2012 after repeated requests (and some prodding) from Maine's congressional delegation.

The biggest player in the sneaker business, Nike, has hired several high-priced lobbying firms in Washington to push to eliminate the tariffs. The result has been a lobbying and public relations war between sneaker rivals that could decide the fate of the few remaining footwear factories in this country.

"We work together on other issues," New Balance's LeBretton said of his industry rivals when asked about the tariff-related tensions. "On this issue, there's no cooling. There is not a situation where we are going to see eye-to-eye on this issue."

Both Froman and Kirk have pledged to take New Balance's concerns into consideration, but neither indicated a willingness to keep the tariffs in place.

A spokeswoman for the U.S. trade representative said the office regards athletic footwear as a "sensitive product" and that U.S. negotiators are taking into consideration the importance of the tariffs to New Balance.

One option is phasing out the import taxes. But even with a phase-out the question becomes: How long?

U.S. Rep. Mike Michaud, a Democrat who represents Maine's 2nd District, said a longer-term phase-out of 25 years would give New Balance time to prepare for the transition. While not common, such extended phase-out periods have been applied to other tariffs.

"It's not that we are saying that you can never eliminate the tariff," said Michaud, a vocal critic of free trade agreements. "The question is how can you do it in a way that protects manufacturing jobs here in the U.S.?"

Both sides of the issue have been lobbying King and Sen. Susan Collins, a moderate Republican who has supported some past free trade deals but voted against others. Like Michaud and King, Collins has been urging Froman's office to shield domestic shoe manufacturing jobs from the impacts of any deal.

"Sound trade policy is imperative to maintaining and increasing the number of good manufacturing jobs in Maine and the rest of the United States," Collins said in a statement. "I am confident he will work to negotiate aggressively and implement a trade policy that honors the commitment of the hardworking employees at New Balance who fulfill their end of the bargain by performing their work with painstaking precision and quality control."

## **GOOD FOR BLUEBERRIES, SEAFOOD**

Other Maine industries would likely benefit from the elimination of tariffs.

Cherryfield Foods in Washington County and its sister company in Nova Scotia, Oxford Frozen Foods, already export a significant amount of wild blueberries to Europe and Asia. Oxford CEO David Hoffman said his company and Cherryfield are often at a competitive disadvantage now because Chile – a major exporter of fruits and vegetables – already has no-tariff agreements with some countries in the Pacific region.

About 50 percent of Oxford's sales are overseas exports, with Europe and Asia roughly equal but Asia growing in share as income levels rise in the region, Hoffman said.

Maine and eastern Canada produce the vast majority of the world's wild blueberries, meaning any new markets would likely benefit the rural communities that support the

industry, Hoffman said. “It is important for the growth of the economy in wild blueberry-producing areas,” he said. “So it is a great opportunity if these tariffs can finally be taken down.”

Asia is also a booming market for America’s commercial fishing fleet and seafood dealers.

Exports account for about 55 percent of sales at Calendar Islands Maine Lobster Co., a Portland-based company that ships “gourmet Maine lobster fare” around the world.

With the ongoing economic troubles in Europe, Asia has emerged as another market for Maine fishermen, said Emily Lane, the company’s vice president of sales. The United States already has a free trade agreement with South Korea.

“It’s opened up opportunities for Maine companies to do business with South Korea and build long-term partnerships,” Lane said.

## **LABOR LEADERS SKEPTICAL**

One criticism often levied against free trade deals is that they reward countries with subpar environmental and labor laws. Opponents, including many in the U.S. labor union movement, contend that the agreements remove trade barriers but do not require adequate upgrades to those nations’ labor and environmental laws.

“The evidence is that free trade simply pits Maine workers and Maine businesses against workers in countries that do not have the same standards,” said Cynthia Phinney, president of the Maine Fair Trade Campaign.

Phinney and other groups suggest that the Trans-Pacific Partnership goes far beyond free trade by attempting to rewrite corporate intellectual property and patent laws, including changes that could allow pharmaceutical companies to block the introduction of lower-cost generic drugs.

Democratic U.S. Rep. Chellie Pingree, who represents the 1st District, is also a vocal skeptic of free trade agreements. Twenty years after implementation of the North

American Free Trade Agreement, Pingree questioned whether such pacts adequately protect Maine workers and the environment.

“At this point, we know very little about what is in [the TPP], so I start with a heavy amount of skepticism,” said Pingree,

That latter statement, which is echoed by Phinney and other critics, reflects the belief that the secrecy surrounding the negotiations – which are closed to the press and to the public – ensures that no one knows what is in the deal until it is done.

**New Straits Times**

**1/2/14**

## **China hints at joining TPP talks**

By Frank Ching | [Frank.ching@gmail.com](mailto:Frank.ching@gmail.com) | Twitter: [@FrankChing1](https://twitter.com/FrankChing1)

**ECONOMIC DIPLOMACY:** Interest shows idea of a partnership is gaining momentum

FOR the first time since it came into existence in 1995, the World Trade Organisation last month achieved a breakthrough, reaching a series of agreements to streamline trade that are expected to boost the world economy by up to a US\$1 trillion (RM3.28 trillion) a year.

Even so, progress in the Doha round of talks has been frustratingly slow and countries will continue to move on their own to reach regional free trade agreements, such as ongoing talks spearheaded by the United States to set up a Trans-Pacific Partnership (TPP).

While the original goal was to reach agreement by the end of last year, the 12 countries involved, which account for up to 40 per cent of global gross domestic product (GDP), announced on Dec 10 after a meeting in Singapore that they would meet again this month. No new deadline was announced.

In November, South Korea indicated interest in joining the TPP talks and it is now holding preliminary discussions, even though acting deputy US trade representative Wendy Cutler said the negotiations were already in the "end game" and it would be very difficult for any country to join the discussions.

Now, China is also indicating interest. Foreign Minister Wang Yi, while outlining diplomatic priorities for this year, said economic diplomacy would be a major focus of Chinese diplomacy in the new year and that "China will face the member states of the Trans-Pacific Partnership talks with an open attitude, as well as other regional or cross-region free trade agreement (FTA) initiatives".

China is very much involved in regional FTA talks, including bilateral discussions with South Korea, trilateral talks with South Korea and Japan, as well as the Regional Comprehensive Economic Partnership, or RCEP, talks involving the 10 Asean states as well as Australia, India, Japan, Korea and New Zealand, which, when concluded, will involve three billion people with a combined GDP of US\$17 trillion.

TPP and RCEP have been seen as rival trading blocs, especially as China was not in the TPP and the US was not in RCEP. However, some countries are involved in both.

South Korea was hesitant to join the TPP because it was seen as an anti-China bloc even though the Korea Institute for International Economic Policy, a government-funded think tank, estimated that membership in the TPP would increase Korean GDP by 2.6 per cent over a 10-year period.

If both China and South Korea join the TPP, that grouping will account for more than 50 per cent of the global economy.

China first indicated interest in the TPP talks seven months ago when its Commerce Ministry said it was studying the possibility of joining the talks. That came as a surprise because a common view then was that the trade pact constituted an attempt by the US to contain China's rise -- the economic counterpart of the military "pivot to Asia". However, China again expressed interest a few months ago during the strategic and economic dialogue in Washington, held in the wake of the Sunnylands summit meeting between (US president) Barack Obama and (China president) Xi Jinping. Washington indicated that China could join the TPP negotiations and briefed the Chinese on the talks.

A note of uncertainty was injected into the future of the talks last month when more than 150 Democratic members of the House of Representatives wrote a joint letter to Obama stating their opposition to granting him fast-track authority in trade negotiations.

Fast-track authority means that when agreement is reached, Congress can approve or disapprove, but cannot make amendments. In the absence of such authority, Congress can examine and object to any article of what will be an extremely complex document.

Since the Trade Act of 1974, all US FTAs have been negotiated with Congress, granting the president fast-track authority. Unless the Obama administration can obtain such authority, the entire TPP negotiations may become stillborn.

The recent interest indicated by South Korea and China shows that the idea of a TPP is gaining momentum. While additional negotiating partners inevitably means a slower pace, issues already agreed will not be revisited.

Despite the opposition to fast-track authorisation by Democrats, the proposal is by no means dead since the House is controlled by Republicans, who by and large favour a free trade agreement. So, the opposition party may come to the rescue of Obama where the TPP is concerned.

In fact, China's interest could well be a positive factor. The US Congress may see this as an opportunity to lock Beijing into an agreement that ensures a level playing field for American business.

Read more: [China hints at joining TPP talks - Columnist - New Straits Times](http://www.nst.com.my/opinion/columnist/china-hints-at-joining-tpp-talks-1.452755#ixzz2qyAuVNtY)  
<http://www.nst.com.my/opinion/columnist/china-hints-at-joining-tpp-talks-1.452755#ixzz2qyAuVNtY>

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- **Activists fear trade deal's impacts on the Pacific rim**

Cecilia Rosen, Mike Ives

02/01/14

### Speed read

- Campaigners fear the proposed deal could limit internet freedoms and drug access
- A plan to extend copyright protection could also hinder the flow of knowledge
- Talks on the agreement are due to resume this year

[BANGKOK/BUENOS AIRES] Recent **trade** talks between 12 countries in the Pacific rim, expected to continue next year after unsuccessful negotiations last month, have sparked dissent on both sides of the Pacific.

Campaigners from Latin America and South-East Asia fear the talks could further restrict internet freedoms and **limit access to generic medicines** by extending big companies' grip on **intellectual property (IP)**.

The negotiations over the Trans-Pacific Partnership (TPP) agreement have been secretive, but a draft chapter on IP was leaked in November by media organisation WikiLeaks, fuelling concerns over the ramifications of the proposed deal.

"The vital lifeline of affordable generic medicines that millions depend on could be severely constrained by the terms of the trade pact," the medical aid organisation Médecins Sans Frontières said in a statement last month.

The organisation said that US demands for clinical **data** for some medicines to be locked up for 12 years would grant additional monopoly protection to biopharmaceutical firms.

This would delay approvals of generic versions of drugs, it added. The Geneva-based organisation urged the countries involved in the negotiations to reject provisions that will harm access to medicines, saying the current terms of the agreement will restrict access to affordable medicines for millions of people.

### Worries in South-East Asia

Trade negotiators arrived in Singapore last month for another round of talks on the TPP, a planned 12-country trade agreement led by the United States that involves four countries — Brunei Darussalam, Malaysia, Singapore and Vietnam — from the ten-member Association of Southeast Asian Nations (ASEAN).

Australia, Canada, Chile, Japan, Mexico, New Zealand and Peru are also taking part.

US officials say the free-trade deal would include “high-standard” provisions on labour rights, healthcare and the **environment**, while also catalysing long-needed reforms of the state-owned **enterprises** that dominate some Asian economies.

**“The vital lifeline of affordable generic medicines that millions depend on could be severely constrained by the terms of the trade pact.”**

### **Médecins Sans Frontières**

“In all of our trade agreements, it is made clear that all countries have a right to regulate in the interest of the **health**, safety and environmental protection of their people,” US trade representative Michael Froman told reporters on a conference call in August.

But activists in several countries warn that the agreement, if signed, would restrict the availability of essential goods and services such as **medicines**, seeds and internet access in parts of South-East Asia and the wider developing world, with dire consequences for millions of people.

“South-East Asian countries that are able to undercut China in wages and working conditions may gain some relatively short-term jobs out of the TPP, but they would have to trade away affordable healthcare, domestic agriculture and much of their national sovereignty in exchange,” says Arthur Stamoulis, executive director of Citizens Trade Campaign, a Washington-based coalition of US advocacy groups.

Intellectual property laws in much of South-East Asia are weak compared with similar laws in the United States, so opponents of the TPP worry that it would allow multinational corporations to bend local laws to their advantage, typically by asserting a legal right to protect their intellectual property.

### **Health concerns**

For example, the TPP could allow multinational tobacco companies to block future government attempts to require larger labels on cigarette packaging that warn of smoking's health effects, says Mary Assunta, senior policy advisor at the Southeast Asia Tobacco Control Alliance. She adds that 127 million adults already smoke in the ASEAN region, and a fresh uptick in smoking there would have major public-health impacts.

The trade deal would also strengthen the hand of international pharmaceutical companies and reduce public access to generic medicines, says Saunthari Somasundaram, president of the National Cancer Society Malaysia.

The cost of medicine is already a major burden to affordable healthcare in Malaysia, where 80 per cent of the population receives healthcare through government hospitals or clinics, Saunthari adds, and generic medicines are a life-saving resource for many low-income patients.

"We are opposed to any regulations that will diminish the ability of [Malaysia], which is a developing country, to effectively treat cancer and safeguard the health of its people," she tells *SciDev.Net*.

## **Digital rights**

The TPP would also restrict freedom in the digital realm, according to Jeremy Malcolm, senior policy officer at Consumers International, a London-based advocacy group representing consumer groups in 120 countries.

Malcolm says the deal would permit internet service providers to monitor private photos or videos if the material were suspected of infringing on copyrights.

This, he says, "is problematic from a privacy perspective. To lock [in] this capability of trade law without a full review of the privacy implications is disturbing."

In Singapore last month (7-10 December), the TPP countries failed to reach a deal, but vowed to continue their long-running negotiations in 2014. Michael Froman, the US trade representative, described the four-day talks as "very successful".

But Stamoulis of Citizens Trade Campaign tells *SciDev.Net* that developing countries should carefully study the lessons from previous US-led free-trade agreements, which he said contributed to rural displacement and downward pressure on wages, among other problems.

He adds that the competitive advantages developing countries might gain by joining the TPP

are far from assured in the long term, since other nations could potentially undercut them by signing other free-trade deals with the United States.

### **Concerns from Latin America**

Francisco Vera, projects director of the Chilean NGO Derechos Digitales (Digital Rights), argues that the TPP agenda would disturb the way cultural goods are produced and distributed in Latin America, where legal standards are already high enough to guarantee authors protection for their work.

The draft TPP agreement would benefit only the industries and the owners of these rights and not necessarily the authors, he says.

“It represents a serious threat to our internet rights and also to other rights linked to IP issues,” he says. “The possible advantages that a country such as Chile might receive from an agreement such as this one are cancelled out by the TPP’s negative impacts.”

Vera, who leads a campaign to open up discussions on the pact, says that TPP will make it harder and more expensive to access films, books and wider knowledge, and stricter provisions for copyright violations will lead to a drastic fall in such material on the internet.

Although the internet is global, economic and social realities are local and national, and that must be taken into account, Julio Vega, the director general of the Mexican Internet Association, tells *SciDev.Net*.

He says the agreement’s intention to restrict the free flow of personal data for commercial transactions and its request for transnational companies to have national internet services in every country could hinder the development of online businesses.

These actions would inhibit widespread internet access in countries such as Mexico, where just 35 per cent of the population are on the **internet**, Vega says.

He says the Mexican Internet Association is not against punishing illegal activity, but it questions the way the TPP plans to fight digital piracy by using internet providers to monitor users and enforce laws. Instead, governments must be responsible for this, he argues.

“The TPP seeks to apply the same norms that already exist in some developed countries in others which are less developed, and will stop the possibility of local industries developing knowledge and innovation,” adds Vera.



# Transcript: Chief Negotiators, Dan Mullaney and Ignacio Garcia Bercero Hold a Press Conference Following the Third Round of Transatlantic Trade and Investment Partnership (TTIP) Talks

December 20, 2013  
Department of State  
Washington, D.C.

<http://www.ustr.gov/about-us/press-office/press-releases/2013/December/TTIP-Third-Round-Press-Conference-transcript>

Rep. Treat:

**QUESTION:** Hi. (Inaudible) from (inaudible). First up, just a quick comment before my question, which is: I was a little bit confused on Wednesday about why your briefing of stakeholders that followed their briefing of you was closed to the press, if you were trying to increase transparency.

But my real question is more about the timetable for deciding what you're going to decide. That is, when would you expect to decide on the sectors to reach an agreement on what sectors you're going to do deal with? And when would you – from that point, how much longer would you expect to go to reach it? Are you hoping to reach an agreement this year? Is it something that's going to be taking place next year? Can you give us just sort of the outside and what your timetable is for various elements of this agreement?

**MR. MULLANEY:** Yeah. On the latter question, I don't think – we don't have a timetable for making decisions on specific things. We're trying to move forward and make progress in all of the areas as much as we can. There will come a time, I suspect, we'll be figuring out how we're going to wrap up the issues, but that time is not yet.

On your first question, we had the three hour session with all of the stakeholders and the negotiators and lots of members of the press. So for the – for that three hour session where there was a direct negotiator-stakeholder interaction, the negotiators were there with members of the press and the stakeholders. Our feeling was that the briefing that we gave to the stakeholders on Wednesday afternoon was their opportunity to pose questions to us and have an exchange, and that the opportunity for the press, for us to have a briefing and have questions and answers, would come at the end of the round when we had completed the round during this hour.

**MR. BERCERO:** Can I just say a word on the sectors to clarify? The sectors which I mentioned in answer to a previous question are those sectors where both sides are exploring the possibility of having a specific regulatory commitment. We, of course, in these negotiations we

are discussing very broadly (inaudible) disciplines which are relevant for all sectors. We are looking into many other issues, but (inaudible) sectors is sectors where we are looking concretely, where it's possible to achieve specific regulatory commitments that go beyond and complement, what is being done until it's on that level. It is not a closed list. It is just a list, and we have started to work cooperatively with the involvement of the regulators on both sides. And within each of the sectors, there's a list of issues that we are looking into. As we progress in the discussion, we will see how far it is possible to go under each of the issues, under each of those sectors. I think that's important to bear in mind.

# The secret trade deal that threatens Maine's frail economy

 [thephoenix.com/boston/news/157007-secret-trade-deal-that-threatens-maines-frail/](http://thephoenix.com/boston/news/157007-secret-trade-deal-that-threatens-maines-frail/)

Free trade at high cost

By **ZACK ANCHORS** | January 3, 2014



**TRADE BALANCES** This chart, by the Congressional Research Service, illustrates trade between potential TPP members.

Today it's far more likely that the shoes on your feet were made in Vietnam than in Maine, but a few decades ago the opposite would have been true. Dozens of shoe factories once employed 30,000 workers in Maine, making it the top shoe-producing state. What's left of that workforce — several hundred New Balance employees — could soon be gone too, thanks to a massive free trade agreement that's expected to eliminate a series of tariffs on imported footwear. And jobs may not be all the state has to lose.

Negotiations over this new trade deal, the Trans-Pacific Partnership (TPP), are in final stages this month, which also happens to mark the 20th anniversary of the enactment of the North American Free Trade Agreement (NAFTA). TPP, an agreement among the United States, Canada, and 12 Pacific Rim countries including Australia, Japan, Malaysia, Singapore, and Vietnam, could

deal a blow to Maine's shrunken manufacturing industry, just as NAFTA did years ago. That was the point stressed by workers, and echoed by Maine's Congressional delegation, when former US Trade Representative Ron Kirk visited the New Balance factory in Norridgewock in September 2013.

But concern over the fate of manufacturing jobs has obscured other troubling implications, both local and global, of the TPP and several other free trade agreements in the works. While the TPP is touted as a crucial opportunity to remove trade barriers and boost global economic growth, a growing number of environmental organizations, intellectual property experts, consumer-rights activists, and public-health groups are voicing alarm about its other potential consequences. Many describe the agreement, the details of which are being worked out amid extreme secrecy, as an unprecedented attempt to bypass normal democratic processes and restructure the global economy in line with long-standing priorities of the world's most powerful business interests. Among those priorities: stronger patent and copyright rules that favor pharmaceutical and tech companies over artists, consumers, and patients, and powerful new rights for corporations, such as the ability to challenge government laws and regulations using private tribunals.

"If [the US trade representative] somehow retains tariffs on shoe imports, that might be a victory for Maine workers," says Matthew Beck, a labor organizer and vice-president of the Maine Fair Trade Campaign, a statewide coalition of more than 60 labor, environmental, human rights, family farm, and community groups. "But overall the agreement would still be horrendous for workers and countless others around the world, including those who depend on affordable drugs."

In Maine, elected officials of both parties worry the agreement would undermine state regulations, decrease access to affordable medicine, create environmental and public health threats, and endanger jobs in several industries. Driven by these concerns, some Mainers are fighting to stop the deal in its tracks or at least to influence the final text of the agreement.

One voice of skepticism comes from state representative Sharon Anglin Treat (a Hallowell Democrat), an official adviser to the Office of the US Trade Representative (USTR), who is one of the only state-level elected officials in the country with limited access to the secret draft agreement.

"There's a lot there that would concern most Mainers, if they had they had the opportunity to read it and a law professor to interpret what they read," she says. "Even if the New Balance jobs are protected, there are many, many areas in this agreement that should raise concerns within our state."

#### **NAFTA, part deux**

Twenty years after NAFTA was enacted, there's still great disagreement over whether the deal between Canada, Mexico, and the US improved standards of living overall or worsened economic circumstances for the majority of poor

and working-class people. Many economists point to significant economic growth that stemmed from NAFTA, but others trace problems like increasing economic inequality and stagnant wages to the agreement.

What's clear is that some companies and individuals benefited enormously from NAFTA while many others suffered from its economic impact. TPP will also produce winners and losers, which is why some Maine businesses await it with enthusiasm while others dread inevitable competition from foreign markets.

The TPP encompasses 800 million people and roughly 40 percent of global gross domestic product, making it much larger than NAFTA. It's different from NAFTA in other ways too. Trade agreements traditionally focus on removing tariffs (a/k/a taxes on imports and exports), but tariffs are already fairly low among most TPP countries. The central goal of TPP is to reduce "non-tariff barriers" and regulations, ostensibly so that businesses can operate with the same playbook in every country. Theoretically, that could lead to higher environmental and labor standards overall, but critics believe that it's more likely that the weakest set of rules will become the norm — or that rules will grossly favor private companies over workers, consumers, and the environment.

Also unlike NAFTA, which generated extensive public debate before its adoption in 1994, few Americans know much about the TPP due to the extreme secrecy surrounding discussions.

#### **Maine's voice at the table**

The vast majority of the 700 "cleared advisers" with access to the clandestine negotiations represent corporations or industry groups such as the American Chemistry Council and the American Petroleum Institute. Among that crowd, Treat, who sits on the USTR's Intergovernmental Policy Advisory Committee, stands out. Her aims on the committee are closely related to her role as chair of Maine's Citizen Trade Policy Commission, a bipartisan group created by state law in 2003 to assess the impact of trade policy on Maine.

"I feel an obligation to look out for how this agreement could affect state-level policy," says Treat. "I've tried to influence areas that interfere with our ability to protect the environment and public health."

The secrecy of the 29-chapter, several-thousand-page draft document is strictly enforced. Although Treat is asked by USTR to provide feedback on excerpts of the agreement, she is forbidden from discussing the text. Independent US Senator Angus King, who also has limited access to the draft agreement, proposed to Treat that they discuss portions of the text they have both seen, but USTR denied them permission to do so.

Despite the restrictions, Treat is actively spreading word throughout the country about the potential consequences of the agreement. And since Maine is only one of three states with a citizen's commission examining trade, the state has wielded unusual influence, given its size. The commission, whose members include legislators as well as representatives of various industries, agencies, and public interest groups, has held public hearings on the TPP, commissioned economic analyses of its impact on the state, corresponded extensively with those near the negotiations, and has even met with government officials from Asia.

At a public hearing last month, the commission heard testimony on a wide range of topics, including the threat the deal poses to Maine's dairy industry and the possibility that its food-labeling provisions would prevent labeling of Maine lobsters and genetically-modified foods. The commission's ability to assess the impact of the TPP on Maine has been made easier by a series of anonymous leaks.

### **Exposing a corporate wish list**

Just as Edward Snowden's leaks in 2013 triggered a wave of public alarm about the growing powers of the National Security Agency, recent leaks by anonymous insiders about the TPP negotiations has spurred much greater scrutiny of the trade deal. Three separate leaks of chapters of the draft agreement have shed light on areas focusing on intellectual property, medicine, and investments; each leak engendered additional alarm.

Following the leak of the chapter on intellectual property, for example, digital rights activists highlighted an obscure provision that would eliminate the ability of artists to regain their copyrights from companies that bought them after 35 years. Dozens of such provisions in the chapter erode the rights of individuals while expanding those of Hollywood studios, tech companies, and recording studios, suggesting that these industries are using the trade deal as a way to achieve goals they've been unable to attain through legislative means.

Ilana Solomon, director of the Sierra Club's responsible trade program, says the agreement closely aligns with corporate agendas due to the makeup of the trade committees that advise USTR. "There's an extremely strong corporate bias on these committees," she says. "The energy advisory committee is filled with representatives of all the biggest energy companies, and the same is true in every area."

Lawmakers have also taken issue with USTR's approach. A letter sent by 130 members of Congress (including Maine reps Chellie Pingree and Mike Michaud) to the USTR last year insisted on greater transparency, noting that "American small business, civil society, and other interest who have a direct and long-term interest in the outcome of these negotiations have little meaningful input."

### **Corporate sovereignty**

A central cause of concern for many TPP critics is found within the "investments" chapter of the draft agreement, which grants private companies the right to challenge government laws and regulations using a process called investor-state dispute settlement (ISDS). Advocates of ISDS say it allows companies to protect their property rights, but critics point to its potential to undermine the sovereignty of governments.

ISDS operates outside of the legal system of any country. Say there's a US environmental regulation that a foreign company says hurts its profits. Normally, the company might challenge that regulation through local or federal courts or lobby legislators to change the rule. ISDS would allow the company to instead take the matter before an international tribunal made up of private arbitrators. If the tribunal finds that the regulation violates the terms of the trade agreement, the dispute is settled in favor of the company, often resulting in a multi-million-dollar payout.

"We all know the Supreme Court has given corporations the rights of individuals, and now these agreements are giving corporations the rights of nations," says Beck, of the Maine Fair Trade Campaign. Less expansive versions of ISDS included in previous trade agreements have led to multi-million-dollar claims against Quebec for imposing a moratorium on fracking and against Australia for cigarette-packaging regulations. The tobacco industry has adopted a global strategy of using ISDS provisions in trade agreements to target national laws intended to reduce smoking. In Maine, ISDS could enable challenges to the state's smoking prevention policies or local ordinances such as water quality rules or South Portland's newly-enacted moratorium on loading ships with tar sands oil.

"ISDS could have enormous environmental implications throughout the world," the Sierra Club's Solomon adds. And few people will even know about it. "These cases take place through processes that completely lack transparency and the majority of the time they get decided in favor of the corporation or are settled with compensation to the corporation."

The possibility that state laws could be challenged with ISDS has been one factor contributing to the bipartisan nature of resistance to TPP in Maine. “It’s really an issue of state sovereignty,” says Aroostook County state senator Roger Sherman, a Republican member of the state’s commission examining trade.

### **Toxics and the TPP**

The American Chemistry Council represents one industry with much to gain from TPP. ACC, the lobbying association whose members include major chemical companies like DuPont, Monsanto and Dow, has aggressively fought Maine’s recent efforts to ban toxic chemicals such as arsenic, mercury, and BPA in certain products. Mike Belliveau, director of the Environmental Health Strategy Center, a Portland-based organization that pushed for the bans, says both TPP and the Transatlantic Trade and Investment Partnership (between the United States and Europe), could be used to undermine the laws.

“These agreements could preempt states like Maine from taking actions to protect the health and well-beings of citizens,” he says. “The chemicals industry supports the agreements mainly as vehicle to downgrade chemical regulation, not as a way to level the playing field when it comes to tariffs.”

But ACC’s senior director of global affairs, Greg Skelton, says Belliveau’s claims are “patently false,” adding that his organization’s goal “is to promote efficiencies and burden-sharing...while maintaining high levels of human health and environmental protections.”

Chemical companies have used ISDS to challenge chemicals regulations before. One example occurred in 1995, when Ohio-based SD Myers used ISDS provisions in NAFTA to challenge Canada’s laws limiting exports of the chemical polychlorinated biphenyl, found in coolant fluids. Canada was ordered by a tribunal to pay the company \$5 million.

TPP is also expected to spur demand for natural gas and increase the controversial practice known as fracking. Production of the fuel is already exploding in the US, but the TPP could drive even more by expediting exports. Current law allows exports of natural gas only with a difficult-to-acquire permit — unless the destination country has signed a free trade agreement with the United States. That exception means the TPP could allow energy companies to export natural gas in far greater volumes to many more countries.

“There would be more pressure to frack in order to have enough to sell to foreign markets,” Solomon says. More exports would also likely lead to higher fuel prices and may revive proposals to construct a liquefied natural gas terminal on Maine’s coast.

### **Un-‘fair use’**

TPP’s chapter on intellectual property leaked this fall and stirred up a new wave of opposition to the agreement. The Electric Frontier Foundation, a digital rights advocacy group, published detailed analyses of the complicated text, concluding it would bring great harm to freedom of speech and due process while undermining such constitutionally-backed traditions as the “fair use” doctrine, which states that brief excerpts of copyright material may under certain circumstances be quoted verbatim. Common practices such as “unlocking” a mobile device would be criminalized.

But the chapter’s greatest harm would be felt by those who need affordable medicine. It would strengthen patent protections, giving pharmaceutical companies a monopoly on their drugs for much longer periods and making generic drugs less accessible. The international aid group Doctors Without Borders sent a letter to TPP countries warning the deal could be “the most harmful trade pact ever for access to medicines” and noting the draft agreement would “roll back public health safeguards and flexibilities enshrined in international law.”

Access to affordable medicine in Maine — the state with the largest population of elderly people — would also be threatened. “The agreement could affect the state’s ability to require rebates from prescription drug providers and to limit costs in other ways,” says Treat, who is also director of the National Legislative Association on Prescription Drug Prices. One method of reducing the cost of prescription drugs is buying them from abroad, a practice which Maine became the first state to legalize this fall. The move triggered a lawsuit from major pharmaceutical companies, and despite TPP’s emphasis on reducing trade barriers, the agreement appears likely to include provisions that discourage such cross-border drug purchases.

### **What’s to gain?**

The main argument for the TPP and similar trade deals is that they boost economic growth and raise standards of living for most people in the long-term. But estimates of TPP’s benefits to the global economy are fairly modest. A recent non-partisan economic analysis projected an increase in global GDP of about one-tenth of one percent by 2025. Other studies, including one by the progressive Center for Economic and Policy Research, conclude the agreement would contribute to greater income inequality and cause significant job losses in the United States.

Even if the economic case for TPP is weak, supporters tout other benefits, such as strengthening environmental protections in developing countries. The USTR is expected to push for provisions that would ban trade in illegal timber and wildlife, for example.

Environmental groups, though, are skeptical that such strong provisions will be included in the final version of the deal. “Other nations are very resistant to making any of these provisions legally binding,” Solomon says.

Similar cynicism surrounds provisions that address public health needs and improve labor standards. “The final agreement will probably include some attempt to improve labor protections in countries like Vietnam, but we’ve seen in the past that these efforts don’t work,” Beck says.

### **TPP on the fast track**

If TPP talks wrap up this spring as expected, one major obstacle remains: the US Congress. Every TPP government must individually approve the agreement’s final draft, and Congress is expected to use the opportunity to allow prolonged debate and add amendments that other nations might reject. To avoid that scenario, President Barack Obama is seeking “fast track” authority from Congress, which allows lawmakers only an up-or-down vote on the agreement.

As recently as December, Obama cited the TPP as a top priority of his second term (it’s just one of several trade agreements the administration is now negotiating, including the also-contentious Transatlantic Trade and Investment Partnership). “The TPP is critical for creating jobs, promoting growth, providing opportunity for American workers, and leveling the playing field for American businesses in the Asia Pacific,” White House press secretary Jay Carney said at a recent briefing.

Nationally, the politics of the TPP don’t line up neatly with the normal partisan divides. Free trade is one of the rare areas in which both Republicans and Democrats generally fall in line and offer support, making fast track approval seem likely. On the other hand, this particular deal is facing significant bipartisan opposition, both from progressive leaders like Massachusetts senator Elizabeth Warren and Tea Party conservatives such as Kentucky senator Rand Paul. It’s unclear at this point whether Congress will grant the president the fast-track status he seeks.

It’s the meager economic benefits projected for TPP that could prove its downfall. In Maine, the threat of job losses has spurred resistance from Maine’s Congressional delegation. Representatives Michaud and Pingree were among 149 other House Democrats who last month signed a letter to Obama stating their intent to oppose fast track. Senator

King recently stated he would be “extremely reluctant” to vote in favor. Senator Susan Collins hasn’t indicated how she will vote; her office notes that while she has supported fast track in the past, “her support was conditioned on reauthorization and expansion of the Trade Adjustment Assistance program,” through which the federal government attempts to minimize the negative impact of imports felt by certain sectors of the economy.

Many who are watching the negotiations closely believe opposition will only grow as the public learns more about what the draft text contains. As Treat puts it: “People may not agree on an issue like banning BPA, but just about everyone agrees that the state should have the power, within the scope of what the Constitution and federal law allows, to pass its own laws and regulations.

### **Hurting Maine**

#### *TPP’s impact on the Pine Tree State*

The Trans-Pacific Partnership is a free-trade agreement among 12 countries that could have far-reaching consequences, local and global. Here are a few:

> **Jobs offshored** Maine could lose hundreds of manufacturing jobs, and the nation could lose thousands.

> **More fracking** Streamlined US exports of natural gas could cause a surge in fracking, higher fuel prices, and renewed momentum for a LNG marine terminal in Maine.

> **Reduced access to medicine** Rules favoring Big Pharma would limit the state’s ability to negotiate lower prescription drug prices and make generic drugs inaccessible to millions in developing countries.

> **Challenges to state laws and regulations** “Investor-State Dispute Settlement” would allow corporations to use private tribunals to challenge state regulations, such as Maine’s ban on BPA in baby-food packaging or its smoking prevention policies.

> **Loss of digital rights** Industry-favored intellectual property rules would curtail internet freedoms and consumer rights, such as the ability to “unlock” a cell phone.

> **Weaker financial reforms** Efforts to reform the financial industry would be undermined by provisions requiring countries to accept rules that favor deregulation.

> **Artists’ copyrights undermined** Provisions regarding copyright would erode artists’ long-term rights over their works and give Hollywood studios and recording companies greater power.

## Friends of the Earth

# Stop Fast Track: Radio AM950 broadcasts on trade agreements and the environment

*Posted Jan. 6, 2014 / Posted by: Kate Colwell*

On New Years Day, Ian Levitt, the host of [The Daily Report](#) on Minnesota radio station KTNF, devoted an hour of his program to the threat to the environment posed by pending Trans Atlantic and Trans Pacific trade agreements. These agreements could be approved on an expedited schedule and without amendment or proper consideration if Congress approves “Fast Track” legislation expected to be introduced this month by Senator Max Baucus and Representative Dave Camp.

Bill Waren, a [trade policy](#) analyst at Friends of the Earth, was Levitt’s guest for the program on AM950. Waren urged listeners to “write, call, and talk personally to Members of Congress and tell them that absolutely in no circumstances approve Fast Track legislation that would push these agreements through Congress without proper consideration.”

“We have two massive trade agreements right now: one covering the Pacific basin and the other a U.S. - Europe agreement,” Waren said. “The plan is the same: to foster deregulation, to push aside consumer, environmental, and climate regulations, and to impose laissez-faire constitution over the democratic legislative process and court processes.”

In particular, regarding the environmental threat of investment chapters of the Pacific and Atlantic trade deals, Waren explained, “the investment tribunals are able to trump courts and trump democratic decisions if they find the business expectations of multinational corporations and rich investors have been thwarted...the purpose of an investment chapter is to stop effective climate regulation in the future.”

Levitt noted that “Many of these members of Congress are getting their pockets lined by the very corporations that want to push this through.” Waren replied, “This is all about campaign finance – otherwise known as legal bribery.”

“It’s the good sense of the American people that this is not a good deal,” Waren continued. “It is a function of out-of-control campaign spending by big corporations and wealthy individuals that is driving this process rather than the will of the people...”

“This [Fast Track] model for subverting the democratic process was literally invented by a very crafty fellow by the name of Richard Nixon,” Waren said. “And, the Nixonian model for Fast Track is totally undemocratic...The United States Constitution provides that Congress, not the imperial presidency, should regulate international trade...and the Executive only implements the will of the people as expressed through Congress....Fast Track ...turns the U.S. Constitution upside down, as it provides for Congress to delegate its authority to regulate international commerce to the U.S, Trade Representative.”

“We can win this fight,” Waren concluded. “It is a strong argument to Members of Congress that they should not give away their constitutional authority.”

## Friends of the Earth

# Baucus and Camp introduce legislation to rush trade deals past Congress

*Posted Jan. 9, 2014 / Posted by: Kate Colwell*

**WASHINGTON, D.C.** – Senator Max Baucus (D-Mont.) and Representative Dave Camp (R-Mich.), introduced “Fast Track” or trade promotion authority legislation today. If approved, Fast Track could expedite congressional approval of two massive trade deals without amendment or proper consideration. The Trans Atlantic and Trans Pacific trade agreements, both of which are currently under negotiation by the Obama administration, would allow big oil companies and Wall Street financiers to sue for millions in compensation for the cost of complying with environmental and other regulations. More generally, the Atlantic and Pacific trade deals would trump sensible safeguards related to food safety, toxic chemicals, and global warming. If Fast Track is approved, these trade deals could be rammed through Congress.

The Baucus-Camp bill hands over to the executive branch powers that the founders intended for Congress to exercise, including:

- The power to circumvent ordinary congressional committee review and directly submit the legislation for mandatory and expedited floor votes in the House and Senate;
- The power to override House and Senate control of their schedules for floor votes; and
- The power to ban any amendments to a trade agreement.

Erich Pica, president of Friends of the Earth, had this to say about the introduction of the Baucus–Camp bill for trade promotion authority:

“The Baucus–Camp Fast Track bill turns the U.S. Constitution upside down. Congress must not give away its constitutional authority and facilitate the ratification of an environmentally destructive Trans Pacific Partnership trade agreement.”

Free Press

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## Looming Trade Deal Raises Concerns About Impacts on Jobs and Farms in Maine

On the 20th anniversary of NAFTA . . .

by Andy O'Brien

On December 12 in Belfast, farmers, fishermen, public policy experts and activists of various stripes testified at a public hearing held by the state's Citizen Trade Policy Commission on the proposed Trans Pacific Partnership (TPP) trade agreement.

The TPP includes the United States and 11 other Asia-Pacific nations - Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam. If approved, it will govern 40 percent of the global GDP and one-third of global trade.

All negotiations have been held in secret and even Congress has not been briefed on specifics, despite the fact that 600 corporate advisors have been granted access and input into the draft texts of negotiations. Mainstream news coverage of the TPP debate has been limited, but a series of leaks has provided a glimpse of what to expect. Covering 29 chapters, the goal of the TPP is to harmonize regulations and eliminate trade tariffs, but those testifying expressed fears that the agreement will put profits for multinational corporations over environmental standards, public health, food safety, local agriculture, consumer rights, and jobs.

### Support for the TPP

In response to mounting opposition to the TPP, the Business Round Table, an association of CEOs of major U.S. corporations, has argued that the trade agreement has the "potential to create new opportunities for Maine" through "increased commercial engagement with these countries." In a report released in December, the group stated that 67 percent of Maine's exports of goods and 21 percent of service exports go to TPP countries that are currently free-trade partners. Currently, 100 companies from TPP countries, predominantly Japan and Canada, employ about 8,200 workers in Maine.

The BRT estimates that 76 percent (\$460 million) of Maine's exports to TPP countries are semiconductors and components. Proponents argue that the TPP will stimulate more commercial activity by opening markets in non-partner countries like Japan, Malaysia, New Zealand and Vietnam. The report notes that high tariffs on imports, such as on footwear and blueberries into Japan, present trade barriers to Maine companies.

But in spite of the potential for increased commercial activity, others say that it won't translate into more opportunities for average workers. According to the left-leaning Center for Economic Policy Research, while the wealthy stand to gain under the TPP due to enforcement of copyrights and patents, median-wage earners will likely lose due to increased competition from lower-paid foreign workers.

## **"NAFTA on Steroids"**

"A giant sucking sound" was how 1992 presidential candidate Ross Perot famously described the sound of jobs flowing out of the U.S., which he believed would happen if the North American Free Trade Agreement (NAFTA) was approved. While business groups have credited NAFTA with increasing trade with Canada and Mexico three-and-a-half-fold since 1994, others say Perot was right.

"Every trade agreement that has come forward since NAFTA is looking to drive every standard down to the lowest common denominator," said commission member Sen. John Patrick (D-Oxford) at the hearing in Belfast.

And Patrick, who is also a mill worker, says he has seen the effects of so-called "free trade" agreements firsthand.

According to the Economic Policy Institute, between 1994 and 2010, over 700,000 U.S. jobs were lost or displaced to Mexico due to a \$66 billion trade deficit with our southern neighbor. Maine was hit particularly hard, with 30,000 manufacturing jobs lost during the past 20 years. Since 1994, a dozen free-trade agreements have been signed and there are currently 16 proposed, including the TPP, which has been dubbed "NAFTA on steroids" by its critics.

Most recently, debate over U.S. trade policy was stoked after 200 workers at the Lincoln Paper and Tissue Mill were laid off because they were underbid by a producer in Indonesia. Following news of the layoffs, retired Lincoln mill worker Rep. Jeff Gifford (R-Lincoln) didn't mince words about his views on the TPP.

"I can tell you that it's the worst thing that we have ever entered into," said the Lincoln Republican. "If you put the US in competition with third-world countries, we lose every time. We have strict environmental regulations and labor laws and we just can't compete. Free-trade agreements are designed to kill the American economy."

## **Impact on Maine Farms**

Speaking at the Citizen Trade Commission hearing in Belfast, Maine Farmland Trust Executive Director John Piotti said that the TPP had the potential to wipe out Maine's struggling dairy industry. The price that dairy farmers receive for their product is currently set by a federal pricing system, and although it has put many local farmers out of business, as it sets prices below the cost of production, it has also cushioned farmers from the harmful effects of international market competition. However, according to Piotti, it wouldn't take much to finish off Maine's dairy farms.

"Right now we're exporting about 15 percent of our dairy products," said Piotti. "If that dropped by 2 percent, it would probably have roughly a 20-percent negative effect on the price paid to farmers, which would be devastating. These farms are on the edge now, and any kind of international policy that potentially puts in place competition that will reduce our export market

threatens to [put them out of business]."

Piotti also pointed out that the formula that sets federal milk prices includes the price of cheese and non-fat milk powder. In the past, the price of cheese was higher, but there's recently been a spike in the price of milk powder coming from international markets. As a result, said Piotti, the price that a Maine dairy farmer receives is determined by the world market price for milk powder. New Zealand, with its large subsidized dairy industry, could potentially flood the U.S. market with milk powder in the same way that the U.S. dumped subsidized corn into Mexican markets under NAFTA. In 2004, Piotti helped develop Maine's dairy subsidy program, which helps stabilize the price farmers receive for their milk from the fluctuations occurring under the federal pricing system.

"Farmers have just enough to keep the industry alive, and it wouldn't take much to have that industry fall apart. [The TPP] could do it," said Piotti.

Maine's dairy industry represents 20 percent of Maine agriculture production, and milk sales generate about \$100 million a year, with an economic impact of \$525 million a year. The capital-intensive dairy farms also support a vast agricultural infrastructure that could have an adverse effect on all local farming if it collapsed. As for whether the TPP would help local farmers by opening up overseas markets, Piotti was skeptical, because farmers generally get the most benefit from markets closer to home.

"The truth is, farms that are operating at that commodity scale, even if they're exporting a lot more, it doesn't necessarily mean that much benefit for the farmer," said Piotti. "The benefit ends up flowing to somebody else. I'm not against exports as a concept, but I don't think it's the best way on which to build the farm economy in Maine."

### **A Threat to National Sovereignty?**

Many critics, who range from progressive reformers to right-wing libertarians, also believe that the TPP will enshrine a binding system of global corporate governance at the expense of national and local sovereignty. Through a trade agreement mechanism known as the "investor-state dispute settlement," enforcement of trade rules can override democratically enacted state, local and federal laws by allowing companies to sue governments for violations of trade laws in a tribunal of unaccountable international trade lawyers. Public Citizen estimates that over \$340 million in compensation to investors has been extracted from NAFTA governments through this process.

Environmentalists have also cited examples of environmental protections facing such threats due to trade agreements. A Canadian mining company sued El Salvador for \$315 million for the loss of its anticipated future profits after the country prohibited the digging of a gold mine due to public fears of water contamination. Similarly, UK-based Churchill Mining is seeking \$2 billion from Indonesia in an international settlement court for imposing a mining tax among other regulations.

Speaking by phone at the hearing in Belfast, Karen Hansen-Kuhn of the Institute for Agriculture

Trade Policy, said that the TPP and its cousin, the pending Transatlantic Trade and Investment Partnership (TTIP) with the European Union, could further allow companies to sue countries with higher standards and more regulations on the basis of a trade agreement.

"There's a real danger with both the TPP and TTIP that these trade agreements could create binding rules that really go against these decisions being made at the local level, so that food safety laws and even GMO labeling could be rendered illegal under the trade deal," said Hansen-Kuhn.

Hansen-Kuhn added that the trade agreement could also restrict procurement policies that require governments to give bidding preference to American companies and schools to purchase locally produced food.

"Our position is that taxpayer money in these kinds of public procurement contracts should be used to promote the well-being of taxpayers and doesn't need to be included in the trade agreement," said Hansen-Kuhn.

Speaking to the Guardian newspaper, one tribunal judge validated some of the worries expressed by critics of free-trade deals:

"When I wake up at night and think about arbitration, it never ceases to amaze me that sovereign states have agreed to investment arbitration at all," the judge said of the process. "Three private individuals are entrusted with the power to review, without any restriction or appeal procedure, all actions of the government, all decisions of the courts, and all laws and regulations emanating from parliament."

### **Making Medicine More Expensive**

Citizen Trade Commission chair Rep. Sharon Treat (D-Hallowell), who is also an official adviser to the Office of the US Trade Representative (USTR) and director of the National Legislative Association on Prescription Drug Prices, says she worries that under the TPP Maine would be bound by proposed provisions protecting patent monopolies of drug companies. This would make it harder for Maine to negotiate rebates for prescription drugs through the state's Medicaid program. Maine is currently one of the only states that allows the purchase of drugs from Canada; Maine's program has faced legal challenges from the pharmaceutical industry and it could be threatened under the TPP.

Recently the drug company Eli Lilly decided to sue Canada for violating its obligations to foreign investors under NAFTA by allowing its courts to invalidate patents for two of the company's drugs, allowing for the sale of less costly generic drugs.

### **Current Status of the TPP**

Although Congress has "advise and consent" power on trade agreements, in recent decades it has granted "fast track" promotion authority, which only allows for an up-or-down vote on trade treaties, avoiding amendments or filibusters that could require the whole agreement to be

renegotiated. Congress is set to act on TPP early in 2014, but in recent months, some Democrats as well as a handful of conservative tea partiers like Congresswoman Michele Bachmann have been pushing back against fast-tracking the TPP. In November, 170 House members sent two letters to the White House expressing opposition to fast-track. Among the signatories were Congresswoman Chellie Pingree and Congressman Mike Michaud.

According to various press reports, in recent months trade negotiations have also hit some stumbling blocks over various government-subsidized industries, currency issues, tariff reductions, and patent and intellectual copyright enforcement, which the U.S. favors.

But although the TPP will face challenges, speaking by phone at the hearing, Pingree's legislative assistant Matt MacKenzie said the agreement remains one of President Obama's top priorities and groups like the U.S. Chamber of Commerce have been out in force lobbying for its passage.

"[The fast-track promotion authority] on NAFTA was a close vote," said MacKenzie. "It's going to be both a regional and ideological debate, and it will be interesting to see where the fault lines are. I do think that there will be very close votes on everything."

### **Jan. 9th update - Michaud, Pingree React to TPP Fast-Track Bill**

Representative Mike Michaud and Congresswoman Chellie Pingree, issued the following statements on Thursday afternoon, January 9, in response to the introduction of legislation by Senate Finance Committee Chairman Max Baucus and Ways and Means Committee Chairman Dave Camp granting the president "fast track" authority, which provides for preferential and expedited congressional consideration of trade agreements.

#### **Michaud:**

"The Baucus-Camp bill is a disappointing repeat of failed trade policy from 2002 that will continue the trends of growing trade deficits, a declining manufacturing sector, and the offshoring of American jobs. This bill may represent the ideas of the two committee chairmen, but it does not reflect Americans' views on trade and falls far short of being a truly bipartisan bill. That's why I will oppose it. This bill misses an opportunity to raise the standards established by Congress that our trade negotiators must meet, and it neglects to include real enforcement of these standards. It also fails to improve transparency and enhance congressional

consultations by the Administration, both of which are critical for Congress to maintain its constitutional authority over trade policy. We know what happens when Congress passes this type of legislation granting fast track. Factories close, plants move overseas, and our workers are left behind. We simply can't afford to repeat the mistakes of the past."

**Pingree:**

"There are two major trade deals that are essentially being negotiated in secret, and fast track authority means they could be rammed through Congress without the kind of debate and transparency that's needed if we want to really see what's in these agreements. Congress should be figuring out how to create jobs here at home, not ship them overseas.... NAFTA went into effect 20 years ago this month, and we can see the damage it's had, particularly on manufacturing jobs in Maine and around the country. It wasn't a good deal for American workers and I'm concerned that some of the new deals being negotiated could be much worse."

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1/14/14

**From:** Lori Wallach <

Hi all,

I have been getting emails from various folks asking about what Sean said about the Fast Track bill/sent to this list re. welcoming improvements in the congressional consultation process given it seems to contradict what everyone else is saying about the bill.

For what it is worth, even the senior Democrat (Rep. Sandy Levin) on the Ways and Means Committee – who was in the process for the past year to develop the bill and who has supported most of the past FTAs– could not support what came out (the bill introduced last Thursday) explicitly because it did NOT increase congressional oversight of the trade negotiating process. The lack of any changes relative to the old 2002 Fast Track re congressional consultation is a major reason that not one single House Democrat supported the legislation for introduction. We did a side-by-side comparison of the terms of the 2002 Fast Track versus the Fast Track introduced last week. Melinda sent our analysis to this list, but the relevant aspects include:

**The Camp-Baucus Fast Track bill literally word-for-word replicates the procedures included in the 2002 grant of Fast Track that expired in 2007. Congress role would be severely constrained:**

- The president would be empowered to unilaterally select trade negotiating partners and commence negotiations. Like the 2002 Fast Track, in the Camp-Baucus bill this authority is conditioned only on pro forma consultations and 90 calendar days' notice being given to Congress before negotiations begin. The Camp-Baucus bill provides no mechanism for Congress to veto a president's decision to enter into negotiations on a trade pact that would be subject to expedited floor procedures, nor any role in selecting with which countries such pacts are initiated. (Sec. 5(a))
- The president would be empowered to unilaterally control the contents of an agreement. As with the 2002 Fast Track, congressional negotiating objectives in the Camp-Baucus bill are not enforceable. Whether or not U.S. negotiators obtain the listed negotiating objectives, the Camp-Baucus bill would empower the president to sign a trade pact before Congress votes on it, with a guarantee that the executive branch could write legislation to implement the pact and obtain House and Senate votes within 90 days, with all amendments forbidden and a maximum of 20 hours of debate permitted. (Sec. 3(b)(3))
- Democratic and GOP presidents alike have historically ignored negotiating objectives included in Fast Track. The 1988 Fast Track used for the North American Free Trade Agreement

(NAFTA) and the establishment of the World Trade Organization (WTO) included a negotiating objective on labor standards, but neither pact included such terms. The 2002 Fast Track listed as a priority the establishment of mechanisms to counter currency manipulation, but none of the pacts established under that authority included such terms.

- The president would be authorized to sign and enter into an agreement subject to expedited consideration conditioned only on pro forma consultations and providing Congress 90 calendar days' notice prior to doing so. (Sec. 6(a)(1)) The executive branch alone would determine when negotiations are “complete.” The congressional “consultation” mechanisms in the Camp-Baucus bill do not provide Congress with any authority or mechanism to formally dispute whether negotiations have indeed met Congress’ goals and thus are complete, much less any means for Congress to certify that its objectives were met before an agreement may be signed.
- The president would be authorized to write expansive implementing legislation and submit it for consideration. (Sec. 6(a)(1)(C)) As with the 2002 Fast Track, such legislation would not be subject to congressional committee markup and amendment. The 2002 Fast Track states that this legislation can include any changes to U.S. law that the president deems “necessary or appropriate to implement such trade agreement or agreements.” (19 USC 3803(b)(3)(B)(ii)) Inclusion of the term “appropriate” in this section of past Fast Track authorities has been controversial, because it provides enormous discretion for the executive branch to include changes to existing U.S. law that Congress may or may not deem *necessary* to implement an agreement. Indeed, inclusion of the term “appropriate” has enabled Democratic and GOP administrations alike to insert extraneous changes to U.S. law into legislation that skirts committee mark up and is not subject to floor amendment. Rather than remove the term “appropriate,” the Camp-Baucus bill merely adds the superfluous modifier “strictly” in front of the same “necessary or appropriate” language found in the 2002 Fast Track. (Sec. 3(b)(3)(B)ii)) As with the 2002 Fast Track, there is no point of order or other mechanism to challenge inclusion of overreaching provisions in the implementing bill.
- Such legislation would be guaranteed House and Senate votes within 90 days with no amendments. Like the 2002 Fast Track, the Camp-Baucus bill would require the House to vote on such legislation within 60 session days, with the Senate having an additional 30 days to vote thereafter. (Sec. 3(b)(3)) Like the 2002 Fast Track, the Camp-Baucus bill would forbid all amendments and permit only 20 hours of debate on such legislation in the House and Senate. Voting, including in the Senate, would be by simple majority. (Sec. 3(b)(3))
- The Camp-Baucus bill replicates the 2002 Fast Track with respect to limitations that could be placed on the application of the Fast Track process to a specific trade agreement. While the factsheet on the bill released by the Finance Committee suggests that it includes a “strong, comprehensive” disapproval process, in fact it replicates the 2002 Fast Track’s limited grounds for which a resolution to disapprove Fast Track can be offered. The Camp-Baucus bill also replicates the 2002 Fast Track’s procedures for consideration of such a resolution, which curtail the prospect that such a resolution would ever receive a vote. To obtain floor action, a resolution would have to be approved by the Ways and Means and Finance committees, and then the House and Senate would have to both pass the resolution within a 60-day period. (Sec. 6(b))

**The Camp-Baucus bill includes several negotiating objectives not found in the 2002 Fast Track. However, the Fast Track process that this legislation would reestablish ensures that these objectives are entirely unenforceable:**

- In addition, some of the Camp-Baucus bill negotiating objectives advertised as “new” are in fact referenced in the 2002 Fast Track. For example, the 2002 Fast Track included currency measures: “seek to establish consultative mechanisms among parties to trade agreements to examine the trade consequences of significant and unanticipated currency movements and to scrutinize whether a foreign government engaged in a pattern of manipulating its currency to promote a competitive advantage in international trade.” (19 USC 3802(c)(12)) The so-called “new” text in the Camp-Baucus bill is: “The principal negotiating objective of the United States with respect to currency practices is that parties to a trade agreement with the United States avoid manipulating exchange rates in order to prevent effective balance of payments adjustment or to gain an unfair competitive advantage over other parties to the agreement, such as through cooperative mechanisms, enforceable rules, reporting, monitoring, transparency, or other means, as appropriate.” (Sec. 2(b)(11))

**What is touted as “enhanced coordination with Congress” is actually the mere renaming of the Congressional Oversight Group from the 2002 Fast Track as “Congressional Advisory Groups on Negotiations,” while provisions ostensibly improving transparency merely formalize past practice:**

- The 2002 Fast Track established a Congressional Oversight Group (COG) comprised of members of Congress appointed by congressional leaders who were to obtain special briefings from the U.S. Trade Representative’s (USTR) office on the status of negotiations and to attend negotiations on an advisory basis. The Camp-Baucus bill renames the COG – delineating a “House Advisory Group on Negotiations” and a “Senate Advisory Group on Negotiations” and describing joint activities of the two – but includes the same appointment process and limited role for congressional trade advisory groups as found in the 2002 Fast Track. (Sec. 4(c)) The difference between the two is only that the COG was bicameral while the 2014 Fast Track proposal would establish an oversight committee for each chamber and then assign joint tasks to the two committees.

- The Camp-Baucus bill instructs USTR to write guidelines for its consultations with Congress, the public and private sector advisory groups. In effect, this provision merely requires USTR to put into writing how it will (or will not) relate to these interested parties. (e.g. Sec. 4(a)(3) and Sec. 4(d)(1))

- The Camp-Baucus bill simply formalizes the past practices of USTR by requiring that any member of Congress be provided access to trade agreement documents. For instance, during NAFTA negotiations, members of Congress had open access to the full draft NAFTA texts with a new version placed into a secure reading room in the U.S. Capitol after each round of negotiations. In the summer of 2013, the Obama administration finally responded to growing pressure by members of Congress for access to draft TPP texts by bringing requested specific chapters to members’ offices for review when a member asked for such access. Rather than specifying that USTR must resume the practice of providing standing access for members of

Congress to full draft trade agreement texts, the Camp-Baucus bill leaves to the discretion of USTR how it will provide text access to members of Congress if a member requests access. (Sec. 4(a)(1)(B))

- The Camp-Baucus bill also replicates the problematic language of the 2002 Fast Track that limits access to confidential trade agreement proposals and draft texts for congressional staff with the necessary security clearances to only committee staff, excluding personal staff with clearances. (Sec. 4(a)(3)(B)(ii))

# Administration Is Seen as Retreating on Environment in Talks on Pacific Trade

New York Times

By CORAL DAVENPORT

January 15, 2014

WASHINGTON — The Obama administration is retreating from previous demands of strong international environmental protections in order to reach agreement on a sweeping Pacific trade deal that is a pillar of President Obama's strategic shift to Asia, [according to documents obtained by WikiLeaks](#), environmentalists and people close to the contentious trade talks.

The negotiations over the Trans-Pacific Partnership, which would be one of the world's biggest trade agreements, have exposed deep rifts over environmental policy between the United States and 11 other Pacific Rim nations. As it stands now, [the documents](#), viewed by The New York Times, show that the disputes could undo key global environmental protections.

The environmental chapter of the trade deal has been among the most highly disputed elements of negotiations in the pact. Participants in the talks, which have dragged on for three years, had hoped to complete the deal by the end of 2013.

Environmentalists said that the draft appears to signal that the United States will retreat on a variety of environmental protections — including legally binding pollution control requirements and logging regulations and a ban on harvesting sharks' fins — to advance a trade deal that is a top priority for Mr. Obama.

Ilana Solomon, the director of the Sierra Club's Responsible Trade Program, said the draft omits crucial language ensuring that increased trade will not lead to further environmental destruction.

“It rolls back key standards set by Congress to ensure that the environment chapters are legally enforceable, in the same way the commercial parts of free-trade agreements are,” Ms. Solomon said. The Sierra Club, the Natural Resources Defense Council and the World Wildlife Fund have been following the negotiations closely and are expected to release a report on Wednesday criticizing the draft.

American officials countered that they had put forward strong environmental proposals in the pact.

“It is an uphill battle, but we're pushing hard,” said Michael Froman, the United States trade representative. “We have worked closely with the environmental community from the start and have made our commitment clear.” Mr. Froman said he continued to pursue a robust, enforceable environmental standard that he said would be stronger than those in previous free-trade agreements.

The draft documents are dated Nov. 24 and there has been one meeting since then.

The documents consist of the environmental chapter as well as a [“Report from the Chairs.”](#) which offers an unusual behind-the-scenes look into the divisive trade negotiations, until now shrouded in secrecy. The report indicates that the United States has been pushing for tough environmental provisions, particularly legally binding language that would provide for sanctions against participating countries for environmental violations. The United States is also insisting that the nations follow existing global environmental treaties.

But many of those proposals [are opposed by most or all of the other Pacific Rim nations](#) working on the deal, including Australia, New Zealand, Canada, Mexico, Chile, Japan, Singapore, Malaysia, Brunei, Vietnam and Peru. Developing Asian countries, in particular, have long resisted outside efforts to enforce strong environmental controls, arguing that they could hurt their growing economies.

The report appears to indicate that the United States is losing many of those fights, and bluntly notes the rifts: “While the chair sought to accommodate all the concerns and red lines that were identified by parties regarding the issues in the text, many of the red lines for some parties were in direct opposition to the red lines expressed by other parties.”

As of now, the draft environmental chapter does not require the nations to follow legally binding environmental provisions or other global environmental treaties. The text notes only, for example, that pollution controls could vary depending on a country’s “domestic circumstances and capabilities.”

In addition, the draft does not contain clear requirements for a ban on shark finning, which is the practice of capturing sharks and cutting off their fins — commonly used in shark-fin soup — and throwing back the sharks to die. The dish is a delicacy in many of the Asian negotiating countries. At this point the draft says that the countries “may include” bans “as appropriate” on such practices.

Earlier pacts like the North American Free Trade Agreement included only appendices, which called for cooperation on environmental issues but not legally binding terms or requirements. Environmentalists derided them as “green window dressing.”

But in May 2007, President George W. Bush struck an environmental deal with Democrats in the Senate and the House as he sought to move a free-trade agreement with Peru through Congress. In what became known as the May 10 Agreement, Democrats got Mr. Bush to agree that all American free-trade deals would include a chapter with environmental provisions, phrased in the same legally binding language as chapters on labor, agriculture and intellectual property. The Democrats also insisted that the chapter require nations to recognize existing global environmental treaties.

Since then, every American free-trade deal has included that strong language, although all have been between the United States and only one other country. It appears to be much tougher to negotiate environmental provisions in a 12-nation agreement.

“Bilateral negotiations are a very different thing,” said Jennifer Haverkamp, the former head of the United States trade representative’s environmental office. “Here, if the U.S. is the only one pushing for this, it’s a real uphill battle to get others to agree if they don’t like it.”

But business groups say the deal may need to ease up. “There are some governments with developing economies that will need more time and leeway,” said Cal Cohen, president of the Emergency Committee for American Trade, a group of about 100 executives and trade associations that lobbies the United States trade negotiator on the deal. “When you think about the evolution of labor provisions, you realize how many centuries the development of high standards took.”

Since the trade talks began, lawmakers and advocacy groups have assailed the negotiators for keeping the process secret, and WikiLeaks has been among the most critical voices. The environment chapter is the third in a series of Trans-Pacific Partnership documents released by WikiLeaks. In November, the group [posted the draft chapter on intellectual property](#). In December, the site posted documents detailing disagreements between the negotiating parties on other issues. The site is expected to release more documents as the negotiations unfold.

Sydney Morning Herald

1/16/14

## Secret draft of TPP talks on environment show little enforcement measures

<http://www.smh.com.au/federal-politics/political-news/secret-draft-of-tpp-talks-on-environment-show-little-enforcement-measures-20140117-30y8f.html#ixzz2qc4oXjbo>

A secret draft of what would be Australia's biggest trade agreement shows it will be toothless in enforcing environmental agreements.

The draft environment chapter of the twelve-nation Trans Pacific Partnership agreement published by WikiLeaks proposes next to no enforcement mechanisms with those that are suggested opposed by each of the 12 nations other than the United States.

A [summary](#) on the WikiLeaks website says the draft makes use of the 'get out clause' approximately 43 times, using language such as: "Where possible and appropriate, the Parties shall seek to complement and utilise their existing cooperation mechanisms and take into account relevant work of regional and international organisations."

The word "may" is also found 43 times in the 23-page draft.

Governments are urged to "...make every effort to arrive at a mutually satisfactory resolution...", "...take measures to prevent...", "...make best efforts...", "...exercise restraint in taking recourse...", and retain "the right to make decisions..."

WikiLeaks says other favourite words are "enhance" (12), "consider" (12), "encourage" (11), "address" (10), "endeavour" (9) and "seek" (9).

A report from the chairpersons of the environment section of the agreement despairs at ever getting meaningful agreement saying the so-called "red line" or non-negotiable positions appear irreconcilable. "Many of the red lines for some parties were in direct opposition to the red lines expressed by other parties," it says.

"It bears emphasising that it is these differences that have prevented the environment working group from reaching agreement on all aspects of the chapter."

Australia is siding with Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam in opposing US moves to give the resolutions of biodiversity, climate change, fisheries and conservation more force.

The environment chapter is the second published by WikiLeaks. The first, on intellectual property showed the US with Australian support attempting to impose on other countries tougher rules that would have strengthened the hand of copyright owners in disputes with consumers.

Each of the negotiating parties has resolved to keep the draft chapters secret until the negotiations are completed, meaning the chapters published by WikiLeaks are the only parts of the agreement in the public domain.

## Politico

### Trade leak feeds Democratic insurgency

By [ADAM BEHSUDI](#) | 1/16/14 7:15 PM EST

Democrats in Congress are fuming over the leaked environmental provisions of a massive Pacific trade deal that would dwarf the North America Free Trade Agreement, casting further doubt on President Barack Obama's trade agenda just as his administration kicks it into high gear.

The [latest release by WikiLeaks](#), which includes the draft environmental chapter of the Trans-Pacific Partnership agreement and a report by negotiators from the 12 countries involved in the talks, shows that the pact would fall short on enforcing the higher standards of other recent U.S. trade deals. Those pacts threaten sanctions against trading partners that violate international agreements to protect endangered species, prevent overfishing and regulate chemicals that deplete the ozone layer.

"It's of grave concern," said Sen. Bob Casey (D-Pa.), a member of the Senate Finance Committee, which oversees trade. "It's as if our negotiators, decade after decade, have to walk into the door and ... say, yes, we have concerns about leveling the playing field on labor and environment protections, but by the end of it we say, don't worry about it."

In the Asia-Pacific deal, the United States still appears to be pushing for those robust environmental provisions, according to the leaked text. But Washington is facing staunch opposition from the 11 other countries involved in the talks.

The inability of the U.S. to secure its key environmental demands at this late stage in the negotiations may not bode well for the deal, which is nearing completion after three years. More importantly, the impasse could cause the further hemorrhaging of Democratic support on what is already an unpopular trade agenda among members of Obama's own political party.

Pro-labor and -environment Democrats whom Obama courted during his campaigns have been deflated by the president's push for trade deals, which they say result in the decline of U.S. manufacturing, lost jobs and lower wages. Now, with Democrats fighting to retain their seats in a midterm election year, the administration is confronted with a potential Democratic insurgency on trade that could grow if the agenda Obama undertook in response to the U.S. recession falls victim to additional negative attention, including more leaked trade papers.

"As more information about the Trans-Pacific Partnership being negotiated in secret are revealed, the more the public can see how clearly this potential agreement, which is unprecedented in scope, would not only lead to the outsourcing of jobs, but also harm American consumers and the environment," Rep. Rosa DeLauro (D-Conn.) said in a statement.

The Office of the U.S. Trade Representative has said it is redoubling its push for strong environmental provisions, including the sanctions, which would suspend tariff cuts and other trade benefits of the deal for violators of the agreement.

The agency acknowledged in a blog post Wednesday that U.S. negotiators have been going it alone in pressing for the environmental standards, but they're not retreating.

"The United States' position on the environment in the Trans-Pacific Partnership negotiations is this: Environmental stewardship is a core American value, and we will insist on a robust, fully enforceable environment chapter in the TPP or we will not come to agreement," the USTR said.

[\(Also on POLITICO: Hill Democrats MIA on Obama's trade agenda\)](#)

WikiLeaks first leaked text from the Trans-Pacific Partnership negotiations in November, when it [released the draft](#) intellectual property chapter; that section drew a sharp rebuke from Internet freedom and health advocacy groups over U.S.-proposed copyright and patent standards for music, movies and drugs and revealed stark differences with developing countries on those issues.

The most recent leak comes just as the Obama administration steps up a push for a critical element of his trade agenda: a bill that would give the president trade promotion authority. Senior White House officials, including U.S. Trade Representative Michael Froman and chief of staff Denis McDonough, have been lobbying Capitol Hill over the last few weeks for the legislation, which would allow Obama to submit the Pacific deal and another, even bigger pact with European Union to Congress for expedited consideration, with straight up-or-down votes and no amendments.

Meanwhile, Commerce Secretary Penny Pritzker urged business groups to support Obama's trade agenda, including the "fast-track" bill, in remarks to the Detroit Economic Club earlier this week. And the president himself is expected to take trade case to the American people in his highly anticipated State of the Union speech at the end of this month.

All of this may do little to help Obama woo liberal Democrats to his side on trade issues if the environmental protections in the Pacific deal remain as is. Already, the revelations have raised concerns among Democratic lawmakers about whether they can support the fast-track bill. They and their Republican counterparts on the Senate Finance Committee hammered the administration for declining an invitation to send Froman to testify at the panel's hearing on the bill on Thursday.

"Obviously I'd like to get some questions answered ... because I think we have to find out the facts," said Sen. Ben Cardin (D-Md.). "That's why we need the administration here."

Sen. Sherrod Brown (D-Ohio), who is leading an effort to strengthen transparency and congressional consultation provisions in the fast-track bill, said enforceable environment standards are vital for a final deal.

"I think the U.S. has to try harder," Brown said.

Vanessa Dick, senior policy officer for the World Wildlife Fund, said having the leaked document to point to helps ensure that the environmental provisions are taken seriously in the debate over trade legislation.

"There are real champions on the hill that see environment being this critical part of trade," she said. "This just emphasizes to them where the negotiations are in terms of the environment chapter."

## TTIP puts the EU's environmental and social policies on the line

Published: 13.01.2014

*This opinion was drafted by ten European health, transparency and environment*

*NGOs: CEE Bankwatch Network, Climate Action Network Europe (CAN), Corporate Observatory Europe (CEO), European Public Health Alliance (EPHA), European Environmental Bureau (EEB), Friends of the Earth Europe (FOEE), Health and Environment Alliance (HEAL), Nature Friends International (NFI), Transport & Environment (T&E), World Wide Fund for Nature (WWF).*

"All through the ongoing Transatlantic Trade and Investment Partnership (TTIP) the fear has been that Europe would be forced to lower the bar to create a "level playing field" between the US rules and generally more robust EU regulations. Even the EU's long established 'precautionary principle' enshrined in the Treaties and underpinning European chemicals regulations could be at risk.

Despite reassurances from EU Trade Commissioner Karel De Gucht, the official language in the TTIP talks revolves around the 'mutual recognition' of standards or so-called reduction of non-tariff barriers through new mechanisms of regulatory cooperation. In fact, there are very few financial barriers left to be removed. Basically, the US and EU are pushing for so-called barriers to trade, including controversial regulations such as those protecting food products, health, chemicals or data privacy, to be removed as well as the prevention of additional ones.

For the EU, that could mean accepting US standards which in many cases are lower than its own. At the same time this agreement could open the gates for multinationals and investors to sue EU Member States if new environmental or health legislation is introduced that adversely affects their business prospects. There are three main areas of concern with the mechanism called the Investor-State Dispute Settlement (ISDS) that risks becoming part of the TTIP.

The first is that Member States will be afraid to introduce new and effective legislation that may have positive social and environmental impacts but which risks upsetting our trade partners. Companies will be quick to seek arbitration if they believe their commercial interests are compromised. As a consequence of this 'chilling' effect, Member States will only introduce legislation if they are sure that they will not be sued.

The second concern is the cost for Member States. The arbitration panels over these disputes may have the ability to levy crippling fines in line with "potential" profit loss. One can easily see how smaller Member States would effectively handover sovereignty to multinationals as fines could be equal to a significant proportion of GDP.

The third concern is why the independent dispute mechanisms are needed in the first place. Existing EU commercial and single market laws are overseen by myriad court jurisdictions, including the European Court of Justice set up under the European Treaties. Why the need for something operating outside these conventional arrangements?

This is not scare mongering from NGOs. Experience has shown that similar mechanisms of arbitration involving "investment loss" have sided against the rights of the broader public or environment interests and with the corporates.

In May 2013 Quebec introduced a ban on fracking, an oil and gas extraction method occurring deep inside the earth's crust which carries significant environmental and health risks. The US company, Lone Pine Resources Inc. had a contract with the Canadian government, and is now asking the government for USD250 million in financial compensation.

In the pending case of tobacco giant Philip Morris Asia vs Australia, the company claims that Australia is treating them unfairly by requiring plain packaging for cigarettes. It has demanded that the Australian government suspend enforcement of the law and pay billions of dollars of losses in sales. These are only two of the 500 cases against 95 governments in recent years.

The combined impacts of this ISDS, together with new mechanisms for regulatory cooperation that are being negotiated under this trade and investment deal in Europe, are predictable. Europe would most likely lose its position as a global frontrunner on public policies such as water, nature protection, food quality, chemicals and climate and energy. European and national policy would suffer a sclerosis as a new category of impact assessments would need to be undertaken to see which multinationals interests are jeopardised.

The ISDS arrangements in the draft EU-Canada Free Trade Deal which was recently agreed by the European Commission, though not yet approved by the European Parliament and Member States, have still not been made public. How can we be reassured by Commissioner De Gucht that similar provisions in TTIP will pose few problems when we still cannot get access to the details of already negotiated agreements? Civil society groups on both sides of the Atlantic are right to feel uneasy; what is masquerading as a trade deal may be a far more sinister attempt to roll-back environmental and public health laws built up over decades in the name of corporate efficiency."

# Trade and the Environment

**New York Times, Editorial** JAN. 18, 2014

One of the most laudable American goals in negotiating the trade agreement known as the Trans-Pacific Partnership with 11 other countries was to strengthen environmental protections around the world. But a draft chapter of the agreement [made public](#) last week [by WikiLeaks](#) shows that many of the countries involved in the talks are trying to undermine that goal.

American negotiators have sought to make the environmental provisions in the agreement enforceable through a dispute settlement process, an idea that most of the other countries appear to oppose. That list includes countries like Canada, Australia and New Zealand that might have been expected to play a more constructive role.

The disagreement is a reminder that this trade agreement is more complex — and in many ways more ambitious — than most. Unlike other agreements that are concerned mainly with lowering import tariffs and quotas, these talks are also trying to set common legal and regulatory standards in areas like the environment, intellectual property, labor rights and state-owned companies.

If done right, agreement on these issues should ease fears that freer trade would lead to greater environmental damage and sweatshop conditions by giving businesses an incentive to ship production and jobs to countries with lower standards. But winning agreement is difficult when a large and diverse group of countries is involved. The other partners are Japan, Malaysia, Vietnam, Brunei, Singapore, Mexico, Chile and Peru.

American negotiators began including enforceable environmental standards in trade agreements in 2007 as part of a [deal](#) between the Bush administration and Senate Democrats. Since then, American trade agreements have asked trading partners [not to weaken](#) their environmental laws and required them to [carry out commitments](#) they had already made under treaties like the Montreal Protocol, which aims to protect the ozone layer, and a [convention](#) on the trade of endangered species and wild plants and animals.

The Pacific nations are now pushing for a process in which nations would consult with one another about environmental disputes and come up with plans to address them. But it would not include penalties, as the American proposal would. Even as some Trans-Pacific Partnership countries are rejecting binding commitments on environmental issues, they seem perfectly willing to include such provisions in other areas, including rules governing expropriation in which a state seizes the property of private businesses.

The Office of the United States Trade Representative [said](#) last week that it would not back down on its environmental agenda. In a statement, it said, “we will insist on a robust, fully enforceable environment chapter in the T.P.P. or we will not come to agreement.”

It is important that American negotiators stick to that policy. And members of Congress, who have to ratify all trade deals, should insist on it.

## Pacific, EU trade deals need up-or-down votes

JANUARY 19, 2014

NEGOTIATING TRADE agreements is an arduous task, made more so by the fact that the Constitution gives Congress the ability to set tariffs, while assigning the president the power to conduct foreign affairs. Today's free trade agreements are far more complex than the Founding Fathers could have envisioned. They encompass multiple countries and require changes to domestic regulations on everything from banking to labor standards to intellectual property rights. No administration can be expected to hammer out such complicated agreements with allies overseas and then renegotiate them, line by line, with individual members of Congress. And yet Congress must have the final authority.

For this reason, the House and Senate ought to pass the Bipartisan Congressional Trade Priorities Act of 2014, which would clarify the process: The White House would retain the authority to negotiate trade treaties, and Congress would promise a timely up-or-down vote. Without this bill, it would be difficult to make progress on any free trade agreement, let alone the two massive ones currently under discussion:

The [Trans-Pacific Partnership](#), which encompasses 12 countries, including Singapore and Vietnam, and the Trans-Atlantic Trade and Investment Partnership with the European Union.

Both deals have the potential to create economic growth here and across the world, but there will, inevitably, be some unfortunate tradeoffs. Still, members of Congress ought to wait and vote their conscience on the merits of the two treaties rather than try to abort the talks by denying the president the power to effectively negotiate on behalf of the United States.

Labor and environmental activists, alongside some liberal Democrats and Tea Party Republicans, have claimed that giving the president this authority amounts to an abdication of Congress's responsibilities. These claims are disingenuous. Congress has given presidents the power to negotiate "fast track" trade deals [for more than 40 years](#). Activists also complain about the secrecy of trade talks. That's an understandable concern. But almost all treaties are negotiated behind closed doors. In fact, the Bipartisan Congressional Trade Priorities Act would provide greater transparency and opportunity for congressional and public input than currently exists.

In reality, those who oppose granting the president the authority to negotiate trade deals deeply oppose the treaties themselves. They have some grounds for wariness. Twenty years after the North American Free Trade Agreement, research on its effects suggests that [the treaty didn't give as big an economic boost as many experts expected](#). The benefits in the form of cheaper goods from overseas don't always make up for the wages that are lost when [unskilled jobs go overseas](#). Some studies suggest that free trade treaties increase [income inequality](#).

Even free trade's biggest advocates acknowledge that certain pockets of society suffer, even as they insist that the agreements benefit the economy as a whole. In the past, trade agreements have been paired with mitigation packages meant to help unskilled

workers by retraining them. But research suggests that this assistance has been woefully ineffective.

For all these reasons, it's important to have a national debate about how to compensate those in our society who are disadvantaged by free trade agreements, and whether the overall benefits of these treaties outweigh the costs. Opponents of these treaties would do well to focus the public's attention on these very real questions.

And supporters, including the Obama administration, should seek the advice of both the would-be beneficiaries of the deals and their potential detractors. The frequently heard complaint that the government does more to represent the interests of corporations than ordinary citizens is a valid one, but it doesn't fully comport with the reality of the ongoing negotiations. The administration has advisory panels consisting of both businesses and advocates for consumers and labor groups, though it remains to be seen whose views will be most reflected in the final agreement. Ultimately Congress will decide, with the full and open input of interests on all sides, whether the negotiators struck the right balance.