STATE OF MAINE

Citizen Trade Policy Commission

DRAFT AGENDA

Tuesday, October 7, 2014 at 2 P.M.
Room 220, Burton M. Cross State Office Building
Augusta, Maine

2 PM Meeting called to order

I. Welcome and introductions

II. Presentation (by phone) on Trade in Services Agreement (TISA) from Scott Sinclair, Canadian Centre for Policy Alternatives

III. Discussion of 2014 CTPC Assessment and possible CTPC actions

IV. Briefing from Representative Sharon Anglin Treat on recent USTR activities

V. Articles of interest (Lock Kiermaier, Staff)

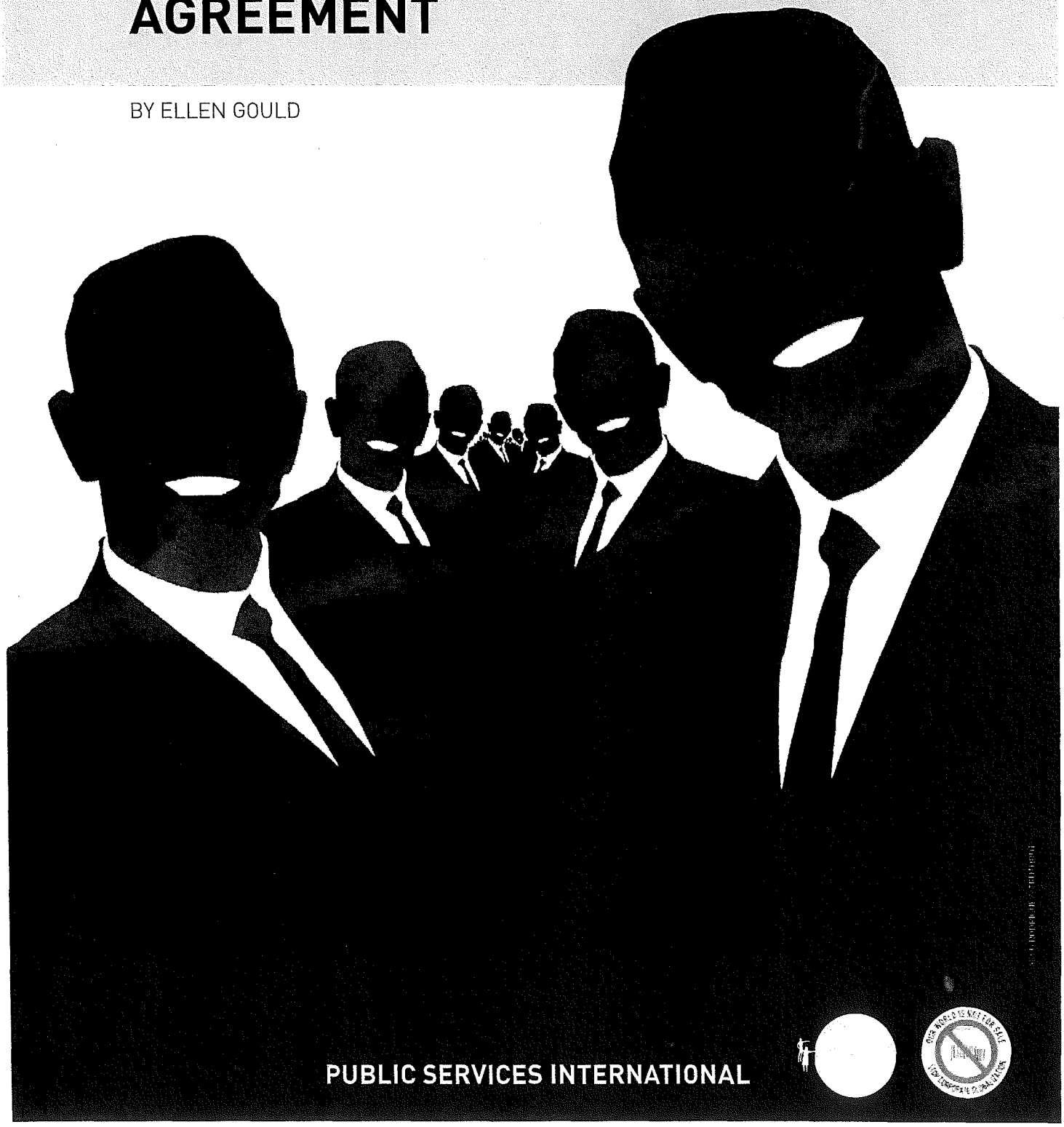
VI. Discussion of next meeting date; public hearing required before the end of 2014

Adjourn

TISA - TRADE IN SERVICES AGREEMENT

THE REALLY GOOD FRIENDS OF TRANSNATIONAL CORPORATIONS AGREEMENT

BY ELLEN GOULD



PUBLIC SERVICES INTERNATIONAL

Written by Ellen Gould
Ellen Gould is a Canadian consultant, advising the Harrison School of Law, Georgetown University, consumer groups, municipal governments, and professional associations on the impacts of international trade agreements. She is a Research Associate with the Canadian Centre for Policy Alternatives. Published studies include: the "GATS and Financial Instability", "The Commodification of Services"; "How the GATS Undermines the Right to Regulate", "International Trade Agreements: An Update for the Union of BC Municipalities".

This report was commissioned by Our World Is Not For Sale (OWINFS) and Public Services international (PSI) but the views expressed are not necessarily those of OWINFS or PSI.

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Our World Is Not For Sale (OWINFS)
www.ourworldisnotforsale.org

FOREWORD

Treating democratic laws and regulations of elected governments, designed to protect the public interest, as barriers to trade is a fundamental misconception of the role of government.

Laws and regulations to protect workers, consumers, small business and the environment exist because the market does not produce these outcomes.

The global financial crisis made clear the catastrophic results of failing to adequately regulate the financial markets. From global warming to the Rana Plaza disaster, our world is confronted with national and global challenges highlighting the tragic consequences of failing to make and enforce decent rules for the benefit of all in our societies.

The power to regulate is also essential to provide fair competition for business and allows countries, cities and regions to pursue economic and cultural development.

The Trades in Services Agreement (TISA), currently being negotiated in secret, is among the alarming new wave of trade and investment agreements founded on legally-binding powers that institutionalise the rights of transnational investors and prohibit government actions in a wide range of areas only incidentally related to trade.

This report's companion document TISA versus Public Services* outlines the harm the TISA will also do to public services designed to provide vital social and economic necessities – such as health care and education – affordably, universally and on the basis of need. Outcomes the market cannot produce.

Shockingly, the TISA will prevent governments from returning public services to public hands even when privatisations fail. Incredibly, in the aftermath of the global financial crisis, the TISA also seeks to further deregulate financial markets.

It is a deliberate attempt to privilege the profits of the richest corporations and countries in the world over those who have the greatest needs and risks establishing a global oligarchy dictating the rules across the world.

We know that large corporate interests are heavily involved in the TISA negotiations.

With such high stakes for people and our planet, the secrecy surrounding the TISA negotiations 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 TISA negotiating texts must be released for public scrutiny and decision-making.

The TISA must not 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

*www.world-psi.org/en/psi-special-report-tisa-versus-public-services

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INTRODUCTION

Highly secretive talks began in 2012 to establish a new trade agreement, the Trade in Services Agreement (TISA). The group of countries[1] negotiating TISA have given themselves an insider joke for a name, the 'Really Good Friends of Services'[2], to signal how truly committed they are to promoting the interests of services corporations. But there is nothing funny about the sweeping, permanent restrictions on public services and regulation that could be the impact of their work.

The idea for TISA originated with trade think tanks and lobbyists for transnational corporations unhappy with the pace of services negotiations at the World Trade Organization.[3] The Coalition of Services Industries has been clear about how ambitious TISA negotiators should be in achieving privatization and deregulation. Testifying to the US government in his capacity as Coalition chair, Samuel Di Piazza, a senior banker with Citigroup, stated that TISA countries should 'modify or eliminate regulations' within their borders. According to Di Piazza, banks, insurance companies, media and other corporations that do business globally should be able to operate in an environment where the determinants are 'market-based, not government-based'. Di Piazza's vision of the future under TISA is one without publicly delivered or regulated services, where *"free market principles can govern the investment in, and delivery of, services on a transnational scale."*[4]

The sweeping deregulation the Coalition is seeking would eliminate policy space for governments at all levels. For example Walmart, a member of the Coalition of Services Industries, sees TISA as a way to free itself of local government zoning regulations and restrictions on store size. Walmart also wants TISA to end the restrictions on sales of alcohol and tobacco, an area often under the jurisdiction of state and provincial governments.

> " Walmart, a member of the Coalition of Services Industries, sees TISA as a way to free itself of local government zoning regulations and restrictions on store size. Walmart [5] "

Eliminating government's role in the delivery of services, getting rid of regulations, and allowing transnational corporations free rein sounds like the platform of a libertarian political party, a radical agenda that should be debated in public and that voters should have a say over at the ballot box. Instead, the Really Good Friends of Services have imposed unprecedented levels of secrecy on their negotiations, suppressing the public's ability to discuss the serious issues at stake. The positions TISA governments

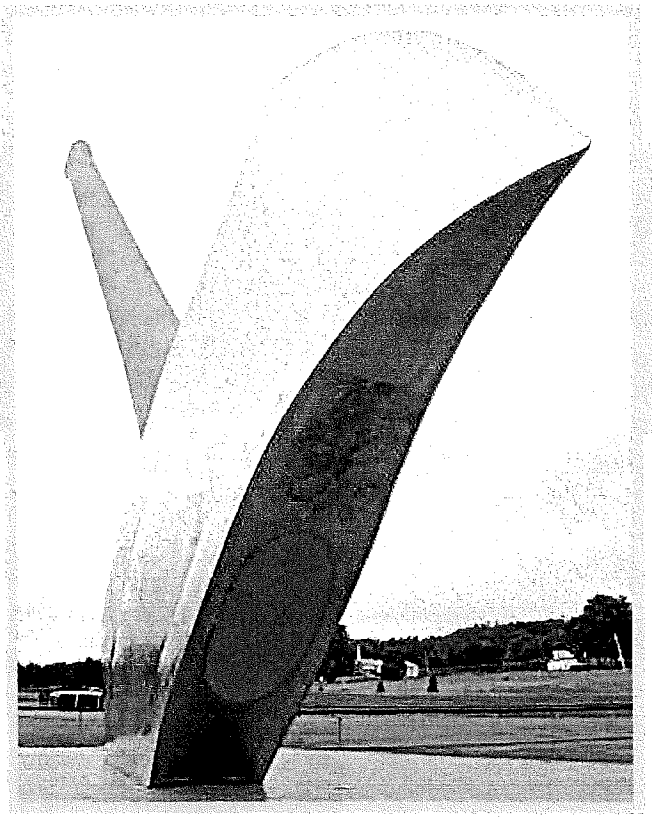
take at the bargaining table – how much they push privatization and deregulation, whether they make concessions in sensitive areas like health, education, culture, water supply, and banking regulation - will not be made public until five years after the agreement comes into force[6]. This extreme secrecy seems designed so that trade officials can negotiate without regard to domestic concerns and to relieve politicians of any accountability for their role in creating TISA.

Why are transnational services corporations confident they can get their agenda of deregulation and privatization through TISA? The following analysis focuses on how TISA could be used to accomplish their deregulatory agenda, and is meant to complement the study 'TISA versus Public Services'[7] that examines how TISA would foster privatization. TISA can be viewed as a one-two punch against the public interest, since it will promote privatization but also provide grounds to attack regulation of privately delivered services.

The objective of this paper is to help overcome the secrecy and complexity surrounding the TISA negotiations in order to bring the agreement into the public sphere for democratic debate. Although the Really Good Friends of Services (with the sole exception of Switzerland) have refused to make public any negotiating documents, enough information can be gleaned from negotiators' speeches, trade journals, and from leaked documents to indicate the threat TISA poses to public interest regulation.

SHARPENING THE AXE:

FROM THE GATS TO TISA



TISA is a strategy to bypass stalled talks to expand services rules and obligations at the WTO, so to understand TISA it is necessary to review some of the issues in those negotiations. Transnational corporate lobbyists have complained that the WTO services agreement, the General Agreement on Trade in Services (GATS), has not achieved the significant change they were counting on when the agreement came into force in 1995. They are also dissatisfied with the ongoing GATS negotiations mandated to continuously expand the reach of that agreement.

Developing countries are blamed for holding the GATS negotiations hostage to progress in other sectors. However, developing countries have argued that while they have been asked to make significant new concessions at the services bargaining table, they have not seen movement at the WTO in areas, such as agriculture, where they have a competitive advantage. WTO negotiations are supposed to produce 'reciprocal and mutually advantageous' results for all members and in particular work to ensure that developing countries secure a share in the growth of international trade.[8] Even including services in the WTO in the first place was a major concession developing countries made when the organization was founded, given that corporations based in OECD countries account for the lion's share of the world's trade in services.

To get around this impasse at the WTO, a group made up of mainly OECD countries founded the Really Good Friends of Services with the idea of going far beyond the multilateral GATS or any regional or bilateral agreement that has yet been signed, pressuring more countries to sign on to TISA, and then getting the agreement incorporated into the WTO. As former US Trade Representative Ron Kirk told a gathering of industry representatives, TISA "*presents significant new opportunities to examine the achievements of services agreements so far; consolidate the most important and effective elements into a single framework; and extend that framework to a broader group of countries.*"[9] The TISA

negotiations are essentially a replay of the negotiations that produced the GATS, but this time without the delegations present in the room that might have pushed back against the more extreme demands of the transnational services lobby.

Despite industry criticism that the GAT S is too weak, that agreement already has strong deregulatory provisions. For example, in 2004 a WTO panel found that US regulations prohibiting Internet and other forms of remote gambling were a GATS violation. US lawyers had argued before the panel that the right toregulate stated in the preamble to the GATS *"implies the power to set limitations on the scope of permissible activity"*.[11] Most citizens might think that was an obvious, minimum standard for what their government should be able to do.

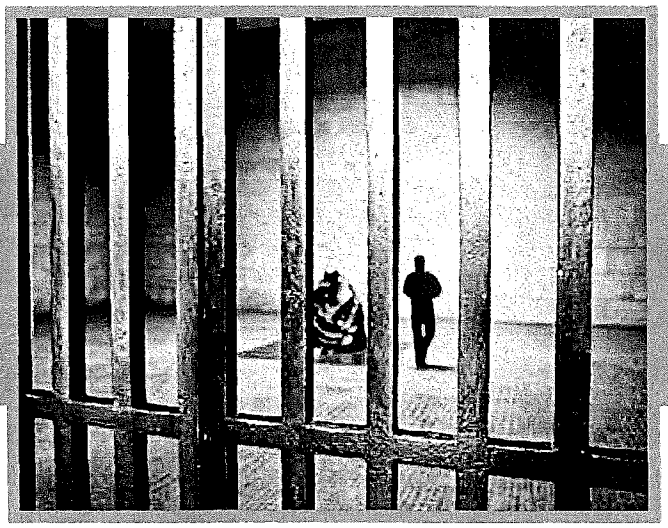
THE GATS-PLUS FEATURES OF TISA THAT COULD HAVE THE STRONGEST DEREGULATORY IMPACTS ARE:

- A coercive negotiating structure that will pressure governments to subject as many service sectors as possible to the agreement and trigger application of a set of new restrictions on regulation;
- GATS-plus provisions that will create more grounds for challenges to regulations;
- Elimination of the GATS article that allows countries to change what they have committed to if they can get other parties to agree.

But in its ruling, the panel made clear how the GATS limits the right to regulate:

"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."[12]

The panel ruling should provide a clear warning to the Really Good Friends of Services that they cannot expect to establish radical TISA restrictions on regulations that go far beyond provisions in the GATS and then not see these legal weapons turned on their own regulations in a trade challenge. The Friends' declared intention to create a 'GATS-plus' agreement makes it likely that they will have to 'modify or eliminate regulations' as the Coalition of Services Industries has demanded. If they do not deregulate, TISA members may find themselves before a dispute panel being set straight about the extent to which TISA limits their regulatory sovereignty.



A COERCIVE NEGOTIATING STRUCTURE

"All laws and regulations designed to achieve domestic regulatory objectives would be subject to the obligation of national treatment. In addition, national treatment would apply to all future such regulations governing the services sectors."

"Trade in Services - Communication on Behalf of the United States."

GATT document L/5838, 9 July 1985

In its original campaign to have services included as one of the WTO agreements, the US tried to get a 'top-down' structure, meaning that all service sectors would be automatically covered unless countries specifically excluded them. Although the GATS ended up having some provisions that do govern all services, the US demand for a top-down agreement was rejected in two key areas – 'market access' and 'national treatment'.

The GATS market access obligation prohibits numerical limits on either the supply or suppliers of a service. The national treatment obligation requires countries to treat services and service suppliers of other parties to the agreement no less favourably than they treat their own. With the GATS bottom-up structure, countries choose which services they will commit to market access and national treatment rather than starting from a place where every service is governed by these obligations unless it is expressly excluded.

In TISA, however, the US has achieved[13] its long-term goal of having national treatment apply in a top-down way to services. This top-down structure means TISA countries will have to list all the services they want to exclude from national treatment, a list-it-or-lose-it proposition that increases the possibility that national treatment may end up applying to services governments meant to protect.

The deregulatory impact of TISA's top-down approach to national treatment is especially serious given

that national treatment targets more than just those regulations that overtly favour local companies. Under national treatment, identical treatment of foreign and local companies is not enough – they have to be given the same conditions of competition. This requirement creates uncertainty for governments since it is not always clear when regulations are creating unequal conditions of competition.

In addition, regulations that discriminate in favour of services supplied by governments[14], non-profits or co-operatives violate national treatment. Fedex, for example, in its submission on TISA to the US Trade Representative, is seeking a 'level playing field' for public and private delivery services and the elimination of 'regulatory advantages historically conferred upon national post offices'. National post offices have mandates to serve parts of the market, such as remote areas, unprofitable 'playing fields' that Fedex and other transnational courrier businesses are not interested in serving. Eliminating regulations that give advantages to national postal offices handicaps their ability to meet their public interest mandates.

> " Fedex is seeking the elimination of 'regulatory advantages historically conferred upon national post offices'. Fedex[15] "

National treatment provisions can also be used to challenge regulations requiring local representation in the governing bodies of service corporations. The Coalition of Services Industries argues that TISA should prohibit governments *"from requiring service providers to meet nationality requirements for Board members"*.[16] Even credit unions and co-operatives would not be allowed to require their board members come from the local community. If TISA parties do not explicitly exclude these regulations when they make their top-down national treatment commitments, then they must eliminate them or risk a trade challenge.

As well as changing national treatment to a top-down structure, other mechanisms are being used to pressure governments to subject as many services as possible to the full force of TISA. The Really Good Friends group are modeling TISA on the GATS, but including new provisions that will impose draconian constraints on the right to regulate. The U.S. WTO Ambassador Michael Punke said in 2012 that the Really Good Friends of Services had agreed to apply standstill and ratchet to national treatment and they may also apply these provisions to market access.[17]

The standstill clause would require governments to lock in the policies that exist when they sign the agreement. If, for example, foreign companies had been granted rights to provide health insurance, TISA would entrench this as their permanent right. As the US insurance lobby put it, "*commitments should, at a minimum, match the level of access that exists in the market today.*"[18]

TISA's proposed ratchet provision[19] would automatically make permanent any experiment governments made in deregulation – with no ability to reverse course if the experiment proved disastrous. An example is the current Norwegian government's plans to liberalize the sale of alcohol. Norway has traditionally been a strong advocate for alcohol control policies designed to reduce the incidence of alcohol-related harm. However, Norway's government is considering changes that would threaten the government monopoly on alcohol sales. The government has proposed allowing direct sales of alcohol to consumers from producers and loosening Norway's restrictions on alcohol advertising.[20] Decreasing the availability and advertising of alcohol have proven to be effective ways to reduce alcohol-related harm, so the

Norwegian government may want at some future point to reverse such changes. But under a ratchet clause, every step Norway might take to liberalize alcohol sales could be locked in permanently.

TISA's standstill and ratchet clauses may act to dissuade more countries from joining the Really Good Friends group. Flexibility in the GATS allows countries to keep from committing sectors that they may have already opened up to foreign corporations. Since many developing countries had been forced to extensively privatize and deregulate under International Monetary Fund structural adjustment programs when the GATS was originally being negotiated, they did not want this to be automatically locked in by the GATS. Instead, developing countries could seek gains in areas of interest to them – construction, maritime services, employment of temporary workers working overseas - in exchange for making commitments covering the services they had already privatized and deregulated.

Developing countries are invited by TISA's advocates to think of opening up their services sectors to OECD-based transnational corporations not as a concession and a sacrifice of their national interest, but rather as a 'precondition for enhancing domestic economic performances'.[21] The same advocates emphasize the comparative advantages of US and EU companies and the potential to create more US and European jobs through TISA when they lobby their own governments.

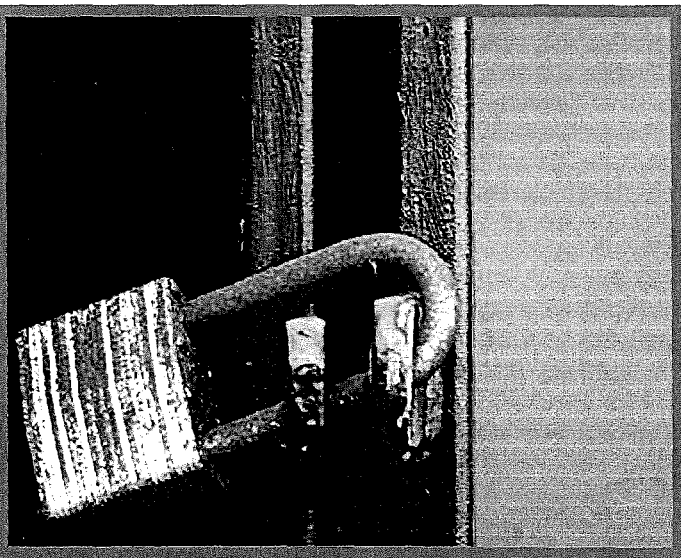
It is difficult to see in general how guaranteeing US and EU companies more access to supply the gamut of services, including entertainment, retail sales, and the trading of financial derivatives in shadow markets serves as a 'precondition for enhancing domestic economic performance' in developing countries. How, for example, would it enhance development for TISA members to accede to Walmart's demand[22] for deregulation of alcohol and tobacco sales?

A key demand of the services lobby is that TISA should require any new service to be completely and automatically covered by TISA market access and national treatment commitments. According to the Coalition of Services Industries Testimony[23], *"TISA should ensure that 'any new services that become possible to trade as a result of technological innovation in a covered category can be provided without further negotiation."* Inclusion of a 'future-proofing' clause is another way TISA is being designed to limit the right to regulate far more than the GATS. This kind of provision has been defined as the 'quasi-automatic liberalization of new services that might emerge over time.'[24] It eliminates the ability of governments to decide whether they want to nurture a national capacity to develop the service or have it delivered by governments or non-profits. In addition, rather than being compelled to give foreign and local corporations the same rights to provide a new service, governments may actually want to completely ban services such as Internet gambling.

The addition of the standstill, ratchet and future-proofing clauses in TISA are being paired with the elimination of the GATS article that allows countries to withdraw commitments. GATS Article XXI states that *"A Member may modify or withdraw any commitment in its Schedule"* if they can negotiate substitute commitments satisfactory to the WTO membership. It is ironic that both the US and the

EC, whose trade officials are intent on eliminating this provision from TISA, are the WTO members that have actually used the flexibility in the GATS to withdraw commitments.[25] The US made an unintentional commitment of cross-border gambling under the GATS, but has negotiated to withdraw this commitment using the modification and withdrawal provisions of GATS Article XXI. The EC modified its commitments to accommodate the enlargement of the European Union.

With TISA, governments will not be allowed to withdraw commitments even if they made them unintentionally, their commitments have had unforeseen, negative consequences, and they agree to provide compensation to other TISA parties. The top-down approach being adopted for national treatment commitments greatly increases the risk of commitments being made that countries end up wanting to withdraw.



FREDERIC POIROT

RESTRICTING GOVERNMENT'S RIGHT TO REGULATE

Corporations have high expectations for the deregulation they expect from TISA, confident that the agreement will compel the elimination of regulations regardless of whether they are discriminatory against foreign companies or not. For example, the National Retail Federation that lobbies for transnational retail corporations is expecting the Really Good Friends of Services to:

> *"Work to ease regulations that affect retailing, including store size restrictions and hours of operation that,* ***while not necessarily discriminatory****, affect the ability of large-scale retailing to achieve operating efficiencies...* [emphasis added]" [26]

It is hard to see what this industry demand for deregulation has to do with trade. Although regulations on store hours and size are applied to local retail stores and transnationals alike, international retail corporations want them eased simply because they do not like how they are affected.

Walmart has taken the position that TISA should prohibit restrictions not only on store size and hours of operation but also on the 'geographic location' of stores - a direct attack on all local government zoning authority.[27] The public interest in walkable neighbourhoods, reducing the noise and negative impacts on workers caused by extended store hours, preservation of heritage areas and other considerations could end up being sacrificed by the Really Good Friends in favour of Walmart's commercial interests.

How could TISA achieve these deregulatory goals for the transnational services lobby? The existing

GATS obligations of national treatment and market access that are being incorporated into TISA[28] do not provide airtight legal arguments for challenging regulations like zoning. However, new grounds for challenging regulation are being negotiated as part of both the GATS and TISA talks. The structuring of TISA to coerce countries to make the widest range of commitments possible could result in the radical deregulation along the lines of what corporate lobbyists are seeking. National treatment and market access commitments could trigger imposition of a whole new set of constraints on the right to regulate.

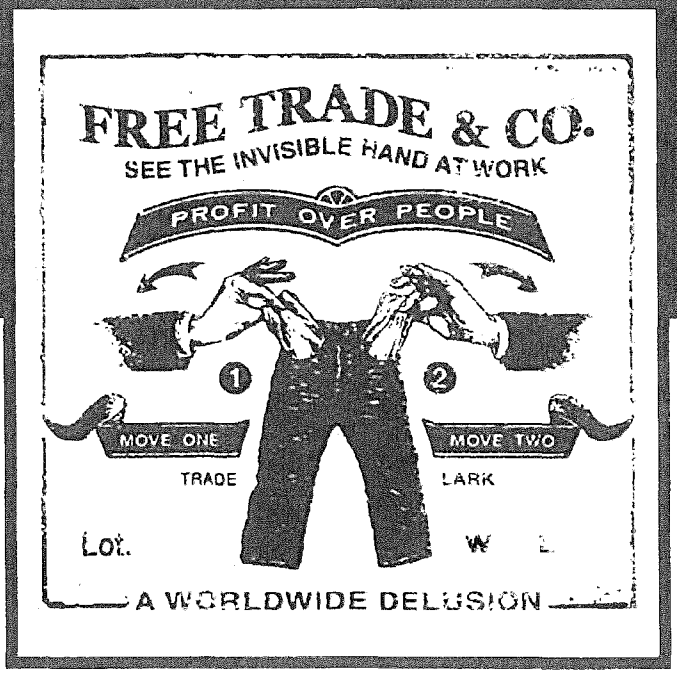
The imposition of new, binding restrictions on non-discriminatory domestic regulation is a controversial aspect of the GATS negotiations. WTO delegations are fighting each other in very undiplomatic terms over how severe these disciplines should be.[29] Any of the proposals on the table, however, would restrict the right to regulate.[30]

TISA negotiators have also agreed to include *"discussions for new and enhanced disciplines on the domestic regulation of services as part of any future deal"*[31] and corporations are lobbying to have TISA domestic regulation disciplines modeled on the most extreme language proposed at the GATS negotiations. In addition, if as intended[32] TISA is incorporated into the WTO, domestic regulation disciplines negotiated through the GATS could apply to all of the extensive market access and national treatment commitments made under TISA. The GATS draft disciplines on domestic regulations state:

> *" These disciplines apply to measures by Members relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards affecting trade in services* ***where specific commitments are undertaken*** [emphasis added]. *"* [33]

The scope of affected regulation could be enormous. The standard for TISA commitments, according to US WTO ambassador Michael Punke, is the 'highest common denominator' of commitments made in any agreement by any of the Really Good Friends of Services.[34] Just considering some existing GATS commitments, and not even taking into account the 'GATS plus' bilateral agreements that have been signed, this standard likely means deregulation will have to be undertaken by the Really Good Friends of Services in extremely sensitive service sectors. For example, if they are going to agree to match the GATS commitments made by any party to the TISA negotiations, the Really Good Friends will have to commit primary and secondary education as Panama has done[35], hospital and medical services as Turkey has done[36], all of construction services including construction of schools, hospitals and highways as Taiwan has done[37], and all of film, radio, television, theatre, libraries and museums as the US has done.

IMPOSING DEREGULATION



CHRISTOPHER DOMBRES

Why are trade agreements now reaching into areas such as non-discriminatory regulation that are so unrelated to trade? **Modern era trade and investment agreements are not as much about getting rid of tariffs as they are about restricting the policies governments are permitted to implement within their own borders.** In explaining why TISA is *'not your father's trade agenda'*, Jonathan Kallmer, until recently a senior US trade official, argues that *"differential regulatory burdens, forced localization measures, government influence and control, and restrictions on cross-border data flows"* are now the principle concerns of transnational corporations. Kallmer says this is why *"the countries negotiating a TISA will focus substantially on regulatory issues."* [38]

> " Modern era trade and investment agreements are not as much about getting rid of tariffs as they are about restricting the policies governments are permitted to implement within their own borders. "

Because the GATS and TISA both define the establishment of services corporations overseas as a form of 'trade', how governments regulate these companies that set up operations in their countries becomes transformed into a trade concern. **Trade negotiators are given license to bargain deregulation**

over complex sectors where they may have no expertise. As promoters of TISA have pointed out, both domestic and foreign companies stand to benefit from the regulatory changes that services trade agreements impose.[39]

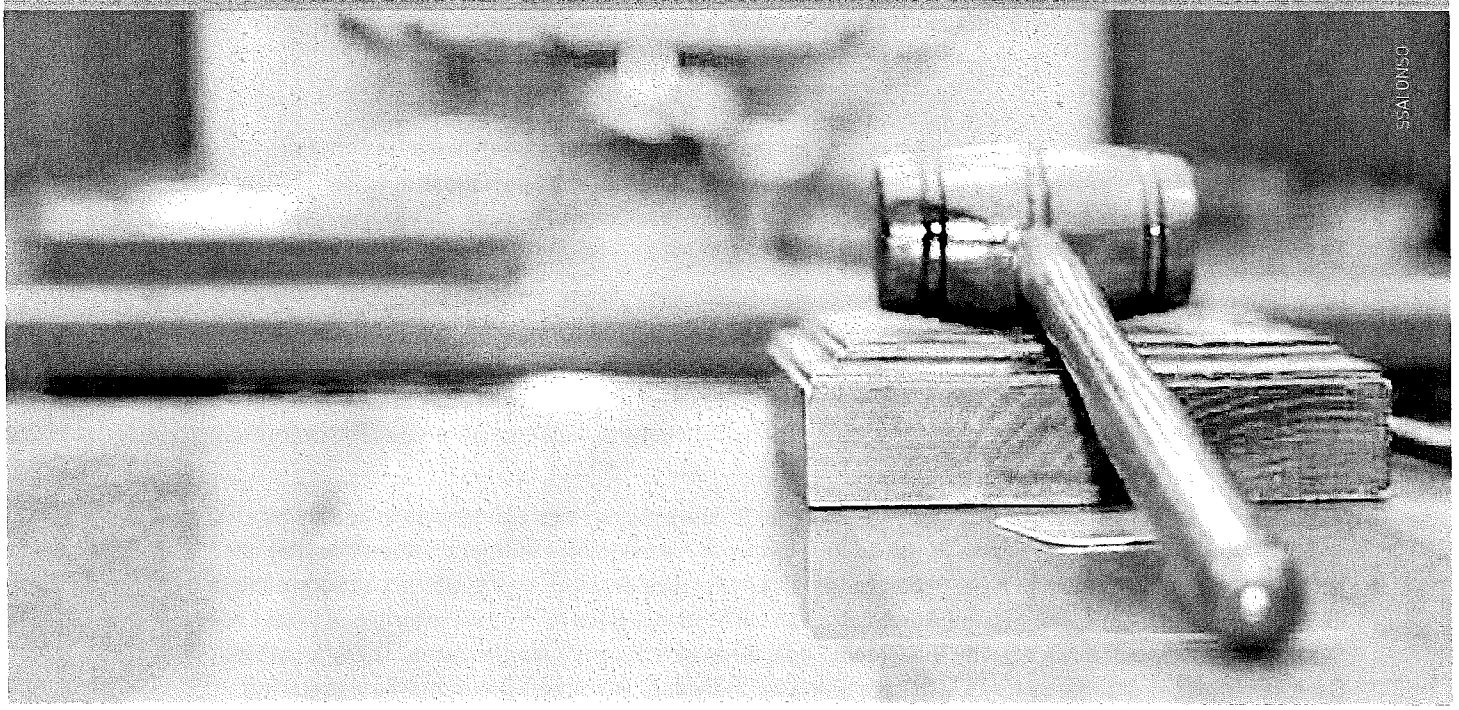
Depending on what wording for the disciplines is ultimately agreed to, WTO panels could decide regulations are GATS violations because they are 'unnecessary', 'excessively burdensome' to business, not 'relevant', not 'objective', were drafted without giving foreign businesses enough opportunities for input, or for a host of other reasons contained in draft versions of the disciplines[40]. Since the new regulatory disciplines would greatly magnify the impact of making a GATS commitment in ways that are unpredictable, this has caused governments to pull back on the liberalization commitments they are willing to make. Brazil has reported there is *"an undeniable link in the level of comfort that regulators were going to have in domestic regulation and the offers they were willing and able to put on the table in the market access negotiations."*[41]

> " Trade negotiators are given license to bargain deregulation over complex sectors where they may have no expertise. "

The categories of regulations to be covered by GATS disciplines are defined so broadly that virtually any regulation would be included because they encompass anything 'related' to licensing, qualifications, and standards. To get a concrete understanding of what is at stake, it is useful to look at a WTO report that provides examples of regulations that could violate the disciplines. Among the examples of possible violations listed are: licensing and qualification requirements that differ among sub-federal states and provinces, 'not relevant' or 'onerous' language requirements, limits on fees charged for services, restrictions on zoning and hours of operation, 'expensive' licensing fees, and 'unreasonable' environmental and safety standards.[42]

What country does not have at least some regulations like these that might be challenged as violations of the disciplines, especially if they commit extensive new service sectors - as they are being strong-armed to do under TISA's negotiating structure – that would trigger application of the disciplines?

WHO DECIDES WHETHER YOUR LAWS ARE 'UNNECESSARY' OR 'UNREASONABLE'?



Proposals on the table at the GATS negotiations would create a variety of grounds to challenge domestic regulations, including if they were not 'necessary' or not 'reasonable'. If a necessity test is agreed to, ' WTO dispute panels would become the ultimate arbiter of whether government regulations over services such as water supply, education, health, and cultural services are really necessary' to realize a government's objectives. The Really Good Friends group includes some of the most aggressive supporters – such as Australia and Switzerland – as well key opponents – such as the US and Canada - of a necessity test.

Despite how controversial the necessity test has been at the GATS negotiations, promoters of imposing a necessity test are viewing TISA as affording another opportunity to push this through.[43] The countries

- Chile, Hong Kong, New Zealand, Mexico, and Switzerland - that took the most intransigent position insisting that a necessity test be inserted into GATS disciplines have submitted papers on domestic regulation to the TISA talks.[44]

> " WTO dispute panels would become the ultimate arbiter of whether government regulations over services such as water supply, education, health, and cultural services are really necessary. "

Corporate lobbyists have necessity testing of regulations as a priority in their demands. For example, the Global Federation of Insurance Associations has declared that TISA should require that universal service obligations cannot be *"more burdensome than necessary for the kind of universal services defined by the member."*[45]

Universal service obligations are regulations requiring that the poor and hard-to-serve populations such as residents of rural areas have access to services. A necessity test incorporated into either TISA or the GATS could make regulations on universal access to services subject to a trade challenge if there were alternatives that were less burdensome to business.

In deciding the necessity of a universal services regulation, dispute panels would weigh whether a government's objective in achieving universal access to a service was important enough to justify how significant its impact was on trade. They would also judge whether the regulations were effective in achieving universal access. In addition, they would decide whether there were alternatives that were less of a burden to business and reasonably available that governments could have pursued.[46] Government regulations can fail a necessity test on any of these grounds.

What would be the results of a necessity test applied to universal service obligations in health care? If Really Good Friends countries rise to the highest common denominator of liberalization like they are being urged to do, they would have to commit health insurance services as the US has already done in its GATS commitments. **The Obama Administration's Affordable Care Act[47] is an example of what could fail the necessity test advocated by the Global Federation of Insurance Associations.** The Affordable Care Act imposes standards for health care plans for individual and small group markets requiring them to include 'essential health benefits' such as care for pregnant women and newborns, generally an expensive patient group to serve.[48] The Act also stipulates that insurance providers cannot deny coverage due to pre-existing conditions.[49]

Although the US government's objectives in extending health insurance to the uninsured could be accepted by a dispute panel as important, the Affordable Care Act's standards could be judged too burdensome to business in light of alternatives the US could have pursued. Groups like the Heritage Foundation have argued there are more market friendly alternatives to the Act. The Heritage Foundation has proposed flat tax credits be given to individuals so they can buy health insurance in the open market.[50] If TISA imposes a necessity test on non-discriminatory regulations, as the insurance industry is calling for, trade panels will essentially be empowered to decide what kind of options countries are allowed to adopt in critical areas like health care.

Developing countries cannot expect to fare any better than OECD members when there is a trade challenge to their regulations. Although WTO dispute panels are in theory supposed to take into consideration the special challenges faced by developing countries, in practice panels have still insisted that developing country regulations have to be made consistent with their trade agreement commitments.

> " The Obama Administration's Affordable Care Act[47] is an example of what could fail the necessity test advocated by the Global Federation of Insurance Associations. "

For example, in defending against a US challenge to its telecom regulations based on GATS telecommunications regulatory disciplines, Mexico argued the panel should take account of Mexico's special concern as a developing nation to promote universal access to telecommunications services and to improve its networks.[51] But the WTO panel ruled against Mexico, stating that *"contrary to Mexico's position, the general state of the telecommunications industry'* and the *'coverage and quality of the network"* were not relevant to a decision on whether regulations setting interconnection rates were reasonable.[52] The panel concluded that Mexico's telecommunications regulations were neither 'reasonable' nor 'necessary'.[53]

When trade panels come out with these kinds of findings, trade officials can express surprise that their own country's regulations have been ruled to violate the trade agreements they have worked to create and expand. For example, the US Trade Representatives Office called the WTO panel ruling against the US ban on cross-border gambling *"shocking and troubling"*.[54]

However, when the offensive interests of exporters are the overriding preoccupation of trade officials and citizens' concerns are given short shrift, the stage is set for unanticipated trade challenges. Speaking at a 2012 conference of the transnational services lobby held on TISA, Ron Kirk, the US Trade Representative at the time, even asked for business to help government *"combat groups who are anti-trade."*[55] Kirk's misuse of the term 'trade' invokes the pretence that these agreements are about nothing more than trade, and misrepresents critics in the same way.

SECTORAL DISCIPLINES

According to the European Commission, TISA negotiators will develop a series of regulatory disciplines for particular sectors, including postal and financial services.[56]

Going by what the delivery services lobby is seeking, the changes to postal and courier services could be significant. The Express Association of America, representing transnational giants like UPS and FedEx, says[57] its expectations of TISA are that it will:

- Eliminate regulations that favour public postal services,
- Eliminate licensing requirements for express delivery providers, and
- Eliminate requirements for express delivery providers to contribute to universal service funds.

This lobby group states that TISA *"provides an opportunity to review the postal policies of the negotiating partners..."* But given the extreme secrecy surrounding the negotiations and its coercive negotiating structure, TISA is the wrong forum for national postal policies to be revised. Change on the scale that the transnational express delivery lobby is seeking should be debated in legislatures and not decided behind the closed doors of the TISA negotiations.

In terms of financial services, a leaked draft of TISA's Annex on Financial Services[58] indicates it generally adopts the provisions of the Understanding on Commitments in Financial Services.[59] This understanding is a WTO agreement some of its members have signed with enhanced rules and commitments to liberalize financial services. Among the deregulatory provisions in the Understanding are: a prohibition against limiting the ability of foreign financial service providers to provide any new financial service; a standstill limiting non-conforming policies to existing ones; and a requirement that members of the agreement endeavour to limit or eliminate any measures, even though non-discriminatory, that *"affect adversely the ability of financial service suppliers of any other Member to operate, compete or enter the Member's market."*

Canada has pushed for the adoption of the 1994 Understanding on Commitments in Financial Services by all Really Good Friends of Services.[60] Canada should not be considered a credible champion, though,

of liberalization of financial services. Its own experience in the financial crisis in fact argues against liberalization. Canada maintains a regulation, called the 'widely held rule', which effectively insulates it from the impacts of the Understanding on Commitments in Financial Services. This rule, placed as a limitation on Canada's GATS financial services commitments[61], acts to deter the entry of serious competition to its domestic banks by requiring that banking assets not be concentrated in too few hands. It has been described as a regulatory 'poison pill' that in effect makes it impossible for foreign banks to enter the Canadian market because they cannot buy out a domestic bank and take over its nation-wide network of branches.

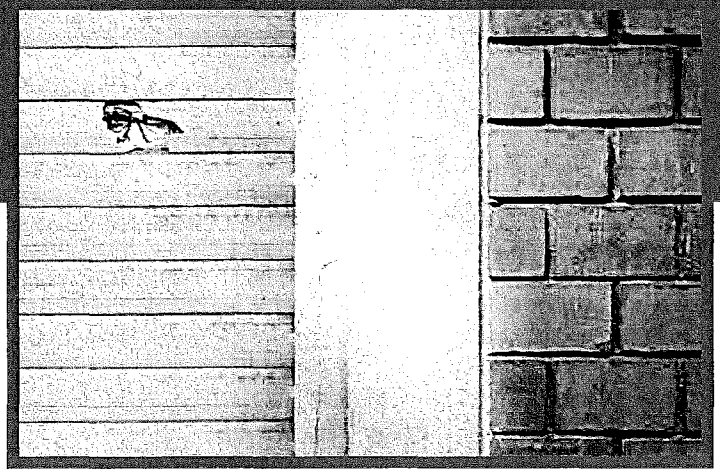
IMF analysts, in their paper on why Canada survived the 2008 financial crisis relatively unscathed, actually credit such barriers to entry for Canada's relative stability during the crisis. The IMF paper stated that *"Limited external competition reduces pressures to defend or expand market share, again reducing incentives to take risks."* [62] Findings like these, however, go against the grain in trade circles and are not discussed so Canada is able to continue to advocate financial liberalization to others at the TISA negotiations while keeping its own banking sector closed.

The draft TISA Annex on Financial Services goes beyond the Understanding on Commitments in Financial Services. The US has proposed adding very stringent requirements for 'transparency' in financial regulations. These provisions would not only require governments to make their financial regulations public, they would also require advance notice of proposed financial regulations be given to TISA members and private interests who would have a right to comment. Governments would have to provide written responses to submitted comments. Such provisions would be especially beneficial for US transnational financial corporations who are far more capable of taking advantage of opportunities to intervene than the banks of developing countries. Another US proposal would set a 120-day standard for TISA members to approve applications to supply financial services, a standard developing countries in particular may not be able to meet unless review of applications is done in a superficial way.

In addition to postal and financial services, TISA negotiators reportedly are also working on disciplines for telecommunications, electronic commerce, maritime transport, air transport, road transport, professional services, and energy-related services. According to Scott Sinclair and Hadrian Mertins-Kirkwood, *"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."* [63]

" Such provisions would be especially beneficial for US transnational financial corporations. "

POTENTIAL IMPACTS ON DATA PRIVACY



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TISA's provisions on standstill, ratchet, future-proofing, negative listing for national treatment, and elimination of the possibility of withdrawing commitments would deliver what transnational service corporations are seeking – certainty that regulations would never be introduced that would reduce their profits. The obstacles these provisions pose for regulations to ensure data privacy, however, illustrate why they are not in the public interest.

A major plank of the US negotiating position in the TISA talks – and one that is flagged as the highest priority by the US Chamber of Commerce[64] - is to restrict initiatives to 'localize' data storage and restrict cross-border flows and processing of data. Cloud-based technology firms are mostly US-based, and US firms dominate the information and communications technology sector in general.

Lobbyists for US financial and securities firms are seeking a TISA imposition of a 'necessity test' on data privacy regulations: *'The agreement should include a commitment that when an act, policy or practice of a relevant authority seeks to restrain cross-border data transfers or processing, that that authority must demonstrate that the restriction is not an unnecessary restraint of trade or investment in light of alternative means by which to achieve the objective of protecting the identity of the customer, security of the data or the performance of prudential oversight.*'[65] Such a provision in TISA would put the onus on governments to come up with industry-friendly regulations on data privacy.

Foreign governments' requirements that data be stored within their countries is a major complaint of the US insurance, computer software, and credit card industries. Their lobby group argues that local storage requirements *"impose added costs and operational burdens on insurance suppliers and interfere with data outsourcing arrangements, offline back office operations, and the use of*

cloud computing. They do not serve any prudential purpose that could not be achieved through less burdensome measures." [66]

However, concerns have been raised in many countries about inadequate data privacy protections in the US. After the Snowden revelations of NSA access to personal data in a range of areas and snooping on personal communications of the Brazilian president, Brazil's government considered requiring Google and Facebook to create data storage centres in Brazil.[67]

Some Canadian provinces require that electronic medical records must be kept within the jurisdiction. Guidelines to meeting provincial data privacy requirements point out that if US-based companies are given contracts to manage electronic medical records, these companies could be required by the U.S. Patriot Act to disclose confidential information. Clauses in contracts for IT companies forbidding disclosure of information in private health records or requiring notification when US government agencies asks for this information are overridden by the Patriot Act.[68]

> " Transnational service corporations are seeking certainty that regulations would never be introduced that would reduce their profits."

> " Lobbyists for US financial and securities firms are seeking a TISA provision that would put the onus on governments to come up with industry-friendly regulations on data privacy. "

With TISA's standstill provision, any local storage requirements not in place at the time the agreement was signed would be a violation of the agreement regardless of whether a country had made a commitment in areas like cross-border management of health data. With TISA's ratchet provision, any loosening of data privacy regulations under one government could not be reversed by another. Introduction of legislation in another TISA party that endangered data privacy, such as passage of the Patriot Act in the US, could not be addressed by the withdrawal or modification of TISA commitments. Exceptions for privacy protection that may be included in the agreement could be subjected to a necessity test, where governments could be required by dispute panels to adopt 'less burdensome' approaches than requirements for local data storage.

CONCLUSION

The Coalition of Services Industries 2012 summit on TISA crystallizes much of what is wrong with the agreement. Ministers of trade sat on a panel moderated by a FedEx executive, supporting all the features of TISA that corporate lobbyists had asked for – its standstill and ratchet provisions, liberalization based on the most far-reaching free trade agreements, and a quick conclusion to negotiations. The New Zealand ambassador actually thanked US business for their efforts in getting the negotiations going. The US ambassador stated there was such a strong consensus among the trade negotiators present at this conference of corporate lobbyists that they should just retire to the bar and sign the agreement.[69]

The Mexican ambassador, Fernando De Mateo, concluded by saying:

"The real fight is often in our own capitals, not Geneva, because we need to have our regulators on board in order to move quickly. The business community can help by talking to them."

In effect, trade officials are asking for corporate pressure to keep regulators from raising concerns about TISA's impact on the public interest.

TISA is a significant step towards realizing the Coalition of Services Industries' highly politicized goal of having free market principles *"govern the investment in, and delivery of, services on a transnational scale."*

> " Governments who are being urged to join the Really Good Friends in signing TISA should evaluate whether they are comfortable with this degree of governance by corporations. "

NOTES

1. Australia, Canada, Chile, Chinese Taipei (Taiwan), Colombia, Costa Rica, European Union, Hong Kong, Iceland, Israel, Japan, Liechtenstein, Mexico, New Zealand, Norway, Pakistan, Panama, Paraguay, Peru, South Korea, Switzerland, Turkey, and the United States make up the Really Good Friends of Services.
2. he 'Friends of Services' group was established in the 1990's by the G20 group of industrialized countries to push for services liberalization through the WTO. The establishment of this pressure group is described by Amrita Narlika in 'Inter-State Bargaining Coalitions in Services Negotiations: Interests of Developing Countries', a paper submitted to the World Services Congress, 1999. 'Friends of ...' groups have been established in the context of the GATS negotiations to press for liberalization in particular sectors.
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6. Even if the negotiations do not produce an agreement, negotiating documents will still be kept secret for five years. The leaked TISA Financial Services Annex states that the US government will not declassify the document until: '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.' Online at: https://wikileaks.org/tisa-financial/WikiLeaks-secret-tisa-financial-annex.pdf
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10. WTO, 'United States – Measures Affecting the Cross-border Supply Of Gambling And Betting Services – Report of the Panel', WTO document WT/DS285/R, 10 November 2004. In April 2005, the WTO Appellate Body upheld the panel's decision that US laws prohibiting remote gambling violate its market access commitments.
11. Ibid, para. 3.146
12. Ibid, para 6.316.
13. Consistent with its legislation requiring transparency in trade negotiations, the Swiss government has posted it initial TISA online and it conforms with a top-down approach to national treatment. The offer is online at:http://www.seco.admin.ch/themen/00513/00586/04996/index.html?lang=en

14. TISA may include the same exemption as in the GATS for 'services provided in the exercise of governmental authority' but this exemption is so narrow – eg. it does not cover public services where there is private competition – that it provides uncertain protection for public services.
15. FedEx, response to USTR 'Request For Comments On An International Services Agreement' Docket Number: USTR-2013-0001. 25 February, 2013. Online at: http://www.regulations.gov/#!documentDetail;D=USTR-2013-0001-0028
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TISA

versus

March against the GATS

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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

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, "21st 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.

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.

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.

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.[1]

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.

Korean farmers protest WTO. Photo: free range jace

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).[2] 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.

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.[3] 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."[4] 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,

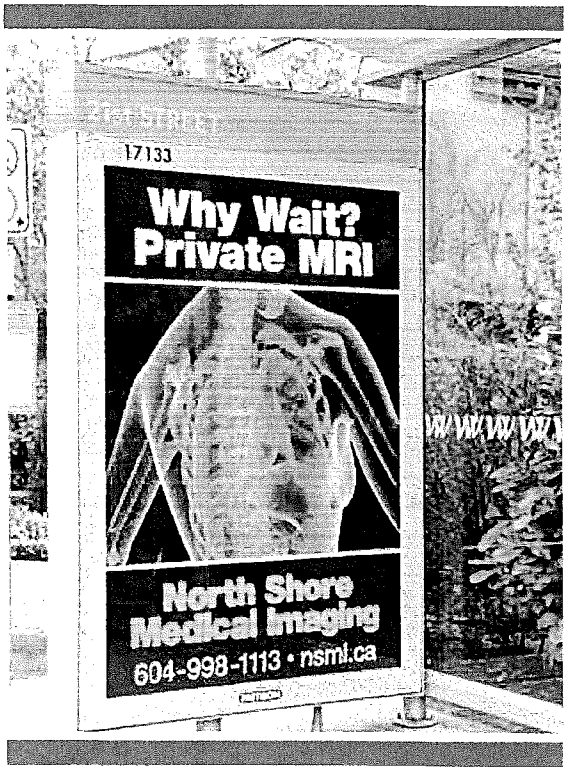
Government Procurement – have been loudly condemned by the U.S. government and business groups as inadequate. Yet, to date, China has "categorically rejected" demands from the U.S. that it meet certain preconditions, such as an improved offer in the ITA talks, before being allowed to join the TISA talks.[5]

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.[8] Unfortunately, the TISA's "top-down" approach to national treatment is designed to limit this flexibility.[9]

Another approach is for governments to take horizontal limitations (that is, exemptions) against specific obligations.[10] 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."[11] 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.[12] In any event, these country-specific limitations, which dilute the avowed ambition of the TISA, will be targetted for elimination or erosion by other TISA participants.



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

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.[13] Accordingly, there will almost certainly be no such provision included in the TISA.

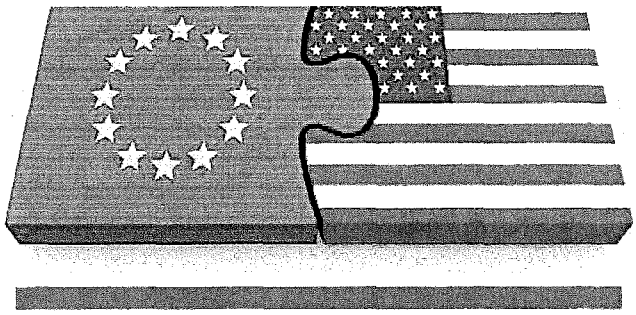
In short, the already formidable challenges in safeguarding public services under the GATS will be greatly exacerbated by the TISA.

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."[6] 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.[7]

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.[14]

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."[15]

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,[16] 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.[17]

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.[18] 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."[19]

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.[20]

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.[21]

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.[22] 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.

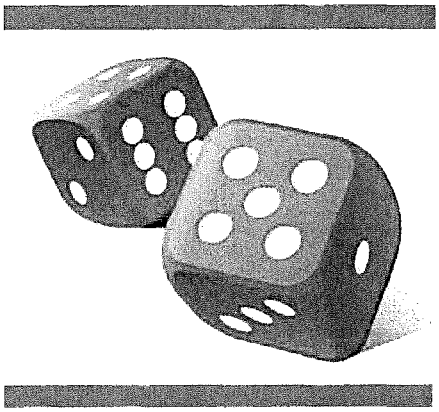
The European Commission, a strong proponent of TISA, officially maintains that the TISA can be fully compatible with WTO rights and obligations and, ultimately, multilateralized.[23] But it has also stated that: "It is not desirable that all those countries would reap the benefits of the possible future 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."[24] 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.[25]

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),[26] 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.[27] 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.[28] 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.[29]

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."[30] 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.

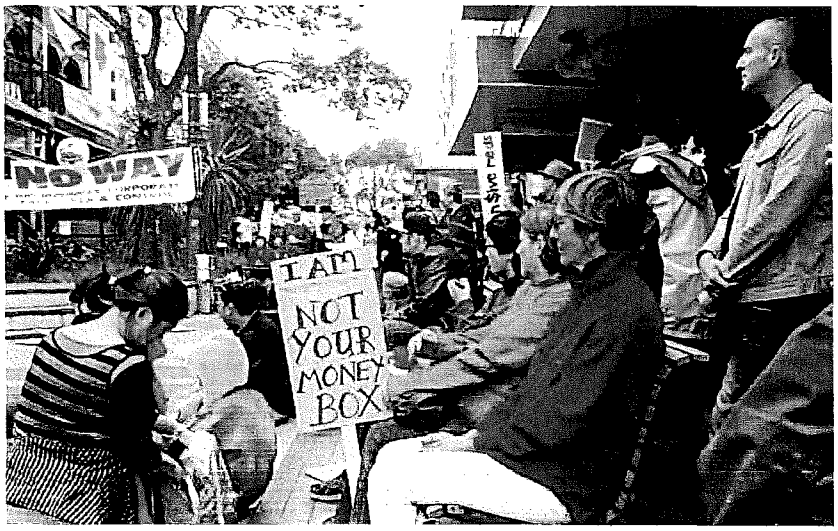
Instead, the strategy is to attain a sufficient critical mass of participants in the TISA so that multilateralization becomes a *fait accompli*. Indeed, the CSI's preferred outcome is *not* to extend the results of the TISA on an MFN basis, but to secure a highly ambitious agreement among like-minded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

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.



...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

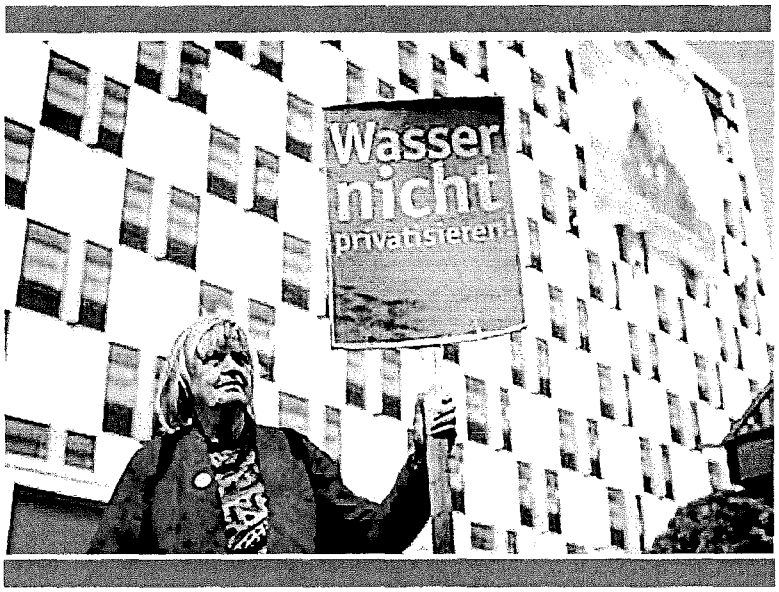
But such commitments are only the floor. Countries are expected to go further, not only by making deeper commitments but also by agreeing to new restrictions and obligations that go well beyond the GATS. Michael Punke, U.S. Ambassador to the WTO, has called for a "highest common denominator" approach,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

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

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.[38]



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.[39]

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"[40] 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."[41]

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.[42] 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.[43]

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.[33] 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[34], national treatment, most favored nation treatment) be made in the direction of greater conformity with the agreement, not less."[35] This ratchet provision, which has reportedly already been agreed to, would expressly lock in future liberalization, which could then never be reversed.[36]

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 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.[37]

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...

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."[44] *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.

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

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.[45]

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.[46] 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

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

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."[52] 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.[53]

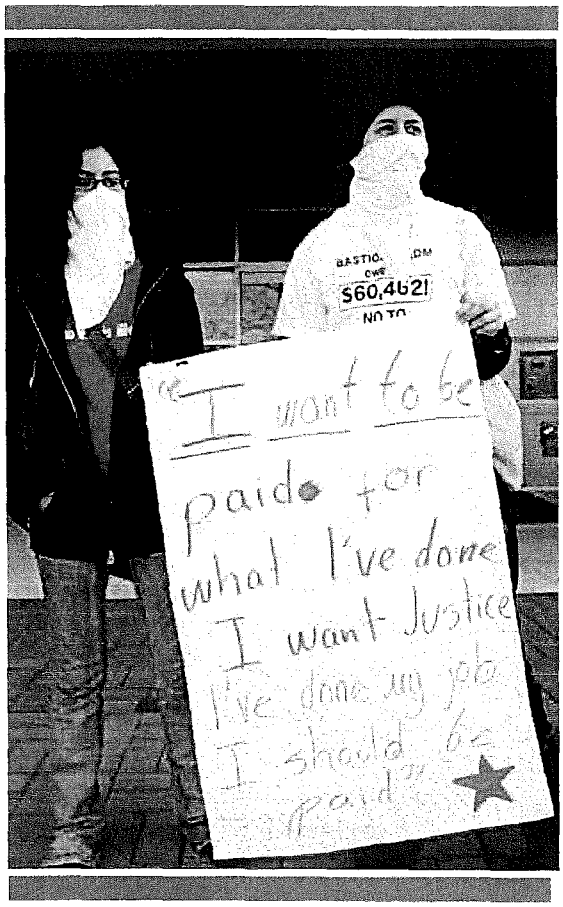
After an election fought mainly on this issue, the New Brunswick government appointed an all-party committee which recommended that the province proceed with public auto insurance. The private insurance industry, however, vigorously opposed these plans. They pointed to the inconsistency with Canada's GATS commitments and also threatened to take action under NAFTA's investor-state dispute settle mechanism to gain compensation for lost profits.[54] 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.[49]

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 economics 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.



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

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." [50]

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.[51]

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

"arbitrary and excessive measures" designed to constrain U.S. firms.[55] The U.S. Trade Representative has also stated that data protections in many countries are "overbroad" and inhibit the possibility of "truly global service."[56]

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.[57]

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.[58] 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.[59]

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.[60] 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.

Rallying for public services, Canada. Photo: flux

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.

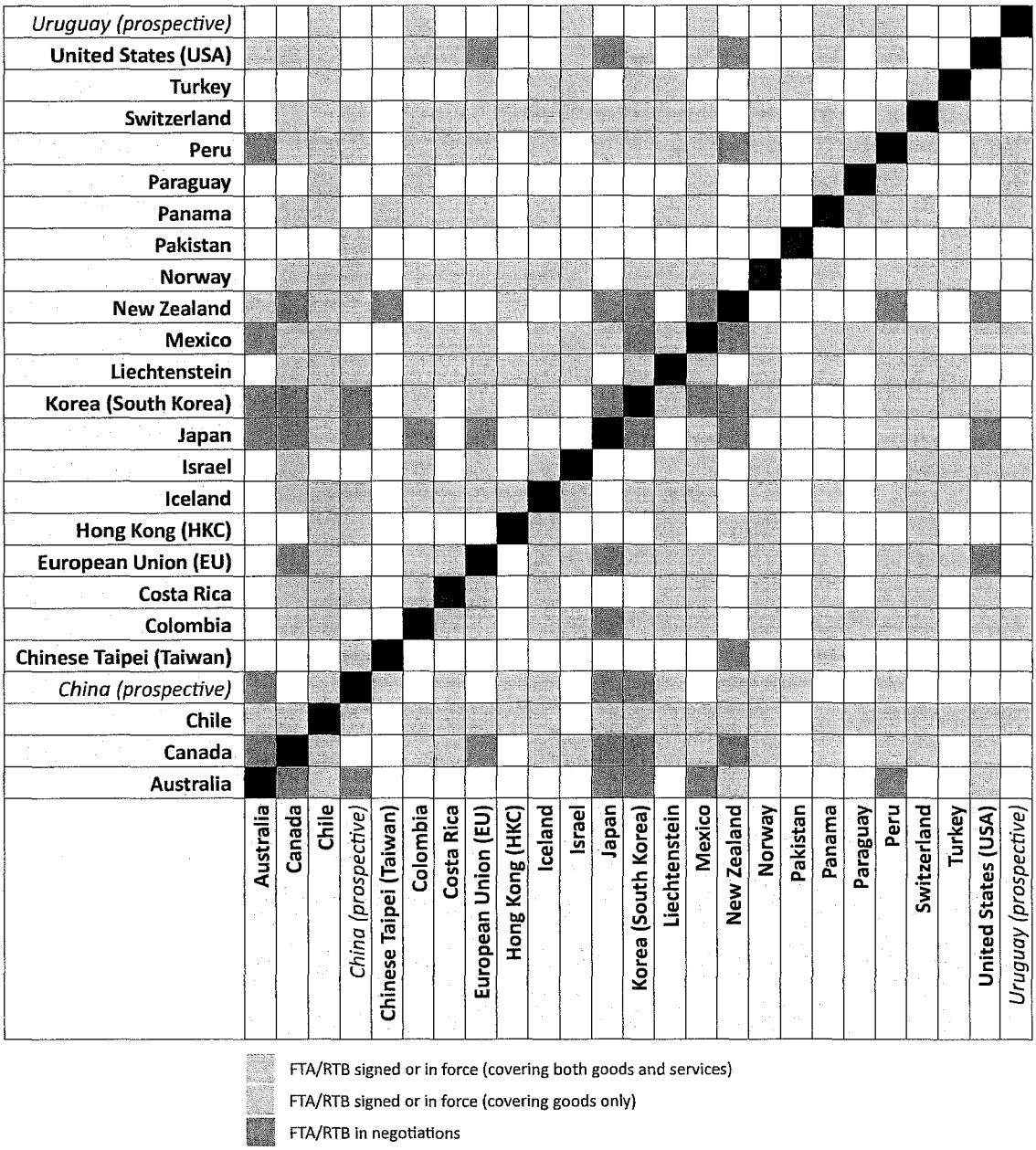
There is an urgent need for public sector unions to join with civil society allies on this issue. Working together, they can expose the official secrecy surrounding the TISA and counter the corporate pressure driving the talks.

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.

TISA Participants Chart

Trade in Services Agreement (TISA) Participants Table
Existing free trade agreements (FTAs) and regional trade blocs (RTBs) among TISA's negotiating parties.
Last updated Nov. 4, 2013.



If two parties with an existing agreement are also negotiating a new agreement (e.g. Canada/USA in the TPP), only the existing agreement is indicated.
Sources: WTO Regional Trade Agreements Information System (http://rtais.wto.org/ui/PublicMaintainRTAHome.aspx), Inside US TradeÕs World Trade Online (http://insidetrade.com/), various trade department/ministry websites, and various news sources.

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 oblation 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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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=uo9GxwRBTa8.

52 Legislative Assembly of New Brunswick. (April 2004). Select Committee on Public Auto Insurance. "Final Report on Public Auto Insurance in New Brunswick."

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.

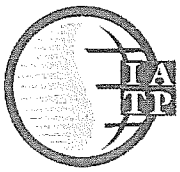
56 United States Trade Representative. (2013), "2013 Section 1377 Review On Compliance with Telecommunications Trade Agreements." p. 4. Online at: http://www.ustr.gov/sites/default/files/04032013%202013%20SECTION%201377%20Review.pdf.

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.

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.



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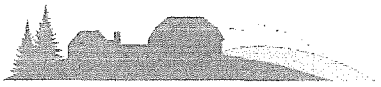

MAINE FARMLAND TRUST

2014 TRADE POLICY ASSESSMENT

Prepared for the Maine Citizen Trade Policy Commission

Maine Agriculture and Food Systems in the Transatlantic Trade and Investment Partnership

by Karen Hansen-Kuhn, IATP and

John Piotti, Maine Farmland Trust

July 2014

Executive Summary

The negotiations for the Transatlantic Trade and Investment Partnership (TTIP) began with a series of bold assertions that it would serve to jump start the two ailing economies, resulting in rising economic growth and job creation on both sides of the Atlantic. Tariffs are already quite low. The bigger challenge – and the real target – is the very different approaches to regulation. Past experiences with free trade, such as those under the North American Free Trade Agreement, give reasons for concern. It is impossible to accurately predict the real impacts of changes in tariff and non-tariff barriers on specific sectors of agricultural production in Maine. The bigger question may be how the changes that could result from TTIP would affect the state's food sovereignty, i.e., farmers' efforts to produce sustainable crops at fair prices, consumers' demands for healthy and affordable foods, and their joint efforts to support local economies.

Food Safety: Tariffs on most crops are already very low. There are, however, some real differences in rules on food additives, pesticides and other agrochemicals that are allowed in one jurisdiction but not the other. The EU's restrictions on 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 what is allowable under Maine law. The Maine Citizen Trade Policy Commission (CPTC) should request information from USTR, including:

- Are commitments on food safety issues such as the use of chlorine rinses of poultry, Ractopamine in meat production and diphenylamine (DPA) on fruit being discussed within the TTIP negotiations on Sanitary and Phytosanitary Standards (SPS) or Technical Barriers to Trade (TBT), and, if so, would TTIP SPS or TBT requirements limit states' abilities to raise food safety standards?
- If those issues are not being addressed within the chapters on SPS or TBT, would they be covered under a chapter on regulatory coherence? How would regulatory coherence subordinate U.S. and Maine laws to protect public and environmental health in agriculture and food?
- Is GMO labeling being discussed in TTIP and, if so, how would any commitments made affect Maine's GMO labeling laws?

Public 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, which requires many procurement programs (but not Farm to School programs) 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.

- The CPTC should insist on a written answer from USTR to its questions on procurement commitments for Farm to School and other local foods programs in TTIP, as well as on the EU's suggestion that federal grant funds used at the state level be opened up to European vendors. It might also consider sharing these concerns with other states and cities being approached by EU negotiators for procurement commitments.
- The CPTC should request information from the Governor's office on any meetings or other communications with EU or U.S. officials on potential procurement commitments under the trade agreement, both in terms of possible risks to local foods programs and more generally to clarify the

process of agreeing to those commitments at the state, county or city level. Those commitments should be the result of a fully informed public debate.

Geographical Indications 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 rights rules enforceable through trade agreements. Some U.S. GIs exist, such as Maine Lobster, which are protected by trademarks held by producers. The EU seeks to protect GIs in TTIP, potentially including cheese names such as feta, gorgonzola and munster, as it did in recent bilateral trade agreements with Canada, Central America, Peru and Korea.

- The CPTC should call on the European Commission and USTR to provide a list of the specific Geographical Indications protections sought by the EU in TTIP, as well as the U.S. response to date.
- Based on that information, the Commission could issue a request for comments or convene a hearing of Maine dairy, wine, cheese and processed meat producers on how they see their interests being affected by those protections. Their recommendations should inform advocacy by the Commission with USTR.

Dairy: Maine dairy farmers—like all American dairy farmers—have been struggling for the past decade, due to low producer prices, which are set by a complicated formula administered by the Federal Milk Marketing Order system (FMMO). FMMO prices have rebounded somewhat in the last two years, due in great part to increased demand for non-fat dry milk (NDM). It is likely that increased trade could lower the price of NDM, and in so doing, drive FMMO prices down significantly. This could prove particularly devastating to Maine dairy farms. Beyond this, Maine currently supplements payments to farms through a Dairy Stabilization Program, which could be subject to legal challenges under the trade deal as an unfair price support. It is also important to note that Maine dairy farmers, like EU farmers, do not use artificial bovine growth hormone. Depending on how the U.S. and EU deal with this issue in trade talks, the outcome may not prove beneficial to Maine farmers.

- The CPTC should request information from dairy groups and other available sources on the likely impact of increased export activity on the U.S. Class I milk price, given (in particular) the role that non-fat dry milk has in Federal Milk Marketing Order pricing.
- The CPTC should make sure trade negotiators are aware of the Maine's Dairy Stabilization Program and its importance to Maine.
- Work with in state players (e.g., Maine Farmland Trust, Maine Organic Farmers & Gardeners Association) to alert Maine's dairy processors (that do not accept milk with bovine growth hormones) of the possible consequences of an international trade agreement on their operations.

The establishment of common standards should serve to prohibit – rather than promote – efforts by corporations to play off regulatory standards in one jurisdiction against the other. The U.S.-EU Organic Equivalency Arrangement was negotiated outside the confines of a trade agreement. The current approach to our bilateral economic relations in TTIP is a political choice; alternatives are entirely possible. If not, if the talks are to continue along the lines of other recent trade agreements, then civil society and policy makers should seriously consider putting a halt to the TTIP until a different approach is underway.

An Assessment of TTIP's Impact on Maine's Agriculture and Food System*

Prepared for the Maine Citizen Trade Policy Commission
by Karen Hansen-Kuhn, Institute for Agriculture and Trade Policy
and John Piotti, Maine Farmland Trust

Introduction

The negotiations for the Transatlantic Trade and Investment Partnership (TTIP) began with a series of bold assertions. The agreement, leaders said, would serve to jump start the two ailing economies, resulting in rising economic growth and job creation on both sides of the Atlantic. It would streamline unnecessary red tape while at the same time raising standards to the highest levels. And it would serve as a guidepost for standards in trade agreements all over the world, and even at the floundering World Trade Organization (WTO).

The truth of these assertions, of course, will depend on the specific content of the trade deal. The U.S. and EU governments have so far refused to publish negotiating texts, but they have provided some information in summary form, and leaked negotiating documents and meeting reports continue to emerge. Civil society groups and legislators continue to push for greater transparency in the negotiations, so that analysis and advocacy is based on real and complete information. In the meantime, a fair amount of information can be deduced from existing information, as well as the results of recent trade deals, particularly the EU-Canada Comprehensive Economic and Free Trade Agreement (CETA).

Trade barriers between the U.S. and EU are already remarkably low, with weighted tariffs for U.S. agricultural exports to the EU averaging just 4.8 percent, and 2.1 percent for EU exports to the U.S.,[1] differences that could vanish with minor fluctuations in exchange rates one way or the other. In just the last year, for example, data at Bloomburg.com indicates that the dollar fell 8.8 percent against the euro from July 2013 to July 2014, in effect making U.S. exports cheaper (compared to a 5 percent rise the previous year)[2]. The bigger challenge – and the real target -- is the very different approaches to regulation. Regulatory coherence, like expanded trade, is in itself a neutral term. But the political context and economic consequences are not neutral, with corporations and their allies on both sides of the Atlantic pressing for harmonization of rules that limit their ability to buy and sell goods and services.

The trade agreement could affect a broad range of sectors, from energy to environment, and intellectual property rights to labor rights. TTIP could also have a significant impact on the evolution of agricultural markets and food systems in the U.S. and EU. Unlike the WTO, there is no specific chapter in TTIP on agriculture. Instead, the rules affecting agriculture, food safety and food systems are woven throughout the texts.

In this paper, we attempt to outline some of the concerns around issues of importance to Maine agriculture and food systems, focusing especially on topics that are key for healthier, more equitable and sustainable agriculture and food systems. These issues include possible TTIP provisions on:

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* *Written with research assistance from Adam Needelman.*

- procurement rules on farm to school and other local foods initiatives,
- proposals for protections of Geographical Indications for cheese, meats and wines; and
- changes in market access rules that could affect dairy, fruit and other sectors relevant to Maine agriculture.

Free trade experiences

While it is impossible to predict with any certainty how the trade agreement would affect particular sectors of production, the history of trade liberalization since the North American Free Trade Agreement (NAFTA) was enacted in 1994 gives reason for concern, especially for the smaller scale, decentralized production that characterizes agriculture in Maine. Over the last 20 years, there has been a marked shift in the size of U.S. farms, with the number of very small farms and very large farms increasing dramatically. The increase in the number of small farms is due to several factors, including urban people returning to the land (although many are reliant on off-farm jobs to support themselves) and the growth in specialty crops for local farmers markets. The number of farms in the middle, those that are small but commercially viable on their own, dropped by 40 percent, from half of total farms in 1982 to less than a third in 2007.[3]

During this process of farm consolidation, the corporations involved in agriculture and food production also consolidated, both domestically and internationally. Mary Hendrickson at the University of Missouri calculates the share of production in different sectors held by just four firms. The U.S. share of the top four firms (Cargill, Tyson, JBS and National Beef) in total beef slaughtering, for example, increased from 69 percent in 1990 to 82 percent in 2011. The story is the same in pork slaughtering, where the ratio increased from 45 to 63 percent, soybean processing (61 to 85 percent) and other sectors, as fewer firms control bigger and bigger shares of total production. This concentration constrains farmers' choices about where to sell their goods, as well as consumers' choices about where and what they can buy.[4]

The trade rules are only part of the story of why agriculture and food systems have changed over the last few decades, but the NAFTA provisions on investment (which gave foreign investors new rights and protections) and tariffs clearly enabled corporations to separate various aspects of production to take advantage of the lowest costs. That is an explicit goal of most trade deals, including TTIP. Under the NAFTA rules, for example, U.S. companies grow cattle in Canada and pork in Mexico that they then bring back to the U.S. for slaughter and sale. Along the way, independent U.S. hog and poultry producers and competitive markets for their products have nearly disappeared.

Efforts to at least label those transnational meats under Country Of Origin Labeling (COOL) laws have been vigorously opposed by the Mexican and Canadian governments and are now facing a review at the WTO. In that case, Canada and Mexico asserted that the labeling laws constitutes a technical barrier to trade because of reporting requirements and that they discriminate against their exports to the U.S. The panel agreed with Canada and Mexico, and in response the U.S. government issued revised rules on COOL that it asserts places it in compliance. The final decision by the WTO panel is due later this year.[5]

The impacts of trade rules on food systems often extend well beyond the direct impacts on where food is produced and by whom. Changes in rules on foreign investment and trade barriers under NAFTA resulted in significant changes in the Mexican food system. Sharp increases in foreign investment in snack food production, fast food restaurants and supermarkets, coupled with rises in consumption of dairy, meat and processed foods, shifted the default food environment available to consumers and contributed to rising obesity rates. Mexico is now tied with the United States for the highest obesity rates in the world.[6]

The issues around trade and agriculture are not just whether costs can be lowered or production volumes increased, but what impacts those changes would have on rural economies, sustainable agricultural production and local control over the food system. Would the trade rules in TTIP help or hinder farmers' and consumers' efforts to re-localize food systems and build connections from farm to fork? How would a possible increase in dairy imports affect farm prices and subsidies? We in the U.S. have a lot to learn from the EU's efforts to retain their cultural and environmental heritage with family farms and sustainable agriculture, but in many ways this trade agreement would take us in the opposite direction.

Market access and Maine agriculture

Agricultural production is at the heart of Maine's economy, both in terms of economic interests and in the state's reputation as a leader in sustainability. As indicated in Table 1, since 1997 there has been an increase in the number of farms and the land used for farming. While the average farm size in acres seems stable, behind that average are a significant increase in relatively smaller farms, and a decrease in mid-sized farms, which corresponds to national trends. The market value of crops in Maine, as well as production of vegetables, increased substantially during the period, reflecting the increase in production of higher value products such as organic crops and specialty cheeses.

Table 1: Maine Agriculture

	2012	2007	2002	1997
Number of farms	8,173	8,136	7,196	7,404
Land in farms	1,454,104	1,347,566	1,369,768	1,313,066
Average size	178	166	190	177
Farms by size				
1 to 179 acres	6311	6446	5285	5322
180 to 499 acres	1318	1178	1334	1545
500 or more acres	544	510	577	537
Market value of agricultural products sold ($1,000)	763,062	617,190	463,603	450,278

Source: 2012 Census of Agriculture, USDA National Agricultural Statistics Service

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Tables 2 and 3 compares the top five Maine agricultural exports to the EU and the top five agricultural imports from the EU with the relevant tariff rates (a full listing of Maine's top exports to the EU prepared by the Maine International Trade Commission is included in Annex 1). For the most part, the tariffs on agricultural commodities are already very low, with the tariff rates rising with the degree of processing. The notable exception is exports of Maine lobsters to the EU. It is worth noting, however, that the lobster exports have dropped considerably in the last few years, from just over $20 million in 2011, to $17.5 million in 2012 and $15.8 million in 2013, while the tariffs have remained stable. So it is not clear that a change in tariffs would actually affect exports to the EU market for that product. Even when tariffs do drop, as in the case of U.S. corn exports to Mexico in the wake of NAFTA's approval, the benefits do not necessarily trickle down to producers.[7]

Table 2: Top ten Maine agricultural exports to the EU and corresponding tariffs

Description	2014 EU Tariffs	Total 2013 (in US $)
Lobsters, Live, Fresh, Ch, Salted	8% Live, 20% Prepared, 8% Whole, 10% Other	11,473,428
Lobsters, including in shell, Frozen	20%	4,372,555
Beer Made from Malt	0%	811,951
Potatoes, Prepared Etc. No Vinegar Etc., Frozen	14.40% cooked; 7.60% + EA(1) (formulated depending on ingredients) if in flakes, flour or meal; 17.6% otherwise	478,575
Waters Not Sweetened or Flavored; Ice and Snow	0%	459,206
Scallops Incl. Queen Scallops, Live, Fresh, Chilled	8%	361,449
Scallops Incl. Queen, Frozen/Dried/Salted/In Brine	20%	350,755
Vegetable Seeds For Sowing	8.30% for salad beet seed or beetroot seed; 3.00% otherwise	247,166
Juice of Single Fruit/Veg, Not Fortified Etc Nesoi	19.20% to [33.60% + 20.60 EUR/100kg]--depending on product	236,180
Cranberries, Blueberries, Etc, Fresh	0%, 3.20%, or 9.60% depending on product	215,520

Source: USDA Economic Research Service: Farm and Wealth Statistics, tariff data from Tariff information from the USITC Dataweb Tariff lookup tool: http://dataweb.usitc.gov/scripts/tariff_current.asp

Table 3: Maine's top ten agricultural imports from the EU and corresponding tariffs

Description	2014 US Tariff	Total 2013 (in US $)
Vodka	0%	6,854,953
Wine, from Grape Nesoi & Gr Must W Alc, Nov 2 Liters	$0.169/liter	4,116,780
Hams, Shoulders & Cuts, Bone In, Salted, Drd, Smkd	$0.014/kg	3,566,466
Animal Feed Prep Except Dog Or Cat Food	0%, 7.5%, [$0.804/kg+6.4%], 1.9%, 1.4%, Depending on product	915,877
Vegetable Seeds For Sowing	0%, $0.0068/kg, $0.01/kg, $0.015/kg, $0.059/kg depending on type of seed	574,119
Sparkling Wine Of Fresh Grapes	$0.198/liter	555,936
Seabass, Fresh Or Chilled	3% if containers are 6.8 Kg or less; Free otherwise	421,155
Beer Made from Malt	0%	392,779
Fish Meat Fresh/Chilled Exc Fillets & Steaks	0%	383,557
Meat Of Swine, Salted, In Brine, Dried, Smkd	$0.014/kg	273,338

Sources: WISERTrade, State HS Database and Tariff Data Source: "TARIC Consultation" European Commission Taxation and Customs Unit

Food safety and Technical Barriers to Trade

But just as the trade agreement is about much more than the actual flows of products and services, the negotiations on agricultural market access will focus on much more than tariffs. As in the chemical sector, the push for "behind the border restrictions," i.e., regulatory coherence on food safety and plant and animal health standards, is driving the trade talks. Much of the debate so far has focused on the EU's relatively higher food safety standards, especially its prohibitions on chlorine rinsed chicken, regulations on the use of additives such as ractopamine in pork and other meat production, its bans on beef produced using growth hormones, and restrictions on and labeling of genetically modified organisms. European policymakers continue to rely on the Precautionary Principle, which gives regulators the ability to impose restrictions in the face of scientific uncertainty over a product's safety. The default position under that principle is that food additives and chemicals can't enter the market unless the companies seeking to introduce those ingredients provide sufficient data to prove them safe, while in the U.S., for the most part food additives or processes are allowed to be commercialized unless

they are proven unsafe, based on studies conducted by the government. The Precautionary Principle is enshrined in the Treaty of Lisbon, the EU's founding document and guides the operations of the European Food Safety Authority (EFSA).

The U.S. National Chicken Council and CropLife America,[8] among others, have complained about the EU restrictions on food additives in comments to USTR on TTIP. The Chicken Council asserts that the EU's stricter rules on poultry rinses (the EU has allowed only plain tap water rinses of chicken) unnecessarily restrict its exports. Speaking at a Senate hearing on TTIP, the Chicken Council's Bill Roenigk said, "One of the more irksome tricks in the EU bag has been the precautionary principle, which I understand the EU uses when it's convenient."[9] EFSA's recent opinion on the use of peroxyacetic acid as a poultry rinse (while not a final change in its regulations) has eased some of the Chicken Council's concerns. It also illustrates the kind of regulatory changes that could take place in anticipation of TTIP. While not formally linked to the agreement, that decision, as well as the U.S. decision to ease restrictions on meat imports from the EU despite lingering concerns over contamination with BSE (Mad Cow Disease), reflects political accommodations that are clearly related to the trade talks.

Fruit exporters have also criticized EU restrictions on pesticide levels. The Northwest Horticultural Association notes that EU tariffs on apple exports range from 4 to 9 percent, depending on the time of year, and that graduated quotas for pear and apple imports restrict sales of lower cost U.S. fruits in European markets. They also point to the EU's restrictions on diphenylamine (DPA), which is used to control scald on apples and pears. The EU sets the maximum residue level for that chemical at 0.1 ppm as of November 2013, a level the Northwest Horticultural Association asserts will effectively ban U.S. apple and pear exports to Europe.[10]

EU regulators are concerned that DPA can combine with nitrogen while the fruit is in storage to produce nitrosamines. According to Environmental Working Group, both the U.S. and EU ban nitrosamines because they have been shown to cause cancer in laboratory animals, "and some studies have found that people eating foods with nitrosamines have elevated rates of stomach and esophageal cancers. Nitrosamines form when nitrogen-containing compounds combine with amines, which are compounds derived from ammonia. Since the 1970s, government agencies have regulated foods and consumer products to limit concentrations of chemicals that can serve as building blocks of nitrosamines."[11] These EU restrictions would not apply to imports of organic apples, as they are produced without that chemical.

The EU has also raised its own concerns about restrictions on fruit exports to the United States. In its 2014 Trade and Investment Barriers Report, the European Commission states that it, "also remains worried by the extremely long delays in treating other Sanitary and Phytosanitary (SPS) export applications submitted by the EU, e.g. for apples, pears, stone fruits and bell peppers."[12] These concerns were echoed in joint comments submitted by Copa-Cocega and FoodDrink Europe, who assert that, "Although it is possible to import apples and pears from Italy, currently US phytosanitary regulation establishes extremely restrictive conditions, which are equivalent to an import ban [of EU products]." They assert that the U.S. preclearance process is unfairly slow and bureaucratic, and that it essentially reflects "political" rather than food safety concerns. Noting a substantial market for pears and apples in

the U.S., it points to bilateral negotiations already underway between food safety agencies in Italy and the United States, and a separate process between the European Commission and USDA.[13]

Several organizations have raised concerns that the proposed chapter on regulatory coherence could drive regulatory standards down to the lowest common denominator by establishing a process that would require notification to the trading partners of any proposed regulations, new cost-benefit assessments and comment periods on any new laws. The Center for International Environmental Law sent a letter signed by 170 U.S. and EU organizations raising concerns that those provisions could affect federal and even state level laws, among other things.[14] This could potentially affect specific legislation enacted in Maine, such as stricter regulations on pesticides.

Potential challenges to Maine's GMO labeling law

Disputes between the U.S and EU over restrictions on GMOs have been seething for more than a decade. The U.S. has challenged the EU's restrictions on GMOs in bilateral talks and multilateral talks, most notably in a dispute brought to a WTO dispute panel in 2003.[15] In that case, the panel ruled against the EU's de facto moratorium on GMOs, finding that they constituted an unfair barrier to trade. The issue of GMO labeling has also been contentious. After a protracted debate at the international standards setting body Codex Alimentarius, the U.S. accepted its finding in support of voluntary labeling of GMOs. Codex definitions, standards and guidelines may be referenced in WTO disputes on Sanitary and Phytosanitary Standards, as well as in bilateral trade agreements like TTIP that are considered WTO plus.

The U.S. government, however, continues to challenge mandatory GMO labeling laws through its trade policy. In its 2013 report on Technical Barriers to Trade (TBTs), USTR notes ongoing discussions with the over labeling of GMO honey, and its objections to Peru's new rules establishing mandatory labeling of GMOs, complaints that it has raised at the WTO committee on TBTs.[16] In USTR's 2014 report, it adds concerns about Ecuador's new mandatory labeling of transgenic foods and comments that it will raise these issues in WTO forums. It also raised concerns about the EU's framework regulation 1169/2011, which, as of December 2014 will allow Member States latitude in setting nutritional labeling standards. USTR notes that, "The chief concern of U.S. industry is that regulation 1169/2011 appears to provide wide latitude for EU Member states to adopt non-uniform implementing regulations. U.S. industry is concerned about the burden of meeting multiple labeling requirements, particularly if those requirements cannot be met through stickering or supplemental labeling."[17]

While there is no official or leaked information yet indicating that the U.S. is seeking to undermine the EU's mandatory GMO labeling laws in TTIP, it would certainly be consistent with the U.S. trade agenda in other forums and with industry demands.[18] In comments to USTR, the National Oilseeds Processors Association lists the elimination of EU GMOs labeling laws as a major objective for the negotiations, saying that, "Since no evidence has ever been presented that such products are unsafe, the label's effect is to generate unjustifiable fear of biotechnology."[19] This demand is echoed by the American Confectioners Association[20] and the American Soybean Association in separate comments to USTR, which asserts that, "There are no health, nutritional or food safety reasons for food products containing

biotech ingredients to be labeled, and any inclusion of biotech ingredients should not be stigmatized with a label."[21]

Food industry groups, joined by the Chamber of Commerce, have already weighed in on the WTO dispute on Country Of Origin Labeling, urging Congress to back off even before the panel issues its final ruling. Pending the final report, due in late July, a coalition of meat industry groups and the Chamber of Commerce urged Congress to suspend the program. The National Farmers Union disagreed, saying, "Urging Congress to repeal COOL laws before the WTO report is issued is just another desperate attempt to prevent consumers from having access to basic information about their food. NFU eagerly awaits the WTO report and will recommend a response if necessary. Consumers have a right to know where their food comes from and our family farmer and rancher members agree."[22]

It is also possible that those groups would use investment provisions in the trade agreement to challenge GMO labeling laws. Investor State Dispute Settlement (ISDS), which gives foreign investors the right to sue governments for compensation over rules or regulations that undermine their expected profits, has become an extremely controversial issue in the trade talks. Under that provision, Phillip Morris is suing the government of Australia over its cigarette labeling laws. In that case, since Australia had refused to include ISDS in its free trade agreement with the United States, the company utilized an older Bilateral Investment Treaty between Hong Kong and Australia that does include ISDS to bring the lawsuit through its Hong Kong subsidiary. This raises the possibility that a U.S. company that is also incorporated in the EU could utilize such a provision to challenge GMO labeling or other consumer protection or environmental laws in the U.S.[23]

If the U.S. and EU were to agree to restrict GMO labeling in TTIP, or to make it voluntary rather than mandatory, those commitments could supersede Maine's GMO labeling law. Given the massive opposition to mandatory labeling by Monsanto, the Grocery Manufacturers Association and other corporate interests that are also active in USTR's Trade Advisory Committee system, it is reasonable to assume that they have made this link too and are pressing USTR on the issue.

Recommendations

It is impossible to accurately predict the real impacts of these changes in tariff and non-tariff barriers on specific sectors of agricultural production in Maine. The bigger question is how the changes that could result from TTIP would affect the state's food sovereignty, i.e., farmers' efforts to produce sustainable crops at fair prices, consumers' demands for healthy and affordable foods, and their joint efforts to support local economies. Tariffs on most crops are already very low, so this is unlikely to be an issue in the trade talks. On the other hand, there are some real differences in rules on food additives, pesticides and other agrochemicals that are allowed in one jurisdiction but not the other. The EU's restrictions on GMOs and its progressive labeling laws could come under pressure from TTIP. Any changes in those rules made under TTIP would apply to the U.S. as well as the EU, potentially limiting what is allowable under Maine law.

A first step should be to insist that USTR provide more information on what is actually being negotiated and what rules or principles are off the table. The Maine Citizen Trade Policy Commission could request information on:

- Are commitments on food safety issues such as the use of chlorine rinses of poultry, ractopamine in meat production and diphenylamine (DPA) on fruit being discussed within the TTIP negotiations on Sanitary and Phytosanitary Standards or Technical Barriers to Trade, and, if so, would TTIP SPS or TBT requirements limit states' abilities to raise food safety standards?
- If those issues are not being addressed within the chapters on SPS or TBT, would they be covered under a chapter on regulatory coherence? How would regulatory coherence subordinate U.S. and Maine laws to protect public and environmental health in agriculture and food?
- Is GMO labeling being discussed in TTIP and, if so, how would any commitments made affect Maine's GMO labeling laws?

Procurement policies at risk in TTIP

Efforts to promote healthier, more sustainably produced foods span the entire food chain, from farm to table, and increasingly, from farm to school, hospital or other public institutions. These programs recognize the value of fresh, healthy foods and help make connections between urban consumers and farmers. There are thousands of farmers' markets, farm to supermarket and other voluntary initiatives along those lines throughout the United States and Europe.

These important, and yet fragile efforts flourish when they are an integral part of the community. As part of this movement towards local foods, new governmental programs are emerging that include bidding preferences for sustainable and locally grown foods in public procurement programs. In the United States, the 2008 Farm Bill specifically authorized public schools to include geographic preferences for locally grown unprocessed foods in their purchasing decisions.[24] These popular programs now reach almost six million students in all 50 states, including more than 200 schools in Maine.[25]

These initiatives have been successful both because they help the school systems to source fresher, healthier foods at fair prices, and because they support urban to rural connections that build communities and encourage local economic development. New proposals to broaden that approach to foods for hospitals and other public institutions have emerged in Maine, Minnesota, Oklahoma, Oregon, Vermont and other states.[26]

Similar initiatives in Europe also encourage local preferences for school lunch programs. In Italy, for example, schools consider location, culture, and how foods fit into their educational curriculum in making purchasing decisions.[27] As of 2010, 26 percent of school food purchases in Rome were from local farmers, and 67.5 percent were organic. EU procurement rules seem to limit such preferences, but Denmark, Austria and other countries have interpreted those rules liberally to allow for sustainable and local procurement of food in various public programs.[28]

Unfortunately, these exciting examples of participatory food democracy could be at risk under TTIP. Both the U.S. and EU have targeted the elimination of "localization barriers to trade." This could mean that bidding criteria designed to favor local foods or local jobs could be deemed illegal under the trade deal. The EU, in particular, has been insistent on the inclusion of procurement commitments at all levels of government, for all goods, and in all sectors. At a speech last spring in San Francisco, French trade minister Nicole Briqc declared, "Let's dream a little with respect to public procurement. Why not replace "Buy American" which penalizes our companies with "Buy transatlantic" which reflects the depth of our mutual commitment?"[29]

Public procurement in recent trade agreements[30]

Procurement rules in trade agreements are designed to ensure that foreign firms can compete for publicly funded programs. In general, they require National Treatment (i.e., establish rules that prohibit discrimination against foreign suppliers of a good or service), establish rules on transparency in bidding processes, and set thresholds on the size of contracts covered by the trade commitments. They prohibit the use of measures designed to encourage local development by favoring local content or a degree of local ownership of businesses competing for procurement contracts. Parties to each agreement will also

Table 4: Government Procurement Agreement (GPA) restraints on government procurement, from the 2012 Assessment:*

• **Nondiscrimination.** The GPA contains "most favored nation" (MFN) and "national treatment" (NT) provisions that prohibit Parties from implementing procurement policies that prefer domestic products, services or suppliers over those of another Party, or that fail to treat the products and services of other Parties equally. Impermissible discrimination under WTO rules can include measures that have discriminatory effects as well as those which intentionally discriminate in order to favor domestic producers.

• **Performance based standards.** Article VI of the GPA contains language stating that "where appropriate," technical specifications for procurement shall be prescribed "in terms of performance rather than design or descriptive characteristics . . .."

• **Use of "relevant international standards."** Article VI also indicates that "where appropriate," technical specifications for procurement contracts shall "be based on international standards, where such exist; otherwise, on national technical regulations, recognized national standards, or building codes."

• **Procedural requirements.** The GPA contains various procedural provisions, including a requirement in Article XII:2 that "[t]ender documentation provided to suppliers shall contain all information necessary to permit them to submit responsive tenders . . .." The specific information that must be provided includes "a complete description of the products or services required or of any requirements including technical specifications, conformity certifications . . . [and] any factors other than price that are to be considered in the evaluation of tenders . . .."

indicate which sectors are excluded from these commitments, and whether environmental or social criteria can be used as bidding criteria.

At the international level, those rules can be set in bilateral free trade agreements or at the Government Procurement Agreement (GPA) at the WTO. The GPA is a plurilateral agreement, so it includes only the 43 countries that have agreed to sign on. It includes rules on goods and services, at the federal and sub-national levels of government and to public utilities (such as energy, water and public transport).[31] The GPA was revised in 2011 to include additional commitments at the federal level, with those changes implemented as of April 2014.

All EU member states and thirty-seven U.S. states (including Maine) are part of the GPA.[32] The inclusion of those U.S. states in the GPA generated considerable controversy. USTR recruited state governors to sign up for the agreement, with very little public consultation on the potential impacts. Several states later attempted to withdraw their approval, and six states, led by Maine, passed laws requiring approval by the state legislature.[33] In the bilateral trade deals that followed the GPA controversy, fewer states consented to have their procurement programs bound by the trade rules, with just 19 agreeing to commitments under the U.S.-Central America Free Trade Agreement (CAFTA) and eight making commitments under the U.S.-Peru FTA. In 2004, the Governor of Maine withdrew its approval of CAFTA commitments, and the state has not agreed to commitments under any free trade agreements since that time.

In 2011, the EU and Japan brought a complaint against Canada over the Ontario government's feed in tariff program for renewable energy, which included procurement preferences for wind and solar energy equipment manufactured in the province. Ontario is not bound by the GPA, but in any case the EU and Japan argued that the program does not qualify for procurement exceptions because, among other things, the energy is resold to consumers on commercial terms. The WTO panel agreed with those arguments and, as of June 2014, the Canadian government was in the process of revising the program to conform to WTO rules.[34]

It is not entirely clear whether a similar argument could be made that school lunches, which are resold to many students in cafeterias, could be challenged on similar lines. In an article on local foods procurement in Ontario, Canadian attorney Kyra Bell-Pasht argues that while the WTO decision raises questions about that possibility, the GATT General Public Interest Exception (g) for conservation of natural resources (including the use of fossil fuels) could be used to justify local procurement provisions as environmental measures.[35]

The EU's aggressive approach to local procurement in that dispute (an approach backed by the U.S. government in its own submission on the case), and in its approach to the CETA talks, raises concerns about how public programs designed to encourage local job creation and economic growth would fare under TTIP. In its summary of the results of the CETA negotiations, the European Commission (EC) states:

> "As regards market access, the Canadian offer [m.d. 374/11 of 19 July 2011] is the most ambitious and comprehensive Canada has made so far to a third country, including in comparison to the access granted to the United States. For the first time, Canadian provinces and municipalities will open their procurement to a foreign partner, going well beyond what

Canada has offered in the GPA (the multilateral Government Procurement Agreement) or in NAFTA."

According to the Canadian Government's summary, the government maintained the ability to include social and environmental criteria in procurement contracts, as well as federally funded [but not, apparently, provincially funded] agricultural programs that are part of food programs. While the agreement does not cover procurement by public entities for goods "not with a view to commercial resale", it does cover procurement contracts for "regional and local entities and bodies governed by public law, including hospitals, schools, universities and social services" over 200,000 SDRs[36] (about USD$300,000), a threshold that could easily affect many state and local programs. While the details will not be known until the final text is published, the Toronto Food Policy Council, Food Secure Canada, and the Council of Canadians, among others, continue to raise serious concerns that the procurement commitments under CETA could jeopardize local foods programs across the country.[37]

The EU's agenda on procurement in TTIP

The EU outlined its general objectives on public procurement just before the first round of negotiations for TTIP in July 2013. It states that, "This negotiation would present an important opportunity for the EU and the U.S. to develop together some useful "GPA plus" elements to complement the revised GPA disciplines, with a view to improve bilaterally the regulatory disciplines." It describes the EU's intention to include 13 U.S. states not already covered by the GPA and bilateral arrangements, as well as 23 larger cities and metropolitan areas including New York, Philadelphia and Los Angeles.[38]

More recently, in a leaked Note for the Attention of the Trade Policy Committee dated February 25, 2014, the European Commission's Directorate of Trade lists its expectations of U.S. deliverables for "approximately 20 of the (economically) most important states." This includes commitments by all state government executive agencies, including counties with a population over 700,000, state capitals and other cities with over 250,000 inhabitants, as well as public universities with enrollment 10,000 students and public hospitals with more than 500 beds.

According to data at the U.S. Bureau of Economic Analysis website, Maine is number 43 in terms of state GDP, so perhaps would be lower on the EU's list of priorities. However, the European Commission memo also notes its priorities for all states with existing commitments under the Government Procurement Agreement (which would include Maine), particularly upgraded market access coverage of executive entities of state governments. Efforts to develop state-specific procurement requirements would likely conflict with the EU's push to open procurement at all levels. Existing Maine law already requires state agencies and schools to buy a certain percentage of meat, fish, many dairy products and fresh fruits and vegetables directly from Maine farmers or food brokers. LD 1254, which was enacted in Maine but ultimately vetoed, would have established minimum purchase requirements for percentages of Maine foods in those programs.[39]

Both the USTR and the EU's Directorate of Trade have asserted that one of the major objectives in the TTIP is to eliminate localization barriers to trade, including local content requirements. In principle, this could include restrictions on procurement preferences for locally grown foods. Under Notes to Annex 1 of the GPA, however, the U.S. listed an exemption for the Department of Agriculture, stating, "This

Agreement does not cover procurement of any agricultural good made in furtherance of an agricultural support programme or a human feeding programme." This means that federally funded Farm to School or similar farm to institution programs are not covered by GPA commitments. There is no similar note in the GPA on state-level commitments, so any locally funded feeding programs could potentially be subject to challenge.

The inclusion of procurement commitments on farm to school or other public feeding programs would be new, but each trade agreement sets specific rules and exclusions. In February 2014, both the Maine Citizen Trade Policy Commission and a separate group of national and regional farm to school and other networks,[40] in separate letters, wrote to the U.S. Trade Representative requesting written assurance that it would not agree to procurement commitments on farm to school or similar local foods procurement programs in TTIP. As of June 2014, neither group had received a written response.

Broader implications

While it is not clear if local foods programs would be included in procurement commitments under TTIP, the EU has stated clear priorities for state level procurement commitments in other sectors, particularly energy, transportation and construction and other Buy American programs designed to promote local employment and economic activity. State-level commitments on procurement and regulatory coherence are two of the EU's most significant "offensive" interests in the trade agreement.

It is also not clear who would decide if a state, county or city is bound by procurement commitments under TTIP. A leaked memo on the December 2013 negotiating session notes USTR's reluctance to press states on this issue despite pressure from EU negotiators, but informal reports indicate that EU officials are already visiting many states to build their case for inclusion in the agreement.

Under CETA, the Canadian government agreed to open federally funded programs at the provincial level to EU procurement bids. The Canadians also agreed to create a single electronic procurement website to provide information to European vendors on procurement opportunities. It is possible that the EU could take a similar approach under TTIP to open up state and local procurement using federal grants. In an article on European procurement directives and TTIP, Christopher Yukins reports that, "Because of an apparent reluctance to challenge the U.S. government's argument that it may not compel the states to join a free trade agreement, some in the European procurement community have suggested that Europeans could instead gain nondiscriminatory access to state procurement markets indirectly, through the federal government's grantmaking authority."[41] Yukins notes that this approach would be consistent with existing procurement reforms conditioning state use of federal grant monies, while avoiding the political problems associated with either convincing states to sign on to new commitments under TTIP or decreeing that it has the authority to unilaterally include them in the agreement.

Public procurement programs, whether for local foods, roads, or renewable energy, are important tools to strengthen local economies and give preference to disadvantaged groups such as minorities and small-scale businesses. As taxpayer funded initiatives, they also offer the opportunity to include criteria such as environmental sustainability or living wages into broader economic programs. Members of Congress have also weighed in on this debate. An amendment to the fiscal year 2015 Commerce, Justice, Science (CJS) Appropriations bill sponsored by Rep. Alan Grayson requires 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.'" The bill, with the amendment, was approved 231-87 by the House of

Representatives on May 30. While it is not clear if that amendment would actually prohibit USTR from negotiating procurement commitments in trade agreements (if it were to pass the Senate and conference committee), it sends a strong political signal to negotiators on both sides of the Atlantic.[42]

Recommendations:

The Maine Citizen Trade Policy Commission should:

- Insist on a written answer from USTR to its questions on procurement commitments for farm to school and other local foods programs in TTIP, as well as on the EU's suggestion that federal grant funds used at the state level be opened up to European vendors. It might also consider sharing these concerns with other states and cities being approached by EU negotiators for procurement commitments.

- Request information from the Governor's office on any meetings or other communications with EU or US officials on potential procurement commitments under the trade agreement, both in terms of possible risks to local foods programs and more generally to clarify the process of agreeing to those commitments at the state, county or city level. Those commitments should be the result of a fully informed public debate.

Geographical Indications in TTIP

A contentious debate over Geographical Indications (GIs) has emerged in the TTIP talks. To many Americans, this is an obscure and apparently new issue. Reports on EU demands to protect what most Americans would consider common food names such as "feta" have elicited surprised and rather derisive comments among Members of Congress and the media.

But, in fact, these kinds of protections have existed for more than a century. Geographical Indications establish legal protections for products based on their place of origin, specific production techniques, and the reputation of quality for those goods. The Paris Convention for the Protection of Industrial Property of 1883 (Paris Convention) established protections for industrial and agricultural goods with a view to protecting producers' intellectual property. While there was much less trade than today, diplomats at the time were concerned about protections for their citizens' products at international trade fairs. That accord was followed by the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods of 1891 and the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration of 1958.[43]

The World Trade Organization (WTO) Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) includes a special section on the protection of GIs. Article 22.1 of the TRIPS Agreement defines GIs as:

> "..indications which identify a good as originating in the territory of a Member [of the World Trade Organization], or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin."[44]

That article establishes that Members have a duty to prevent deceptive uses of product names through trademark or other intellectual property protections. However, Article 24 also establishes certain exceptions, notably, Article 24.6, which states:

> "Nothing in this Section shall require a Member to apply its provisions in respect of a geographical indication of any other Member with respect to goods or services for which the relevant indication is identical with the term customary in common language as the common name for such goods or services in the territory of that Member."[45]

The question of whether GIs such as "feta" or "parmesan" are in fact common names or protected designations is at the heart of the current debate on GIs in TTIP.

EU protections for Geographical Indications

The central idea behind protections for GIs is that these products have inherent qualities related to their place of production (such as soil or climatic conditions, called *terroir*), as well as cultural knowledge and traditions, that differentiate them from similar products. That designation creates a kind of place-based "brand" that informs consumers about their special qualities and often allows producers to charge a premium price. GIs are most common for wines, cheeses and certain meats, but there are some GIs for certain kinds of textiles (such as Thai Silk) or Swiss Watches produced according to specific criteria.[46]

Unlike other more controversial forms of intellectual property, protections for GIs are not held by specific companies or individuals. As opposed to trademarks, which are owned by a particular company or trade association, GIs are a collective right. They cannot be bought, sold or assigned to other rights holders.

These protections are most advanced in the European Union, which has established a process to register and protect GIs. In each case, producers apply to register a product using specific production and geographic standards. Those decisions are made first at the national level, although non-EU applicants may also apply directly to the European Commission.

The EU has separate registration and protection regimes for wines, spirits, and agricultural and food products. As of May 2014, 1226 food and agricultural products were registered at the European Commission as protected products. Those products include meats and meat products, cheeses, beers, fruits and flowers. They are produced and marketed locally or regionally, but some categories, especially cheeses, are widely exported as well. The list includes 216 cheeses, among them Gruyere, Roquefort, Queso Manchego, Mozzarella di Bufala, Camembert de Normandie, Neufchatel, Fontina, Gorgonzola, Asiago, Parmigiano Reggiano, Pecorino Romano, Gouda Holland, Edam Holland and Feta. It is important to note that in some cases, it is the compound name, such as Parmigiano Reggiano, that is protected, rather than the broader category of parmesan cheese.[47]

In 2006, the U.S. and EU reached a bilateral agreement on the protection of wines. That agreement requires the U.S. to make changes in laws to limit the use of certain wine names considered "semi generic": Burgundy; Chablis; Champagne; Chianti; Claret; Haut Sauterne; Hock; Madeira; Malaga; Marsala; Moselle; Port; Retsina; Rhine; Sauterne; Sherry and Tokay.[48] Existing producers of these wines would be "grandfathered" in, but non-EU producers not meeting the GI criteria for those wines would not be allowed to use those names. The EU has a similar bilateral agreement on wine with Australia, and agreements on wine and spirits with Canada, Mexico, Chile and South Africa.

The EU has been seeking to expand protections of geographical indications in its negotiation of bilateral free trade agreements. New commitments on the issue were reached in FTAs with Peru and Colombia, Central America, and Korea. In May, EU Trade Commissioner Karel De Gucht told a United Kingdom House of Lords subcommittee hearing on TTIP that, without securing at least partial protection for EU GIs in the United States, it would be very difficult to conclude a deal on agriculture. According to a report in Inside U.S. Trade, the EU is seeking GI protections for a list of 200 items, including meats, fruits and vegetables, wines and spirits, and 75 kinds of cheese.[49]

There is no public information yet on the exact list of GI protections the EU will seek in TTIP, but an examination of the commitments made in other recent trade agreement could give some indications. Table 1 lists GI commitments made in three recent trade agreements negotiated by the EU.

Given the similarities in culture, consumer tastes and production with the U.S., the results of the Canada-EU Comprehensive Economic and Trade Agreement (CETA) could also help to clarify the EU agenda in TTIP. The main CETA negotiations concluded in October 2013, when the two sides reached a political agreement, but the final negotiations are still underway as of this writing. Still, the technical summaries of the negotiations published by the EU and Canada are instructive. A leaked technical summary by the European Commission of the outcomes from the CETA text reports:

> "Another very positive result is the outcome on Geographical Indications (GIs). It is remarkable that Canada - not traditionally a friend of GIs - has accepted that all types of food products will be protected at a comparable level to that offered by EU law and *that additional GIs can be added in the future* [emphasis added]. This is a very satisfactory achievement in itself, but at the same time also a useful precedent for future negotiations with other countries.
>
> 125 of our 145 priority GIs will enjoy in full the high protection reserved by Article 23 TRIPS to wines and spirits, i.e. that the use of a GI name is prohibited even when the true origin of the product is indicated or in translation or with expression such as "kind", "type", style", "imitation" or the like.
>
> In addition – after very difficult negotiations - Canada finally agreed to follow our [the EU's] request regarding the five cheeses (Asiago, Gorgonzola, Feta, Fontina, Munster) the names of which are largely considered generic on the North American market. The use of these protected denominations will be prohibited with an exception for the already existing uses on the Canadian market ('grandfathering').
>
> New entrants into the Canadian market will only be able to sell their product if these 5 names are accompanied by indications such as "style", "type" "kind", or "imitation". This is a compromise solution, but one that achieves that Canada recognises that these names are protected GIs. It protects the market position of our producers by clearly distinguishing them from the original product. In addition, we have obtained for all GIs protection from the misleading use of symbols from the countries of the original GI owners. For instance, the misleading uses of flags and symbols are prohibited, and all products must have a clear and visible indication of their origin."[50]

Table 5: Geographical Indications for Cheeses Protected in Recent EU Trade Agreements

EU-Central America Association Agreement (2012)	EU-Peru-Colombia Trade Agreement (2012)	EU-Korea FTA (2010)
Allgäuer Emmentaler		
Allgäuer Bergkäse		
Asiago		Asiago
Brie de Meaux	Brie de Meaux	Brie De Meaux
Camembert de Normandie	Camembert de Normandie	Camembert De Normandie
Comté	Comté	Comté
Danablu	Danablu	
Emmental de Savoies	Emmental de Savoie	Emmental De Savoies
Esrom		
Feta	Feta	Feta
Fontina		Fontina
Gorgonzola	Gorgonzola	Gorgonzola
Grana Padano	Grana Padano	Gran Padano
Idiazábal	Idiazábal	
Kefalograviera		
Mahón-Menorca		Mahón-Menorca
Manouri		
Mozzarella di Bufala Campana		Mozzarella Di Bufala Campana
Parmigiano Reggiano	Parmigiano Reggiano	Parmigiano Reggiano
Pecorino Romano		Pecorino Romano
Provolone Valpadana	Provolone Valpadana	Provolone Valpadana
Queijo S. Jorge		Queijo De São Jorge
Queijo Serra da Estrela	Queijo Serra da Estrela	
Queso Manchego		Queso Manchego
Reblochon	Reblochon	Reblochon
Roquefort	Roquefort	Roquefort
Taleggio	Taleggio	Taleggio

Source: http://ec.europa.eu/trade/policy/countries-and-regions/agreements/#_other-countries

While the details of the EU's specific negotiating objectives on GIs in TTIP are not clear, it is clearly a priority area in the negotiations. The "Directive for the negotiation of the Transatlantic Trade and Investment Partnership between the European Union and the United States of America," which was adopted by the EU Council on 17 June 2013, outlines main negotiating objectives for the agreement. The only specific issue identified in the section on intellectual property rights is a mention of GIs. The text emphasizes that, "The negotiations shall aim to provide for enhanced protection and recognition of Geographical Indications through the Agreement, in a manner that complements and builds upon the TRIPS, also addressing the relationship with their prior use on the US market, with the aim of solving existing conflicts in a satisfactory manner."[51]

The debate on GIs in the United States

While this concept is most developed in the EU, there are a number of Geographical Indications already in use in the United States. Although there is no centralized list as in the EU, names such as Maine Lobsters, Idaho Potatoes, Vidalia Onions, Kona Coffee and Florida Oranges are protected under trademarks held by industry associations. The American Origin Products Research Association, an organization established to promote the establishment and protection of GIs in the United States, argues that increased designation and protection of GIs for locally produced cheeses and other goods would enhance value added for local producers and provide more accurate and useful information to consumers. They argue that existing trademark law puts the burden of protection on those industry associations, raising unfair obstacles to producers of locally established producers to establish their own place-based names for cheeses and other products.

Those concerns have found some resonance among Maine cheese producers. In an article in the Portland Press Herald, Caitlin Hunter, a cheese maker at Appleton Creamery said, "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." She labels her cheese "Camdenbert," (a takeoff on the coastal town Camden) for example.[52] However, extending those protections to what most would regard as generic names is another matter.

The Consortium for Common Food Names (CCFN) argues that the EU's agenda on GIs would unfairly restrict food names that are no longer strictly associated with particular regions. It notes that a federal standard for production of Asiago cheese has existed since 1977 (almost 20 years before the European Commission recognized Asiago as a GI) and asserts that, "Despite its long-time usage in the Americas, consumption of asiago cheese in the United States was relatively limited until a few U.S. dairies increased production, and the restaurant chain Panera Bread began to sell asiago bagels (a breakfast pastry). Panera has now sold millions of asiago bagels, and American consumers are very familiar with asiago cheese. This is not due to asiago producers in Italy, but to producers in the United States and around the world that have been manufacturing and marketing this product for years."[53]

The CCFN argues for a process to establish which food names are actually in common usage, perhaps with a registry at the international level. It further suggests requiring that GIs include the name of the

place where the good is produced, i.e., Camembert de Normandie (which is the actual GI approved by the EU) rather than simply Camembert (which, in fact, the EU has not sought to protect).

These issues have found resonance in Congress, where two major letters to USTR have rejected the EU's push for GI protections in TTIP. In an April 4 letter to USDA Secretary Tom Vilsack and USTR Michael Froman, 45 U.S. Senators rejected the EU's approach on GIs in TTIP, focusing on protections for processed meat names such as bologna. They called on USTR to work aggressively to ensure that the EU's approach on GIs does not impair the ability of U.S. businesses to compete, stating, "We are concerned that these restrictions would impact smaller businesses who specialize in artisan and other specialty meat products such as bratwurst, kielbasa, wiener schnitzel and various sausages."[54] It is worth noting that the EU does not recognize GIs for any of those terms as single meat names. According to the European Commission's Database of Origin and Registration (DOOR), it does recognize Mortadella Bologna, Thüringer Rostbratwurst, Nürnberger Bratwürste, Nürnberger Rostbratwürste and Kiełbasa lisiecka.

That letter was followed in May by a letter from 177 members of the House of Representatives (including Reps. Michaud and Pingree) focused on GIs for cheese names. That letter, led by the Congressional Dairy Farmers Caucus with support from the National Milk Producers Federation, asserts that, "The EU is taking a mechanism that was created to protect consumers against misleading information and instead using it to carve out exclusive market access for its own producers. The EU's abuse of GIs threatens U.S. sales and exports of a number of U.S. agricultural products, but pose a particular concern to the use of dairy terms."[55]

Potential impacts on Maine producers

According to at least one report, Maine has more artisan cheese producers than any state except New York. Jeff Roberts, the author of The Atlas of American Cheese and a consultant to the Vermont Institute of Artisan Cheese at the University of Vermont, reports that since he wrote that book in 2006, the number of artisan cheese producers in the state increased from 25 to 75. "To me, that's a truly remarkable expansion in a relatively short period of time," he commented. "And most of us outside of Maine have never heard of Maine artisan cheese because it really doesn't leave the state."[56]

If TTIP were to include GI protections for specialty cheeses produced in Maine, producers could be compelled to modify those cheese names, either to other names or to include qualifiers like "style." The fact that the EU has already established protections for cheese names in its recent agreements with Colombia and Peru, Central America and Korea means that any exports by Maine producers to those markets could be restricted, potentially undermining the expansion of cheese production in the state.

Which cheese (or meat) names are protected would influence how cheese and dairy producers would be affected. If the EU focuses primarily on protections for the cheese names it protected in CETA (Asiago, Feta, Fontina, Gorgonzola, Munster), it seems most likely that it would impact larger corporations such as Kraft, rather than smaller producers of artisan cheeses. These impacts would be lessened if the protections are established for compound names such as Parmesano Reggiano rather than Parmesan.

However, a recent article in Inside Trade indicates that the EU is seeking protections for as many as 200 products, which would expand protections for their goods without necessarily including corresponding protections for US GIs in ways that benefit local producers. The way those protections are established would also matter, so that any GIs advance the interests of smaller, innovative local producers over those of larger corporations interested primarily in protecting export markets.

On the other hand, a vigorous public debate on the issues of protections for place based names, such as those advanced by the American Origin Products Association, could result in new protections for innovative cheeses and other goods. Maine Lobster is one such GI already in existence. Raising the profile of that issue, and examining the potential of existing trademark law or possibly other mechanisms such as those used in the EU, could enable Maine producers to establish specialty markets and potentially retain more of the value added from their production.

Recommendations:

- The CPTC should insist on transparency in this issue, calling on the EU and USTR to provide a list of the specific Geographical Indications protections sought by the EU in TTIP, as well as the U.S. response to date.
- Based on that information, the Commission could issue a request for comments or convene a hearing of Maine dairy, wine, cheese and processed meat producers on how they see their interests being affected by those protections. Their recommendations should inform advocacy by the Commission with USTR.

Impact on Maine's dairy sector

TTIP and other international trade agreements threaten Maine's dairy industry. To understand how, one must first learn about milk pricing.

Federal Milk Pricing

The prices paid to most American dairy farmers for their milk (i.e., producer prices) are set by the federal government through complicated formulas. The formulas, which are administered by the Federal Milk Marketing Order (FMMO) establish producer milk prices based on the wholesale price of various dairy products, namely cheese, butter, dry whey, and not-fat dry milk (NDM).

FMMO sets prices for four classes of milk:

- Class I is Grade A fluid milk.
- Class II is Grade A milk used in ice cream, yogurt, cottage cheese an similar products.
- Class III is Grade A milk used to make cream cheese and hard cheeses.
- Class IV is Grade A milk used to make butter or used for dry milk.

The formula for each milk class has been the same for decades. However, the results of applying the formula have changed dramatically. The reason is that the price of NDM has soared in recent years,

primarily due to increased demands in developing nations; and the price of NDM has a direct and significant impact on milk prices in Classes I, III, and IV.

It's worth noting that, until recently, the price of NDM had no impact on Class I pricing. This is because the formula for Class I pricing is based on either the price of butter or the price of NDM, whichever is higher. For decades, the price of butter has exceeded the price of NDM, so that NDM had no effect on the Class I price of milk. But that has now changed. Now—and for the foreseeable future—it is expected that NDM will continue to be driver, not butter.

A key detail about federal dairy pricing is that producer prices during the last decade have often been below most farmers' cost of production. Many farmers hold on even though they are losing money every day. (They do so, in part, because you cannot turn off a cow, as you turn off a piece of equipment; and in part, because even though these farmers may be losing money if they measure all their costs, having some cash flow enables them to continue to service their debt and keep the farm.) Still, many farmers have not been able to hold on; they have gone of business. Vermont, for example, lost over half its farms between 2004 and 2011.

Since 2011, the FMMO price has rebounded somewhat. (Few dairy farmers are making money if you look at true costs, including depreciation and real wages for family members; but more farmers are covering their marginal costs than a few years ago, which is enough to keep them in business.) However, it's important to recognize that recent increases in producer prices are due primarily to the increase price of NDM.

Maine Dairy Stabilization Program

The next key piece of information to know is that Maine has a unique program that augments the payments farmers receive when the FMMO price is low. The Maine Dairy Stabilization Program was enacted into law in 2004, immediately providing critical support to the troubled industry. In the period from 2004 to 2011, when Vermont lost over 50 percent of its dairy farms, Maine lost only 19 percent. The difference was this program.

The Maine Dairy Stabilization Program provides direct funding to Maine farms, based on the difference between the FMMO price and the cost of production for an average farm of that size. The program pays out different amounts for four tiers of production, based on the fact that larger farms have, on average, a lower cost of production. (Because of this structure, the program is generally referred to by Maine farmers as the "tier program".)

Once every three years, the Maine Milk Commission contracts with University of Maine researchers to conduct a "cost of production" study, identifying a different average cost for each of the four tiers. When the FMMO price falls below this cost figure, the Maine Milk Commission begins to pay farmers extra. (Without the program, dairy farmers are already paid by the Commission, so structuring the payments in this way is not requiring the Commission to take on a major new function, but simply to pay out a different amount.) The greater the difference between the FMMO price and the cost of production, the more the farmers are paid.

Maine has also enacted into law a mechanism to bring in new revenues when the FMMO price is low. The mechanism is a "handling tax" applied to retailers on every gallon of milk sold. The size of the tax goes up when the FMMO price goes down.

This tax can be applied without driving up consumer costs, as long as the level of taxation is moderate. The reason is this: what retailers charge for milk is dependent on what a consumer is willing to pay; when the FMMO price drops lower, the store's cost drop as well, as explained below, so that the store's margins increase; the new tax can be paid out of the this margin without any negative impact on the consumer price.

There are three players in the milk distribution chain: farmers (producers); processors; and retailers. As explained above, the producer price is set by government policy. The price paid to the processor by a retailer is also set by government policy. (The processors are treated like a public utility, in that they are allowed to cover their costs and make a little profit.) But the retailer is allowed to sell the milk for as much as the market will bear.

Consider what happens when the FMMO price drops: the farmers make less and the processor makes the same. Usually the consumer price also remains the same. (There is little reason it will not, because it is the price consumers have been paying—and the retailers can sell if for that.) This means that retailers are making greater profit when the FMMO price drops. The effect of Maine's handling tax is to take away *some* of this this profit. The Maine Dairy Stabilization program then provides that money to the farmers.

It's an elegant way to correct a major deficiency in the FMMO system. If applied well, the farmers fare better, while the retailers still come out fine. Consumers benefit as well, because in the long run, consumers will be hurt if so many local dairy farmers go out of business and there is no longer adequate milk from local sources.

But even though this program works well in Maine, similar strategies have not been applied elsewhere. That's because Maine is in a unique situation. First, Maine is not as closely bound to some of the legal constraints of the FMMO system (for complicated historical reasons). Second, the program only works because the amount of milk produced in Maine is roughly equal to the amount consumed.

A rough balance is essential to making this program work, because under the Interstate Commerce Clause, the handling tax needs to be applied to all milk sold in the state.

Consider if such a program was in place in Vermont, which is a smaller state with a larger proportion of its agriculture in dairy production. Vermont produces about six times the amount of milk it consumes. To help the farmers to the same degree as in Maine, the tax would need to be six times higher—and at that level, the system simply cannot work.

One final point about this system: the two programs (one paying farmers; another generating revenue) cannot be legally linked without violating the Interstate Commerce Clause. So the two programs are legally separate: the Maine Dairy Stabilization Program pays out funds to farmers from the state's

General Fund; while the handling tax collects revenues into the General Funds, which the Legislature could use for any purpose.

Bovine Growth Hormones

In Maine, there is practically no use of artificial bovine growth hormones by dairy farmers. There is not a legal prohibition, but the two primary milk processors do not accept milk from cows that have received the hormones. This approach has worked extremely well for Maine's dairy industry. Although bovine growth hormones increase milk production, they are costly, and often reduce the working life of a dairy cow. All in all, the financial benefits are modest, if existent at all. Meanwhile, the fact that Maine milk is hormone free has helped sell it. So, while this is a major point of tension nationally in the trade talks, it isn't an issue for Maine producers.

Potential negative impacts of international trade agreements

One potential negative impact of the trade agreements now being pursued is that they could depress FMMO prices further. This risk is very real, due to the increasing importance of NDM prices on what farmers get paid. As noted above, the recent boost in FMMO prices is due primarily to the increased price of NDM. Broader trade opportunities could increase imports of NDM, which could easily depress the price of NDM, with potentially devastating impacts on farmer incomes.

This is clearly a concern with the TPP, as New Zealand is a major producer of NDM. For that reason, several major dairy industry organizations have spoken out against TPP.[57]

However, the U.S. dairy industry has not expressed the same kind of organized opposition to TTIP. In fact, some industry organizations are supporting a new US-EU trade pact. This is because the "EU currently enjoys a trade surplus of $1.2 billion" and some dairy groups believe that a "transatlantic agreement can do a lot to drive more reciprocal dairy trade between the US and the EU."[58]

Presumably, these dairy groups feel that the extra revenues from new exports would more than offset any FMMO price depression that could be caused by more EU trade. That might be true for the kind of large dairy farms prevalent out West—some of which are situated in huge buildings that abut powdered milk plants (often owned by the same conglomerate that owns the herd). Yet Maine's dairy sector has limited export opportunities, given both its far smaller size and the fact that there is no powered milk plant in the region. It is realistic to expect that, in Maine, the potential negative impacts of TTIP on FMMO prices will outweigh any benefits from new exports.

Another set of concerns stems from Maine's Dairy Stabilization program. It is possible, if not likely, that any international trade agreement would view this program as an unfair price support, particularly given the pressure to harmonize state and federal regulations. Given that the program only exists in Maine, there would not be any significant political pressure to have a trade agreement treat this program favorably. And yet this program has been (and remains) critically important to Maine's dairy industry.

Even if a new international trade agreement does not flat out prohibit Maine's Dairy Stabilization Program, it is likely that the program would be at greater risk for a legal challenge. As noted above, the program walks a fine line with the Interstate Commerce Clause. Though the authorities in Maine believe

that the state's current system is legally supportable, it's also true that the system is legally complicated. The likelihood of a lawsuit increases if Maine's dairy polices are under closer scrutiny due to a new international trade agreements.

Another area of concern stems from Maine's de-facto prohibition of bovine growth hormone. Growth hormones are generally not used in the EU, which suggests that the U.S. will try to address that forthrightly in any new trade agreement, as a way to increase export opportunities. The EU's restrictions on those hormones is already a flash point in the negotiations. Depending on the concessions granted, the unintended consequence could be that Maine's current position with bovine growth hormones, particularly its ability to promote any milk exports as hormone free, comes under renewed scrutiny and is weakened.

Recommendations:

The Maine Citizen Trade Policy Commission should:

- Make sure trade negotiators are aware of the Maine's Dairy Stabilization Program and its importance to Maine.
- Request information from dairy groups and other available sources on the likely impact of increased export activity on the U.S. Class I milk price, given (in particular) the role that NDM has in FMMO pricing.
- Work with instate players (e.g., Maine Farmland Trust, Maine Organic Farmers & Gardeners Association) to alert Maine's dairy processors (that do not accept milk with bovine growth hormones) of the possible consequences of an international trade agreement on their operations.

Overall conclusions

TTIP could affect Maine's agricultural and food sectors for decades to come. While there may be legitimate reasons to coordinate regulations between the U.S. and EU, those discussions need to happen under conditions of full transparency, something that is not possible under the current regime of secrecy. The establishment of common standards on food safety, procurement, or protections for local producers should serve to prohibit – rather than promote – efforts by corporations to play off regulatory standards in one jurisdiction against the other.

Any efforts to develop coherent approaches need to achieve a delicate balance on at least three dimensions: the appropriate level of decision making (subsidiarity); the right risk assessment and technical capacity; and fair and sustainable livelihoods and prices for farmers and consumers. Achieving the right balance among those complex topics within the context of a trade agreement, in which proposals on any one of those issues could be traded off for market access or other proposals on entirely different issues, seems fraught from the outset. This is a risky approach in any aspect of the

trade agreement, but is especially problematic in the arena of food and agriculture, which touches on public health, rural and urban economies and environmental protection.

Subsidiarity, the idea that decisions should be made at the smallest, lowest or least centralized level of decision making possible, was a central topic of debate in the formation of the European Union. Article 4 of the founding Treaty of Maastricht establishes that principle as a key element in the balance between the authorities of the Member States and the EU as a whole. In the U.S., that issue, while not usually described with that term, has long been a subject of tension between states' rights and federal authority. Maine's GMO labeling laws (as well as those in other states) for example, may eventually come into conflict -- or ultimately influence – federal policy on that issue, and will undoubtedly raise the public profile of GMO safety across the country. In both the EU and U.S., that tension, and the grounding in the democratic concept of subsidiarity, reflects the conflict between local level innovations such as farm to school programs or restrictions on food additives or technologies based on emerging science, and the economic pressures driving commercialization even when the risks are not fully understood.

The common standards for organic foods negotiated between the US and EU, for example, offers an alternative approach to resolving those tensions within trade deals. The carefully crafted Organic Equivalency Arrangement incorporated input from the Organic Trade Association and the International Federation of Organic Agriculture Movements. As an Arrangement (rather than an Agreement or Treaty), it was enacted through an exchange of letters from USDA and USTR from the United States, and the European Commission for Agriculture and Development.

The Arrangement, which began in 2012, recognizes certification by the USDA National Organic Program as equivalent to the EU Organic Program. It provides for periodic reviews and establishes a work plan to exchange information on emerging issues.[59] A formal review of the process is scheduled for 2015. It provides a flexible basis for mutual learning and expanded trade in those goods. The fact that this bilateral arrangement was negotiated on its own, outside the horse trading inherent in any trade negotiations, created the conditions for a reasonable approach that can also be reopened should conditions change in the future.

There is ample room for cooperation among regulators in the U.S. and EU on issues related to food safety and food markets. Discussions of locally appropriate standards for chemicals or food additives or technologies benefit from shared knowledge across the Atlantic. On the other hand, the pressure for mutual recognition agreements in TTIP on chemical policy and financial reforms, among others, creates the conditions for a push to the lowest standards prevalent in either jurisdiction.

Those discussions always reflect pressures from competing interests, but they are also always enhanced when they take place under conditions of transparency and full information. That will not be possible in TTIP as long as the negotiations remain shrouded in secrecy. This is a general problem that runs throughout the trade agreement.

Governments should engage in meaningful discussions with all stakeholders on these and other issues before each negotiating session and upon its conclusion. Those dialogues should also include frank discussions on the potential tradeoffs among sectors and hold open the possibility that the most

productive avenues for progress could be outside of the trade talks, as happened with the agreement on organic standards.

While it seems unlikely that "harmonization" in TTIP will mean anything but a race towards the lowest common denominator in terms of standards, the public attention created by the trade talks does offer a platform to learn from the best experiences on both sides of the Atlantic. This could be an opportunity, for example, to recast the public debate in the United States (and perhaps even in the EU) on the Precautionary Principle as a sensible, scientific, and democratic approach to technologies that are advancing much more rapidly than knowledge of their safety. EU dairy producers (many of whom are opposed to TTIP) could learn from Maine's experience with dairy prices supports. And local policymakers in many European countries, who are becoming increasingly alarmed about the potential impacts of TTIP on their food and agricultural systems, could learn from the Maine Citizen Trade Policy Commission's experience at fostering an informed public debate.

The current approach to our bilateral economic relations in TTIP is a political choice; alternatives are entirely possible. If not, if the talks are to continue along the lines of other recent trade agreements, then civil society and policy makers should seriously consider putting a halt to the TTIP until a different approach is underway.

Annex 1: Maine Exports to the European Union

Rank	Code	Description	Annual 2010	Annual 2011	Annual 2012	%2010-2011	%2011-2012	Duty Rate
		TOTAL ALL COMMODITIES	374,062,772.	404,058,102.	364,415,948.	8.02	-9.81	
1	880000	Civilian Aircraft, Engines, And Parts	28,668,336.	51,544,840.	70,921,039.	79.80	37.59	Free
2	481190	Paper, Paperbd, Cellulose Wadd Etc, Coat Etc Nesoi	33,886,397.	32,770,621.	27,956,065.	-3.29	-14.69	Free
3	470329	Chem Woodpulp, Soda Etc, N Dis S Bl & Bl Nonconif	38,813,782.	52,715,777.	22,244,855.	35.82	-57.80	Free
4	902750	Instruments Etc Using Optical Radiations Nesoi	35,986,913.	28,398,666.	22,209,385.	-21.09	-21.79	Free
5	[illegible]	Composite Diagnostic/Lab Reagents, Exc Pharmaceut	29,658,364.	20,655,662.	18,492,365.	-30.35	-10.47	Free
6	[illegible]	Plates, Sheets Etc. Nesoi, Cellular Polyurethanes	18,317,531.	14,080,447.	17,972,372.	-23.13	27.64	6.5%
7	[illegible]	Lobsters, Live, Fresh,Ch, Dried, Saltd Or In Brine	11,669,946.	14,865,606.	16,573,213.	27.38	11.49	8%
8	[illegible]	Tantalum Electrolytic Fixed Capacitors	4,693,204.	7,053,571.	12,010,418.	50.29	70.27	Free
9	[illegible]	Gas Turbine Parts Nesoi	11,277,421.	3,594,681.	10,362,879.	-68.12	188.28	4.1%
10	[illegible]	Antisera And Blood Fractions, Immun Products	4,347,583.	7,794,924.	8,764,881.	79.29	12.44	Free
11	[illegible]	Parts Of Pumps For Liquids	6,794,132.	8,652,296.	8,026,103.	27.35	-7.24	1.7%
12	[illegible]	Chem Wdpulp Sulfite Ex Dsslvng Gr Nonconf Semi/Blc	0.	0.	7,437,811.	0.-nan	0.inf	Free
13	[illegible]	Value Of Repair/Alter Articles Previous Imported	2,835,496.	3,667,193.	5,094,972.	29.33	38.93	NA
14	[illegible]	Paper & Paperboard, Uncoated, >10% Mech.Fib.,Rolls	0.	1,152,597.	4,356,210.	0.inf	277.95	Free
15	[illegible]	Gears; Ball Or Roller Screws; Gear Boxes, Etc	197,019.	2,623,040.	4,071,911.	1,231.36	55.24	NA
16	[illegible]	Yachts Etc For Pleas/Sport Nesoi; Row Bts, Canoes	2,273,650.	2,289,828.	3,838,196.	0.71	67.62	1.7%-2.7%
17	[illegible]	Sanitary Towels And Tampons Diapers For Babies Etc	0.	0.	3,533,280.	0.-nan	0.inf	Free-12%
18	[illegible]	Ppr/Pbrd For Writ/Pring,Clay Ctd,<=10%Mec Fbr,Rls	3,128,772.	3,941,725.	3,391,991.	25.98	-13.95	Free

19	440320	Coniferous Wood In The Rough, Not Treated	0.	9,273.	3,036,941.	0.inf	32,650.36	Free
20	840690	Parts For Steam And Other Vapor Turbines	553,781.	350,555.	2,828,346.	-36.70	706.82	2.7%
21	480419	Kraftliner, Uncoated, Bleached, In Rolls Or Sheets	0.	0.	2,697,607.	0.-nan	0.inf	Free
22	903039	Inst Meas Volt Crrnt Etc W-Out Rcrdng Dvce, Mltmtr	1,264,821.	1,955,116.	2,141,926.	54.58	9.55	2.1%-4.2%
23	441890	Builders Joinery And Carpentry Of Wood, Nesoi	1,236,784.	1,952,260.	1,999,364.	57.85	2.41	Free
24	844900	Mach F Manuf Or Finish Nonwovens;Hat Blocks; Parts	46,981.	34,937.	1,854,710.	-25.64	5,208.73	1.7%
25	930591	Parts & Accessor. Of Military Weapons Of Head 9301	17,282.	918,576.	1,736,617.	5,215.22	89.06	Free
26	711319	Jewelry And Parts Thereof, Of Oth Precious Metal	558,450.	277,286.	1,726,041.	-50.35	522.48	2.5%
27	591140	Textile Straining Cloth Used In Oil Presses Etc	2,487,358.	1,879,325.	1,584,498.	-24.44	-15.69	6%
28	930190	Military Weapons,Oth Thn Revol,Pist,&Hd 9307,Nesoi	82,690.	1,756,140.	1,584,320.	2,023.76	-9.78	Free
29	853190	Parts Of Electric Sound Or Visual Signaling Aprts	29,439.	432,895.	1,494,764.	1,370.48	245.29	Free-2.2%
30	392690	Articles Of Plastics, Nesoi	3,306,589.	829,454.	1,462,912.	-74.92	76.37	Free-6.5%
31	853710	Controls Etc W Elect Appr F Elect Cont Nov 1000 V	1,398,707.	1,340,213.	1,430,997.	-4.18	6.77	2.1%
32	842890	Lifting, Handling, Loading & Unloading Machy Nesoi	437,371.	83,067.	1,387,566.	-81.01	1,570.42	Free
33	470321	Chemical Woodpulp, Soda Etc. N Dis S Bl & Bl Conif	51,100.	0.	1,364,248.	-100.00	0.inf	Free
34	850450	Electrical Inductors Nesoi	8,000.	683,853.	1,143,948.	8,448.16	67.28	Free-3.7%
35	860791	Parts, Nesoi, Of Locomotives	171,210.	2,682,611.	1,101,948.	1,466.85	-58.92	1.7%-3.7%
36	160530	Lobster, Prepared Or Preserved	1,470,428.	1,560,063.	1,095,897.	6.10	-29.75	20%
37	970600	Antiques Of An Age Exceeding One Hundred Years	536,122.	478,880.	1,090,413.	-10.68	127.70	Free
38	902790	Pts Of Inst, Phys/Chem Analysis Etc, Nesoi	2,791,597.	2,148,143.	1,070,217.	-23.05	-50.18	Free-2.5%
39	848420	Mechanical Seals	818,379.	1,095,637.	1,046,995.	33.88	-4.44	1.7%
40	391390	Natural And Modified Natural Polymers Nesoi, Pr Fm	1,180,327.	1,078,944.	988,436.	-8.59	-8.39	NA

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Article notes: October 7, 2014
Citizen Trade Policy Commission

EUROPEAN LAWMAKERS THREATEN TO SCUPPER CANADA TRADE DEAL; (Reuters; 8/28/14)

This article reports that EU lawmakers were threatening to vote down a free trade agreement with Canada because it included ISDS provisions. Many EU lawmakers oppose the inclusion of ISDS provisions because of the perceived ability of multinational corporations to sue governments over regulations and laws that are seen as casing the corporations to lose profits. One lawmaker said, " Giving corporations the right to sue governments for loss of anticipated profits would be ridiculous if it were not so dangerous."

Is This EU-US Trade Deal A "Once-In-A-Generation" Opportunity?(Forbes; 8/28/14)

This article skeptically reviews the claim from a member of the British Parliament that the TTIP is a "once-in-a-generation" opportunity that will result in significant job and economic growth. The article recounts the lack of transparency in the current TTIP negotiations, highlights the dangers of ISDS provisions and the threat to public services and government procurement contracts that the TTIP is alleged to likely contain when it is finally completed.

Low Expectations for Hanoi Round cast Doubt on November TPP Result; (Inside US Trade; 8/29/14)

This article reports that the next round of informal TPP talks scheduled to take place in Hanoi in early September are not likely to result in a final TPP agreement being finalized in November- a publically stated goal of the Obama administration. Among the latest hurdles facing the TPP negotiations are controversial and unresolved topics regarding intellectual property protections for pharmaceuticals, disciplines for state-owned enterprises, technical barriers to trade, sanitary and phytosanitary measures, and labor rights.

American Envoy to Brussels Says EU Needs TTIP Benefits More Than US; (Inside US Trade; 9/4/14)

The newly appointed US Ambassador to Brussels, Anthony Gardner, stated publically that because of Europe's "continuing sluggish economic performance" that Europe needs the economic benefits of the TTIP more than the US does. Ambassador Gardner also dismissed current EU concerns about GMO issues and sanitary washes for meat and poultry as "peripheral" and stated the need for a comprehensive trade agreement to be finalized in the near future. Additional remarks from Ambassador Gardner also criticized those who allege that the TTIP negotiations are lacking in transparency and he sought to dispel allegations that the US procurement market is more closed and restrictive than that of the EU nations.

New Trade Deal- TISA- Could Undermine Safety, Environmental, Workers' Rights Regs; (AFL-CIO Blog; 9/5/14)

This blog post seeks to explain the current negotiations between the US and other WTO members for the Trade in Services Agreement (TISA). While the negotiators for TISA allege that the treaty will liberalize trade and investment in services and also expand regulations on services, many critics claim that TISA will effectively remove regulatory barriers to trade thus imperiling many crucial regulations and laws concerning public safety, the environment and various workers' rights. The blog post also highlights the secrecy and lack of transparency around the current TISA negotiations.

Nomination of Cecila Malmstrom as E.U. Trade Envoy Signals Interest in U.S. Talks; (New York Times; 9/10/14)

The recent appointment of Ms. Cecilia Malmstrom as EU Trade Envoy by Jean-Claude Juncker, President-elect of the European Commission, is seen as a reflection of his strong interest in rejuvenating the somewhat stalled TTIP negotiations.

Vietnamese Delegation Heading to Washington Next Week to Talk TPP; (US Trade Today; 9/12/14)

This article reports on the September visit from a high-level Vietnamese trade delegation to Washington. One of the main purposes of the visit was to discuss the TPP and thus highlight the Vietnamese interest in gaining market access in the US for apparel and footwear.

EU chairs next round of plurilateral talks on services; (trade.ec.europa.eu; 9/19/14)

This brief article reports on the next round of TISA negotiations that were to take place in Geneva on September 21st. One of the focuses of these talks is to center on four regulatory disciplines: financial services, telecommunications, domestic regulation & transparency, and "mode 4" [Staff Note: the WTO website has this to say about Mode 4: "*The movement of natural persons is one of the four ways through which services can be supplied internationally. Otherwise known as "Mode 4", it covers natural persons who are either service suppliers (such as independent professionals) or who work for a service supplier and who are present in another WTO member to supply a service.*]

Cecilia Malmastrom, E.U. Trade Nominee, Points to 'Toxic Element' in U.S. Talks; (new York Times; 9/30/14)

Cecilia Malmastrom, nominated to be the next EU trade commissioner, told a hearing of the European Parliament that the inclusion of ISDS provisions in the TTIP was a "nuclear weapon" that may have to be excluded from the final negotiated version of the TTIP. The article goes on to state that European opposition to ISDS is rooted in a belief that the US would use this provision to overturn European laws and regulations concerning the environment, food safety and publicly funded health care.

USTR: TPP Briefing Schedule; (USTR; 10/1/14)

The USTR released a draft agenda of a briefing for cleared advisors and liaisons that will take place regarding the TPP in Washington DC on October 9th. The detailed agenda includes presentations on Rules of Origin, Financial Services, Cross Border Services & Non-conforming Measures, Technical Barriers to Trade, Market Access (Agriculture), Environment and Intellectual Property.

The trade clause that overrules governments; (Washington Post; 10/1/14)

This opinion piece discusses the possible inclusion of ISDS provisions in the TTIP and offers the writer's opinion on why he is opposed to ISDS- namely "the mockery that the ISDS procedure can make of a nation's laws…". He also cites recent European opposition to ISDS and suggests that the inclusion of ISDS in the TTIP, which is strongly supported by President Obama, would paradoxically threaten to undermine some of his landmark achievements including the fight against pollution and global warming and his "commitment to a single standard of justice."

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)

(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 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 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 issueswill impact U.S. support for an eventual Korean TPP bid. Seoul, meanwhile, has continue 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 deja 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 raisedby 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).
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http://www.aflcio.org/Blog/Global-Action/node/128841

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 is this area is critical. The group of countries currently negotiating TISA accounted for nearly 70% of world trade in services in 2012.

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 atderegulation 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

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 addi- tional 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 is 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.

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. Yanukovych 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>
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
Office of Intergovernmental Affairs & Public Engagement | 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 9th. 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 by COB Monday, October 6th. 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
Office of Intergovernmental Affairs & Public Engagement | 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

STATE OF MAINE

Citizen Trade Policy Commission

DRAFT AGENDA

Monday, March 31, 2014 at 1 P.M.
Room 334, State House
Augusta, Maine

1 PM Meeting called to order

I. Welcome and introductions

II. Discussion of 2014 CTPC Assessment

III. Discussion of possible written CTPC testimony for Committee on Ways and Means

IV. Discussion of attendance at TTIP stakeholder meeting in Washington DC in Mid-May

V. Review of current status of TTP and TTIP (Representative Sharon Anglin Treat)

VI. Articles of interest (Lock Kiermaier, Staff)

3:30 PM Adjourn

Citizen Trade Policy Commission
c/o Office of Policy & Legal Analysis
State House Station #13, Augusta, ME 04333-0013 Telephone: 207 287-1670
http://www.maine.gov/legis/opla/citpol.htm

STATE OF MAINE

Citizen Trade Policy Commission

Description of Proposed 2014 Assessment

March 17, 2014

Current Maine state law requires that the Maine Citizen Trade Policy Commission (CTPC) *"...Shall every 2 years conduct an assessment of the impacts of international trade agreements on Maine's state laws, municipal laws, working conditions and business environment."* (10 MRSA §11(9)C). The CTPC has been conducting these assessments since 2006; the last one having been completed in 2012. Recent assessments have been focused on the following topics:

- The 2012 Assessment was conducted by Professor Robert Stumberg, Professor of Law at Georgetown University and Director of the Harrison Institute for Public Law, and addressed the possible effects on Maine of the TransPacific Partnership Agreement (TPPA) with regards to the topics of tobacco, pharmaceuticals and procurement;
- The 2010 Assessment was conducted by William Waren, Policy Director of the Forum on Democracy & Trade, and addressed the impacts of international trade agreements on state and municipal laws in Maine; and
- The 2006 Assessment was conducted Peter Riggs, Executive Director of the Forum on Democracy & Trade, and addressed the effectiveness of the CTPC with respect to five different objectives: communication between government and civil society groups in Maine; communication with national associations and with other states; communication with the USTR and with members of Maine's congressional delegation; engaging Maine's citizenry on international trade topics; and communicating with the media.

Each of these assessments can be viewed in their totality at the CTPC website:

http://www.maine.gov/legis/opla/citpolassessments.htm

For much of 2013 and 2014, the CTPC has been focusing on the ongoing negotiations between the U.S. and European Union (EU) for the Transatlantic Trade and Investment Partnership (TTIP). Like previous international trade agreements, the TTIP is largely being negotiated in secret with no public access to proposed text but the CTPC has been able to ascertain the following:

- Predominate issues to be negotiated within the TTIP appear to focused less on the removal of tariffs and more on a discussion over the existence of, and removal of,

perceived non-tariff barriers to trade, including direct and indirect subsidies and the harmonization of regulatory standards addressing a wide range of policies, including chemicals and pesticide regulations, food safety standards, and food and product ingredient labeling;

- In addition, procurement policies are likely to be central to the TTIP negotiations, and the EU has made clear that binding sub-central governments and public institutions at the state, county and local level is a priority;
- The mutual quest for regulatory harmonization could be accomplished in a way that maintains high standards of environmental and public health and safety, but there is also the strong possibility that TTIP will "harmonize downward" to the lowest regulatory common denominator and effectively preempt state standards that are different from or exceed federal laws and regulations;
- Agricultural subsidies, food safety, labeling and procurement standards are likely to be addressed throughout different chapters of the TTIP;
- It is likely that if Investor State Dispute Settlement (ISDS) provisions are included in the TTIP, those provisions will be applied to policies involving food and agriculture throughout the TTIP, posing a significant threat to the sovereignty of Maine laws and regulations in these topics.

The CTPC wishes to have an Assessment completed which focuses on the TTIP and its possible effects on agriculture in Maine with specific attention to:

  - Farm-to-School and other procurement provisions favoring local food and agriculture; and
  - Agricultural policies including direct and indirect subsidies relevant to Maine such as dairy supports and tax policies favoring farming easements.

In seeking the appropriate candidate to complete the 2014 Assessment, the CTPC has agreed upon the following criteria:

- The 2014 Assessment should be performed by an individual or organization that has an in-depth knowledge of the aforementioned trade policies relating to agriculture and food issues as they pertain to Maine and their likely treatment in an international trade agreement such as the TTIP;
- The CTPC will positively consider in-state or regional candidates with knowledge of Maine policies and institutions where the candidates have the requisite trade law and policy expertise;
- The 2014 Assessment should be presented in person at a Public Hearing to be scheduled by the CTPC in late Spring of 2014with a final document to be submitted by June 30, 2014; and
- The 2014 Assessment will be presented and completed at a total cost not to exceed the $10,000 appropriated by the Legislature to the CTPC specifically for this purpose.

Interested parties should contact CTPC staff person Lock Kiermaier (phone: 207-446-0651 or e-mail: lock.kiermaier@legislature.maine.gov)

John Piotti is president and CEO of Maine Farmland Trust, an award-winning statewide non-profit organization that has helped over 400 Maine farms remain viable and helped protect over 37,000 acres of Maine's best farmland.

John has worked on agriculture issues since the early 1990s—when most people dismissed farming in Maine as having no future. From 1995 to 2006, he managed all the farm programs for Coastal Enterprises, Inc. (CEI). He was a founder of Maine Farmland Trust in 1999, and then served on its board. He became the Trust's CEO in 2006.

He has served as chair of the Northeast Sustainable Agriculture Working Group (NESAWG) and a director of the National Campaign for Sustainable Agriculture. In Maine, he has been a key player in just about every state level committee and task force involved in agriculture over the past 20 years.

From 2002 to 2010 John also served in Maine's State Legislature, where he chaired the Committee on Agriculture, Conservation and Forestry, and later served as House Majority Leader.

In 2005, John was one of only eight Americans awarded a prestigious Eisenhower Fellowship. He spent time in Sweden and Brussels exploring European models for using agriculture as a vehicle to advance sustainable community development.

John holds three degrees from the Massachusetts Institute of Technology (MIT): in engineering, public policy, and management.

He was recently named by Maine Magazine as one of the 50 people who have done the most for the state.

John F. Piotti
1075 Albion Road
Unity, ME 04988

Summary of Qualifications

Proven leader and entrepreneurial builder of organizations, with:

- 25 years of executive experience (in government, private non-profits, and business)
- creative problem solving and strategic thinking skills
- demonstrated fundraising success
- exceptional communication skills
- political and media savvy
- extensive professional contacts
- excellent reputation and highest level of personal integrity
- proven ability to work with a wide variety of people
- passion for Maine's people, communities, and landscape

Employment Record

MAINE FARMLAND TRUST
Belfast, ME
July 2006 to present

President & CEO of Maine's only statewide organization focused on protecting farmland and supporting farming. Hired to lead organization to the "next level," by engaging farmers, landowners, and community members in new ways to support farms. Responsible for developing new strategic direction, increasing membership from 400 to 4,500 households, leading $50 million fundraising campaign, creating new programs (including a highly innovative "farm viability" program), and establishing new partnerships with other key organizations. *In 2009, MFT received the Dirigo Award from the Maine Association of Non-profits as one of the best run organizations in Maine.*

MAINE HOUSE OF REPRESENTATIVES
Augusta, ME
December 2002 to 2010

Four terms in Maine's state legislature, representing 8 rural communities. Served as House Majority Leader, Chair of Committee on Taxation, and Chair of Committee on Agriculture, Conservation, & Forestry. Reputation as a non-partisan problem-solver. Led successful efforts to stabilize Maine's dairy industry, provide new state funding to protect working waterfront, fund Land for Maine's Future program, and preserve Katahdin Lake and incorporate it into Baxter State Park. *Honored by Maine League of Conservation Voters for this last item.*

COASTAL ENTERPRISES, INC (CEI)
Wiscasset, ME
September 1995 to June 2006

Director, Maine Farms Project (MFP). Created and operated an innovative program supporting farmers and food processors for Maine's premiere community development corporation. Managed eleven different activities involving farm business planning, marketing, public education, community gardens, food assistance, and a demonstration farm. Oversaw a special loan fund targeting organic farms. Supervised 7 employees and numerous subcontractors. Responsible for raising all program funds ($1.3 million in FY2006).

UNITY BARN RAISERS
Unity, ME
May 1996 to June 2006 *part-time*

Founder and Executive Director (volunteer). Provided leadership and staff support to a unique grass-roots organization that enhances the quality of life of the Unity area. Key Accomplishments: transformed a vacant downtown building into a vibrant new community center; renovated four other downtown properties; created a new downtown park, trail system, community gym, and farmers market; successfully recruited a new health center, veterinarian, insurance agency, credit union, and expanded supermarket to the community. *Unity Barn Raisers received the 2003 Noyce Award for Non-Profit Excellence from the Maine Community Foundation in recognition of its vision and success.*

UNITY CONSULTING
Unity, ME
May 1991 to September 1995

President. Built and managed a highly successful small consulting business that drew upon my knowledge of emerging technology, community development, and the environment. Select projects:

- Conceptualized a new program for introducing the latest techniques of environmentally-conscious manufacturing (ECM) within Maine, and then wrote a successful federal grant proposal (for $500,000) that enabled twenty-five Maine manufacturing firms to implement the program.
- Managed a new partnership of Maine institutions engaged in biomedical research (University of Maine, University of New England, Jackson Laboratory, Bigelow Laboratories, Foundation for Blood Research, and Mount Dessert Island Biological Laboratory). Developed case statement and organized a legislative strategy and bond campaign that resulted in $30 million in new state funding.

MAINE SCIENCE & TECHNOLOGY COMMISSION
Augusta, ME
July 1988 to April 1991

Associate Director. Responsible for creating Maine's "Centers for Innovation" program to bring new technology to Maine businesses through industry/academic partnerships. Developed initiatives in aquaculture, biotechnology, forest products, food processing, and metals & electronics manufacturing. Developed and managed a competitive process for distributing over $5 million in grant funding.

Acting Executive Director (January - June 1990). Led MSTC through a challenging transition period, helping the board set strategic direction. Represented MSTC before the Legislature and federal officials.

MASSACHUSETTS WATER RESOURCES AUTHORITY ADVISORY BOARD
Boston, MA
July 1985 to June 1988

Executive Director/Administrator. Responsible for building and guiding a completely new 67-member advisory board possessing statutory authority over the budget and policies of the Massachusetts Water Resources Authority (MWRA), which was created in 1985 to provide water and sewer services to 2.5 million Massachusetts residents and to undertake a $3 billion clean-up of Boston Harbor. Developed necessary management systems and operational procedures. Developed relationships with key community leaders and public officials. Conducted and coordinated analysis of various technological options, siting decisions, demand projections, and rate impacts. Supervised staff conducting budget and policy analysis.

Education

MASSACHUSETTS INSTITUTE OF TECHNOLOGY
Cambridge, MA
September 1979 to June 1985

- Master of Science degree in Ocean Systems Management, 1985.
  Thesis examined economic and political impacts of ocean waste disposal alternatives. Course work included: Resource Management, Coastal Zone Management, Regulation, Environmental Law, Finance, Economics, Management Sciences, Optimization and Quantitative Analysis.
- Bachelor of Science degree in Ocean Engineering, 1984.
- Bachelor of Science degree in Political Science/Public Policy, 1983.
- Active in newspaper, athletics, student government, and Sigma Chi fraternity.
- Received numerous academic and leadership honors.

Current Organizational Involvement

- Chair, Town of Unity Planning Board (for past 12 years)
- Maine Technology Institute, Agriculture and Forestry Advisory Board (new)

Past Organizational Involvement

- Past Chair, Town of Unity Comprehensive Plan Committee
- Past Chair & Treasurer, Unity College Board of Trustees
- Past President & Vice President, Kennebec Valley Council of Governments (KVCOG)
- Past Member, Millennium Commission on Hunger and Food Security
- Past Member, Governor's Dairy Task Force
- Founding Board Member & Past Vice Chair, Maine Farmland Trust
- Founding Board Member, Sebasticook Regional Land Trust
- Founding Board Member, GrowSmart Maine
- Past Member, University of Maine Board of Agriculture
- Past Chair, Northeast Sustainable Agriculture Working Group (NESAWG)
- Past Board Member, National Campaign for Sustainable Agriculture
- Past Board Member, Friends of Mid-coast Maine
- Past Member, Maine Food Policy Council
- Co-founder and past Board Member, Maine Eat Local Foods Coalition

Of Special Note

- 2005 Eisenhower Fellow. One of only eight Americans receiving this prestigious award. Traveled to Sweden and Brussels to study sustainable development and European Union agricultural policy.

- 2006 Fleming Fellow. One of thirty State Legislators from across the country chosen to participate in year-long leadership development program.

- Author of *From the Land: Maine Farms at Work.* (Besaw Publishing, 2010)

- One of *Maine Magazine's* "fifty persons who have done the most for Maine." (2013)

Personal Interests & Background

Village Soup newspaper columnist. Enjoy hiking and skiing. Amateur boat-builder and accomplished sailor. Married with two children. Raised on Nantucket Island.

Karen Hansen-Kuhn

Institute for Agriculture and Trade Policy

Director International Strategies Trade and Global Governance

Karen Hansen-Kuhn joined IATP in September 2009. She has been working on trade and economic justice since the beginning of the NAFTA debate, focusing especially on bringing developing countries' perspectives into public debates on trade, food security and economic policy. She has published articles on U.S. trade and agriculture policies, the impacts of U.S. biofuels policies on food security, and women and food crises. She was the international coordinator of the Alliance for Responsible Trade (ART), a U.S. multisectoral coalition promoting just and sustainable trade, until 2005. After that, she was policy director at the U.S. office of ActionAid, an international development organization. She holds a B.S. in international business from the University of Colorado and a master's degree in International Development from The American University - See more at: http://www.iatp.org/about/staff/karen-hansen-kuhn#sthash.5TPdhK0j.dpuf

Recent Blog posts include:

http://www.iatp.org/about/staff/karen-hansen-kuhn#sthash.5TPdhK0j.dpuf

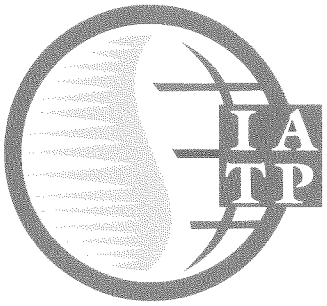
- Obama administration told to stop expanding "corporate rights" in trade agreements Published March 5, 2014
- Agriculture in TPP: Repeating NAFTA's mistakes Published February 3, 2014
- Fast track targets local foods efforts Published January 28, 2014
- We're fed up! Published January 24, 2014
- Fast tracking a corporate agenda Published January 10, 2014
- NAFTA and US farmers—20 years later Published November 22, 2013
- Secret trade agenda threatens shift toward sustainable food system Published October 24, 2013
- Lessons on globalization from Colombia's uprising Published August 29, 2013

Recent Publications include:

http://www.iatp.org/about/staff/karen-hansen-kuhn#sthash.5TPdhK0j.dpuf

- TTIP slides webinar 12/16/2013 Published December 16, 2013
- EU-US trade deal: A bumper crop for "big food"? Published October 9, 2013
- From Dumping to Volatility: The Lessons of Trade Liberalization for Agriculture Published September 19, 2013
- Who's at the Table? Demanding Answers on Agriculture in the Trans-Pacific Partnership Published March 4, 2013

- Exporting Obesity Published April 5, 2012
- Local Foods, Global: Food Aid and the Farm Bill Published March 28, 2012
- Speculation Update: Progress Report on U.S. Commodity Market Reforms Published February 24, 2012
- Q&A: Why an agriculture work program at the UNFCCC is the wrong approach for farmers, animal welfare and development Published February 23, 2012



INSTITUTE FOR AGRICULTURE AND TRADE POLICY

HEINRICH BÖLL FOUNDATION

TTIP Series

Promises and Perils of the TTIP

Negotiating a Transatlantic Agricultural Market

By Karen Hansen-Kuhn and Dr. Steve Suppan

Institute for Agriculture and Trade Policy

October 2013

10

Promises and Perils of the TTIP: Negotiating a Transatlantic Agricultural Market

By Karen Hansen-Kuhn and Dr. Steve Suppan

Published October 2013

The Institute for Agriculture and Trade Policy works locally and globally
at the intersection of policy and practice to ensure fair and sustainable food, farm and trade systems.

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The Heinrich Böll Foundation is a political nonprofit organization striving to promote democracy, civil society, equality and a healthy environment internationally.

More at boell.org

Executive summary

Still reeling from the devastation of the global financial crisis, the EU and U.S have embarked on an ambitious set of trade talks for a Transatlantic Trade and Investment Partnership (TTIP), intended to jump-start fragile markets and spur economic growth and job creation in both regions.

Tariff barriers between the U.S. and EU are already low. The bigger challenge—and the real target—is the very different approaches of the U.S. and EU to regulation. Negotiators intend to overcome these barriers through efforts to achieve "regulatory coherence." Regulatory coherence, like expanded trade, appears to be a neutral term, but the political context is not neutral at all. Industry lobby groups and their political allies continue to launch strident attacks on both sides of the Atlantic on rules that limit their ability to buy and sell goods and services. As leaders from both regions have made clear, the terms of this trade agreement will set the standard for future free trade agreements.

TTIP affect a broad range of issues, from energy to the environment, and intellectual property rights to labor rights. The agreement could also have a significant impact on the evolution of agricultural markets and food systems in the U.S. and EU. Unfortunately, little concrete information is known about the content of the TTIP proposals, since the governments involved have stated that they will not publish draft text.

It is likely that investor-state dispute resolution (ISDR), which gives investors the right to sue governments for compensation over rules that affect their expected profits, will be included in TTIP as well, despite the fact that there is no doubt that the U.S. and EU legal systems are entirely up to the task of resolving such complaints by foreign investors without resort to a trade mechanism. It is also reasonable to assume (based on numerous corporate submissions to USTR) that the EU's reliance on the Precautionary Principle will be squarely on the agenda in discussions on food safety, environmental protection and public health.

In both the U.S. and EU, the time to influence the substance of the agreement is before it is completed and submitted to the relevant legislative bodies for their votes for or against ratification. That's a tricky task, since the negotiations are happening behind closed doors, but it means that civil society groups and legislators need to pay close attention to what is on the agenda, even without complete information.

In this paper, we outline some of the concerns for healthier, more equitable and sustainable agriculture and food systems:

- **FOOD SAFETY:** Differing food safety standards have been the subject of trade disputes between the U.S. and EU for years. Complaints lodged at the World Trade Organization (WTO) by the U.S. government have focused on EU restrictions on genetically modified organisms (GMOs) and veterinary growth hormones that are deemed safe in the U.S. but are banned in some EU member states. TTIP proposals on Sanitary and Phytosanitary standards (SPS) and Technical Barriers to Trade (TBT), such as product labeling, seek to go beyond WTO commitments and include pressure to subject SPS and TBT standards to Investor-State Dispute Resolution. There is also pressure to lower EU standards on meats and poultry, including those on hormone-treated beef, controversial growth promotion hormones, such as ractopamine and chlorinated rinses of poultry carcasses. The EU, for its part, is seeking to overturn limits on its exports of beef despite concerns over EU member state controls to prevent Mad Cow Disease.

  This deregulatory approach could carry over into emerging technologies, such as the use of nanotechnology in food and agriculture, even though there are no clear U.S. regulatory definitions of nanomaterials, and much less risk assessment of the impacts of nanomaterials on human health and the environment. The TTIP negotiators are tasked to provide a least–trade restrictive framework for harmonizing SPS regulations on nanotechnology, when specific regulations do not yet exist.

- **CHEMICAL POLICY REFORMS:** Rules on the use of potentially toxic chemicals will be negotiated in the TBT chapter. Of particular concern are chemicals that disrupt the delicate hormone balance in the human body. The EU's Regulation on Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) is a process firmly grounded in the Precautionary Principle. To the contrary, in the U.S. the outdated Toxics Substance Control Act of 1976 (TSCA) puts pressure on the Environmental Protection Agency to prove that chemicals are unsafe, rather than on the industries producing the chemicals to prove that they are safe before they enter the market. USTR has been pushing back against REACH since its inception, citing its approach as TBT at the WTO.

- **PROCUREMENT POLICIES AND LOCAL FOODS:** As part of the global movement towards healthier foods, new governmental programs, such as the U.S. Farm to School programs and similar initiatives in Italy, Denmark and Austria, include bidding contract preferences for sustainable and locally grown foods in public procurement programs. Food Policy Councils are also bringing people together to generate locally grounded proposals for healthier, more sustainable foods and agriculture.

One of the most ambitious, the Los Angeles Food Policy Council, has made procurement a central element of their programs. Both the U.S. and EU have criticized "localization barriers to trade." The EU, in particular, has been insistent on the inclusion of procurement commitments in TTIP at all levels of government, for all goods, and in all sectors—potentially including commitments on these public feeding programs.

- **FINANCIAL SERVICE REFORMS:** The links between agriculture, food security, financial services and commodity market regulation are multifaceted. New rules being developed under the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) in the U.S., and the EU's revised Markets in Financial Instruments Directive (MiFID) process seek to increase the transparency and comprehensiveness of reporting to regulators by market participants and prevent market disruption by unregulated, dark-market trading. Efforts are underway to ensure that the rules on both sides of the Atlantic are consistent. Upward harmonization of financial and commodity market regulation could be derailed by proposals to include them in the TTIP financial services chapter and to make financial reform rules subject to investor-state dispute resolution.

While there may be legitimate reasons for and benefits from regulatory coherence between the U.S. and EU, those discussions of public rules need to happen under conditions of full transparency and should not be subsumed within a trade agreement. The TTIP negotiations should result in an agreement that prohibits—rather than promotes—efforts by corporations to play off regulatory standards in one jurisdiction against the other. Those dialogues should hold open the possibility that the best avenues for progress could be outside the constraints of trade rules, as happened with the recent U.S.-EU agreement on organic standards. Proposals to broaden the definition of investment to apply to SPS and financial market regulations, making them subject to challenge under investor-state dispute resolution, should be firmly rejected.

If this is truly to be a "high standards" agreement, and if there is any hope that "harmonization" does not mean shifting standards towards the lowest common denominator, then the U.S. and EU governments need to start from a thorough redefinition of "regulatory coherence" that prioritizes human and environmental well-being over market openings. That seems entirely improbable given statements made by the governments up to this point. Improbable isn't the same thing as impossible though. The current approach is a political choice; alternatives are entirely possible. If not, and the talks are to continue along the lines of other recent trade agreements, then civil society and policymakers should seriously consider putting a halt to the TTIP.

Introduction

Still reeling from the devastation of the global financial crisis, the U.S. and EU have embarked on an ambitious set of trade talks intended to jump start fragile markets and spur economic growth in both regions. In his 2013 State of the Union Address, U.S. President Barack Obama announced that, "we will launch talks on a comprehensive Transatlantic Trade and Investment Partnership [TTIP] with the European Union, because trade that is fair and free across the Atlantic supports millions of good-paying American jobs." At the opening of the talks in July, European Commission President José Manuel Barroso stressed the urgency of the talks, saying that, "we intend to move forward fast. The current economic climate requires us to join forces and to do more with less. More importantly, in doing so, we will remain strong global players who set the standards and regulations for the 21st century."

Why are the talks so urgent, and what does it mean for the world's two largest economies to set the standards? How would the trade agreement affect farmers, workers, consumers and those who care about the environment in both regions? What about efforts to reshape agricultural production to produce healthier, more equitable and sustainable food systems?

Trade barriers between the U.S. and EU are already remarkably low, with weighted tariffs for U.S. agricultural exports to the EU averaging just 4.8 percent, and 2.1 percent for EU exports to the U.S.,[1] differences that could vanish with minor fluctuations in exchange rates one way or the other. The bigger challenge—and the real target—is the very different approaches to regulation. Regulatory coherence, like expanded trade, is in itself a neutral term but appears to be gaining specific meaning in the context of this and other recent trade agreements. Leaked versions of the regulatory coherence chapter of the Trans-Pacific Partnership (TTP), for example, reveal a strong emphasis on the use of U.S.-style cost-benefit analyses to regulations, an approach that is much too limited for rules on such issues as the environment, public health and food systems.[2] Recent statements by U.S. Trade Representative Michael Froman urge the EU to be more like the U.S. in setting such standards. EU Trade Commissioner Karel de Gucht said "I would like to see a set of horizontal rules to guide regulatory co-operation—and what I mean by that is we should ultimately strive for the mutual recognition of our regulations across a broad range of sectors."[3] Mutual recognition, like regulatory coherence, has the potential to lower standards, depending on the process used and the political context.

The political context is not neutral at all. Industry lobby groups and their political allies continue to launch strident attacks on both sides of the Atlantic on rules that limit their ability to buy and sell goods and services. As leaders from both regions have made clear, the regulations set in this trade agreement will set the standard for free trade agreements of the future.

The trade agreement could affect a broad range of sectors, from energy to environment, intellectual property rights and labor rights. TTIP could also have a significant impact on the evolution of agricultural markets and food systems in the U.S. and EU. Unlike the global World Trade Organization (WTO), there is no specific chapter in TTIP on agriculture. Instead, the rules affecting agriculture, food safety and food systems are woven throughout the texts. Also unlike the WTO, which publishes negotiating proposals on its website, little is known about the content of the TTIP proposals, since the governments involved have stated that they will not publish draft text.

That lack of transparency is already a major issue of concern for legislators and civil society. The office of the United States Trade Representative (USTR) and the EU Directorate General of Trade convened a stakeholder event at the start of the talks in July in Washington, D.C. It also issued public requests for written submissions. But so far, those have been one-way conversations, with some 300 representatives of civil society and businesses testifying on the basis of general statements like the EU-U.S. High-level Working Group report and the specific contents contained in leaked texts on negotiating proposals. A briefing for stakeholders at the end of the talks provided general feedback, not specific information, on the concerns and proposals raised during the sessions.[4]

It is reasonable to assume that the proposals advanced in these negotiations will be consistent with those in the Canada Europe Trade Agreement (CETA), the Trans-Pacific Partnership (TPP) and other bilateral trade agreements negotiated by either side. It is to be expected (although probably not reasonable), for example, that investor-state dispute resolution, which gives investors the right to sue governments for compensation over rules that affect their expected profits, will be included in TTIP as well, despite the fact that there is no doubt that the U.S. and EU legal systems are entirely up to the task of resolving such complaints by foreign investors without resort to a trade mechanism.

It is also reasonable to assume that the EU's reliance on the Precautionary Principle will be squarely on the agenda in discussions on food safety, environmental protection and public health. Numerous submissions to USTR by corporations have attacked the Precautionary Principle (a basic principle enshrined in the EU's founding Treaty of Lisbon) as unscientific and grounded more in politics than sound policy. Their insistence on "sound science" glosses over the fact that all too often, the full extent of the risks of new chemicals

and technologies are not known nearly as quickly as regulators allow their commercialization. This is especially true for emerging technologies and food safety, in which new research demonstrates real reasons for concern about unexpected consequences of food additives, both for human and environmental health.

We should not assume that these are the only possible options for better economic ties between the U.S. and EU. For example, common standards for organic foods negotiated between the U.S. and EU offers an alternative approach to rigid trade deals. The carefully crafted Organic Equivalency Arrangement incorporated input from farmers, businesses and civil society. The arrangement, which began in 2012, recognizes certification by the USDA National Organic Program as equivalent to the EU Organic Program. It provides for periodic reviews and establishes a work plan to exchange information on emerging issues.[5] It provides a flexible basis for mutual learning and expanded trade in those goods. The fact that this bilateral arrangement was negotiated on its own, outside the "horse trading" inherent in any trade negotiations, created the conditions for a reasonable approach that can also be reopened should conditions change in the future.

The process of negotiating and ratifying the TTIP commitments is almost as important as the content. In the United States, only members of the Trade Advisory Committees have access to negotiating texts and open dialogues with negotiators at all stages of the negotiations. Those committees are overwhelmingly dominated by corporations.[6] Once the agreement has been completed (and only at that point publicly available) and signed by the president, it would be submitted to Congress for ratification. President Obama will request Fast Track Authority (formally known as Trade Promotion Authority) from Congress, most likely in the fall of 2013, so that the resulting agreement (and others, probably including the Trans-Pacific Partnership) can be submitted without the possibility of amendments and with strictly limited floor debates in Congress. Fast Track is widely criticized as an outdated, undemocratic procedure and will itself be the subject of intense lobbying and debate in the U.S. this fall.

In the EU, the agreement would be initialed for consideration by the European Council, which at that point would publish the completed text in all official EU languages. After signature by the president, it would be submitted for ratification by the European Parliament. As in the U.S., no amendments are permitted at that stage. If the agreement includes provisions that are the responsibility of Member States (rather than the EU as a whole) it would also be submitted for ratification in those parliaments.[7]

In both the U.S. and EU, the time for input on the substance of the agreement is before it is completed and submitted to the relevant legislative bodies for their votes for or against ratification. That's a tricky task, since the negotiations are happening behind closed doors, but it means that civil society groups and legislators need to pay close attention to what is likely to be on the agenda, even without complete information. It is not clear, for example, that local foods systems could be subject to procurement commitments under TTIP, but that is entirely consistent with EU calls for the inclusion of all goods and all sectors, at all levels of government.

In this paper, we attempt to outline some of the concerns around topics that are key for healthier, more equitable and sustainable agriculture and food systems: food safety and additives, chemical policy, procurement rules, and financial and commodity market reforms. This list is certainly not exhaustive, but we are troubled by how strongly this trade agenda represents almost exclusively the interests of multinational corporations and financial institutions to the detriment of other concerns. We hope this analysis will stimulate more questions, and perhaps some answers on what's really at stake in the TTIP before the agreement is completed and proceeds to ratification.

Food safety, livestock and plant health in the TTIP

Differing food safety standards have been the subject of trade disputes between the U.S. and EU for years. Complaints lodged at the WTO by the U.S. government have focused on restrictions on genetically modified organisms (GMOs) and food additives that are deemed safe in the U.S, but are still questioned and even banned in some EU member states. Up to this point, those issues have been debated at the WTO and at Codex Alimentarius (Codex), a standards-setting body housed at the United Nations with the participation of more than 180 countries. Codex standards form the basis for the WTO's agreement on Sanitary and Phytosanitary Standards (SPS), which in turn is the reference point for bilateral trade and investment agreements. Agreements in bilateral or regional trade agreements like TTIP can either refer to the WTO agreement or "go beyond" it to loosen its restrictions on food safety.

The origin for the TTIP proposal to seek a chapter on trade-related SPS that "goes beyond" the WTO's SPS agreement is a recommendation of the U.S. EU High-level Working Group on Jobs and Growth.[8] This recommendation is founded on econometric projections that increasing agricultural trade will result in economic growth and job creation, and that domestic food safety, animal health and plant health measures can be "disguised trade barriers." So, for example, the U.S. Trade

Representative's (USTR) report on SPS barriers to trade states, "Overall, U.S. farm exports totaled $145.2 billion in 2012. According to the U.S. Department of Agriculture's Economic Research Service, each $1 billion in agricultural exports supports approximately 6,800 jobs on and off the farm [down from 8,400 jobs in the 2012 report]. At the same time, however, SPS trade barriers prevent U.S. producers from shipping hundreds of millions of dollars' worth of goods, harming farms and small businesses. The elimination of unwarranted foreign SPS trade barriers is a high priority of the U.S. Government."[9]

In reality, farmers and ranchers sell their raw materials to and buy inputs from U.S. agribusiness firms at the prices those firms stipulate (with some exceptions for small niche markets). SPS related trade disputes concern the agricultural chemicals, veterinary drugs and genetically modified seeds, food additives, processed foods and other products manufactured and/or traded by transnational agribusiness. Bulk commodities comprise less than 20 percent of the value of U.S. agribusiness exports.[10] USTR interest in SPS issues is a function of increasing market access for these products. It is no surprise that the lead U.S negotiator for agriculture market access is also the lead negotiator for SPS issues.[11] Despite the trade negotiators' repeated promises to protect public and environmental health in the agreement, the bottom line of TTIP is to increase exports and imports for the companies and sectors represented by trade advisors.

We should also take the econometric claims made for jobs created from trade with a huge grain of salt, not only because they ignore the jobs lost as a result of imports and incentives to outsource production to non-U.S. facilities, but because year in and year out, these claims have been flat out wrong,, e.g. by about $10 billion in the case of the U.S.–South Korea Free Trade Agreement, with a net loss of 40,000 jobs.[12]

Seventy-six members of the U.S. Congress, representing their agribusiness constituents, are lobbying the USTR to make SPS standards "fully enforceable" in TTIP through a dispute settlement mechanism that would "go beyond" the dispute settlement mechanism of the WTO. Though the design of the mechanism is not stipulated in the congressional letter, it presumably would give agribusiness companies the right to sue EU member state governments (or the U.S. government) over SPS regulations and implementation measures through the investor-state mechanism, a right they currently do not enjoy. Thus far, the USTR has been unwilling to apply an investor state mechanism to SPS disputes in other trade agreements.[13]

If investor-state does apply to SPS issues in the TTIP, U.S. investor lawsuits and threats thereof will find a varied reception among EU member state governments. For example, in Italy, the Minister of Agriculture is seeking to ban the planting of GM crops, even while acknowledging that such a ban might be illegal under EU law.[14] EU member states are required to accept the scientific opinions of the European Food Safety Authority (EFSA) as binding, unless a government can show that EFSA failed to consider relevant science. NGOs and some EU member states have argued that EFSA risk assessments are incomplete, since they do not review the ecological effects of GMOs, such as the rise of pesticide-resistant "superweeds," but instead only review toxicological literature and biotech-company supplied data.[15]

Countries such as Italy and Austria, which have invested heavily in certified organic agriculture, worry that those investments will be undermined by the failure of the European Commission and the United States to develop enforceable rules to ensure that organic crops will not be contaminated by transgenic ones. At the other end of the spectrum is the United Kingdom, whose Minister of Environment (!) urged the commercialization approval of GM varieties, arguing that "The use of GM could be as transformative as the original agricultural revolution."[16]

Since the failure in 2011 of the European Commission, the European Council of Ministers and the European Parliament to agree on the terms to revise the 1997 Novel Foods Regulation, EU law on new food technologies food has been fractured between the positions of agribusiness and consumer group interests.[17] Perhaps as a result of this division, the commission has not advanced any product specific SPS related offensive agricultural interests.[18] Rather, the commission's strategy appears to be to use "horizontal" SPS rules applying to all products to circumvent the Novel Foods debate for transatlantic agribusiness firms.

In the U.S., food safety is regulated by a patchwork of over 30 laws administered by 15 agencies. Because of the inefficiencies and vulnerabilities of that patchwork, the General Accountability Office (GAO) has made scores of recommendations for consolidating the system to reduce U.S. vulnerability to foodborne illness.[19] Recommendations for consolidating all food safety authority in an agency with no statutory authority for marketing have been staunchly resisted.

The U.S. Department of Agriculture (USDA) is home both to various offices that support U.S. agricultural exports and the Food Safety Inspection Service (FSIS), which has authority over the safety of meat and poultry products. The Food and Drug Administration (FDA) regulates a broad array of foods, food ingredients, food contact surfaces, veterinary drugs and other products. However, for imported foods, under the

authority of the Food Safety Modernization Act, the FDA will be delegating its authority to private third-party certifiers of food export facilities.[20]

Another industry potentially affected by the negotiations is dairy. While the EU wants to lower tariffs to increase dairy exports, European offices of global agribusiness firms, like their U.S. counterparts, are demanding the removal of non-tariff barriers.[21] In any case, the historic deadlock between U.S. and EU trade negotiators will almost certainly make discussions on SPS a central point of contention in the TTIP negotiations. The most salient topics in these talks include:

Genetically modified organisms (GMOs)

The Coordinated Framework for Regulation of Biotechnology of 1986 remains the basis for the regulation of U.S. agricultural biotechnology. The policy assumed, nearly a decade before any GMOs were commercialized, that GMOs were "substantially equivalent" to their traditional counterparts and posed no risks that would require specific legislation or risk assessments. As a result there is no required pre-market safety testing, and no applications to commercialize GMOs have been rejected.[22] Although the 1986 policy is supposed to be "science-based" and the scientific basis of the policy is now 30 years old, nearly a decade of efforts to revise the policy to take into account new science, e.g., in targeted gene modification and synthetic biology, have floundered.[23] There is likely great concern among U.S. and industry officials that the legal premise of "substantial equivalence" cannot hold up in light of subsequent scientific publication.

U.S. crop exporters and seed companies are relying on removal of SPS barriers on GMOs to increase exports under TTIP. A U.S. Grains Councils letter to USTR notes the wide variability in the tonnage of U.S. feed grain exports to European Union member states, e.g., "6,000 tons in 2008 to 944,000 tons in 2011."[24] Remarkably, the letter characterizes the primary reason for this variability not as a result of falling demand or of price increases and volatility resulting from bank and hedge fund speculation in commodity markets,[25] but as a result of "asynchronous biotechnology policy" and asynchronous commercialization approvals that "prevent market access." They assert that, "This variability in exports can be tied to [the] timing of EU approvals of GM corn traits." This remarkable explanation for export variability is buttressed with anecdotal claims, not export figures to EU member states that could have been readily cited from Department of Commerce statistics. The explanation also fails to take into account longer-term competition from countries that have expanded their feed grain acreage and exports.[26]

Given the Grains Council's single-factor understanding of export variability, it is no surprise that it urges USTR to negotiate the TTIP SPS chapter so as to make the EU regulatory review system for GMOs just like the U.S. commercialization approval system. The Grains Council notes that more and more GMO varieties approved by U.S. agencies are multi-trait "events," e.g., a trait to allow application of a certain pesticide with a trait claiming that to confer drought tolerance. The Council letter then states "in the United States, when a single event is approved, any combination of that event with other approved single events is automatically approved (or is approved thereafter with a fast-track procedure). The EU conducts a separate risk assessment for stacked events [multi-trait varieties]."[27] The U.S. approval system assumes that there will be no environmental or public health risk from the interaction of approved single trait varieties. The EU risk assessment system makes no such assumption. The Grains Council looks to the USTR to negotiate an SPS chapter that will synchronize the EU risk assessment process with the U.S. automatic approval process in order to expedite U.S. exports.

Livestock growth hormones, poultry carcass rinses and mad cow disease

Industry letters concerning the use and levels of livestock growth hormone residues in meat and poultry carcass rinses in poultry processing are indicative of the SPS barriers to trade in meat and poultry that the USTR will seek to remove in the TTIP. In addition, the North American Meat Association invokes a recently approved standard of the Codex Alimentarius Commission for ractopamine as demonstrating that the failed asthma drug, used in the U.S. for about 20 years to increase livestock growth before slaughter, is "safe."[28] Ractopamine has been banned in many countries, including the EU, both because of its impacts on animal health, and due to concerns that the accumulated consumption of ractopamine in meat could interfere with the control of asthma by other medications. The extremely controversial Codex vote on a ractopamine standard, approved by a margin of two of the more than 180 government members, was based on a literature review of six studies, three furnished by the ractopamine manufacturer. The EU strongly opposed the standard and fought back a U.S. attempt to pass a standard for recombinant Bovine Growth Hormone, on similarly limited and outdated studies.[29]

Chlorine rinses of poultry are also a subject of controversy. Under a proposed USDA rule to privatize poultry carcass inspection (HACCP Inspection Model Project - HIMP), plant employees would have only about a third of a second to "inspect" the carcass for fecal matter and deformities that are not classified as "contaminants" under USDA rules.[30] Rinsing the carcasses with various diluted chemicals is the only way

to maintain the line speeds, despite myriad worker injuries, and have not have systemically contaminated poultry products. Despite the excoriation of HIMP by the General Accountability Office,[31] the USDA and poultry industry continues to insist on the efficacy of privatized inspection and the safety of the poultry rinses.[32] The U.S. made acceptance of the poultry rinse a top priority in the Transatlantic Economic Council[33] and will very likely use the TTIP as another forum for exporting poultry with fecal matter decontaminated with the rinses.

Mad cow disease: a bargaining chip?

A May 10 letter from the National Cattleman's Beef Association (NCBA) to the USTR indicates that the U.S. regulatory regime for preventing Bovine Spongiform Encephalitis disease (BSE, popularly known as mad cow disease) may become part of the TTIP bargaining process. The risk of BSE, a fatal neurological disease in livestock that is acquired by humans through the consumption of meat from infected animals, is deemed by the World Animal Health Organization (WHO) to be "negligible" in the United States.[34] The USDA characterized the last reported instance of BSE in U.S. herds, in April 2012, as "atypical" and not tied to the most likely vector of infection, the beef cattle consumption of animal feed containing rendered bovine products.[35] As a result, the U.S. "negligible" status was not down graded to "under control," the status of BSE risk in several EU member states, above all the United Kingdom, the epicenter of BSE infection in the 1980s and 1990s.

NCBA claims that "certain European Union member states continue to link their support for approval of lactic acid to the publication of a comprehensive BSE rule."[36] In February, The European Commission approved a rule to allow lactic acid rinse to decontaminate beef carcasses.[37] However, rule approval is not tantamount to EU member state implementation of the rule.

The USDA has had a draft rule under consideration since 2008 for the import of bovines and bovine products from countries that have had BSE. One factor delaying publication of a final rule is that the United States might have to allow beef imports from countries in the EU that have a BSE surveillance inspection rate of cattle similar to that used in the United States (40,000 post mortem inspections out of a herd of 35 million in 2012). The draft rule has been the subject of a lawsuit, for failure to protect U.S. cattle, domestic cattle producers and U.S. beef consumers.[38] EU member states wanting to export their beef to the United States might litigate under the TTIP if the USDA's final BSE import rule required more stringent surveillance inspection of EU herds than of U.S. herds.

Human tolerance for agricultural pesticides on agricultural crop exports

The regulatory metric for human tolerance to pesticide residues in agricultural crops is Maximum Residues Levels (MRLs). In lobbying letters to the USTR, both pesticide manufacturers and crop exporters complain that EU import MRLs are too stringent, too costly and require too much information to satisfy EU member state import authorities. The U.S. Hop Industry Plant Protection Committee proposes a typical, if generic, solution to this complaint: "In the TTIP, establishing a way to streamline import tolerances in the EU and harmonizing MRLs with U.S. levels would be very much appreciated."[39]

Nanotechnologies and nanomaterials

Nanotechnology involves the synthesis, visualization and manipulation of materials at the atomic to molecular-sized level for use in industrial, consumer and agricultural products and processes. The size, shape and configuration of Engineered Nanoscale Materials (ENMs) confer material properties that are of great commercial interest to a broad range of industries. For example, nanoclays and and nano-titanium dioxide incorporated into food packaging biopolymers would retard oxidation and allow meats, fruits and vegetables wrapped with such bio-polymers to appear to be fresher for a longer period.[40]

However, the manufacture of ENMs and their incorporation into consumer and industrial products is not regulated either in the EU or the U.S. The TTIP negotiators are tasked to provide a least trade restrictive framework for harmonizing SPS regulations on nanotechnology, when regulations do not yet exist. According to some advisors to USTR, the TTIP should be negotiated to prevent regulatory divergence that would impede trade in products with ENMs. For example, the American Chemical Council advocated to the USTR that the EU should drop its particle count based definition of nanomaterials and adopt a weight-based definition supported by the ACC in the International Council of Chemicals Association as a "solid basis for Transatlantic cooperation" to remove non-tariff trade barriers to ENMs.[41]

It is a matter of considerable controversy as to whether a weight-based definition of ENMs would be a practical definition for regulators, especially for import inspection and testing.[42] While there are several means to visualize nanoparticle count for the purpose of determining the properties of an ENM or ENM compound, a weight-based ENM definition could prove to be impracticable for the purpose of determining whether environmental health or safety risks were significant in a product incorporating ENMs. For example, the amount of nanosilver in a pesticide product would be less relevant to judging its safety and efficacy than the mass to

surface ratio that enables nano-enabled pesticides to apply to more of the surface of the target pest than macro-counterparts to those pesticides. However, a potential controversy over the scientific bases for a regulatory definition of ENMs is just one of many that TTIP negotiators will try to head off in the generic SPS legal framework.

The EU rules targeted by U.S. agribusiness and industry go well beyond those outlined here. To avoid creating public controversy, it is very unlikely that EU laws or even regulations will be challenged directly. However, to judge by the agribusiness rejection of the USTR proposal for an SPS consultation mechanism in the Trans-Pacific Partnership agreement negotiations, it is unlikely that agribusiness will be satisfied until all EU food safety, animal health and plant health laws, regulations and implementing and enforcement measures are subject to an investor-state dispute settlement process.[43] They are apparently unconcerned that U.S. SPS standards could be overturned by challenges emanating from the European affiliates of U.S. agribusiness firms.

Chemical policy reforms and TTIP*

While trade agreements tend to focus on removing barriers to the free flow of goods and services, including regulatory barriers, that impulse must be tempered by broader social and public health goals around our food system. Rules on the use of potentially toxic chemicals fall under what are called Technical Barriers to Trade, and will undoubtedly be on the agenda in the TTIP negotiations. Because the EU takes a very different approach to regulating toxic chemicals than the U.S., how these rules are negotiated could have important ramifications for environmental and public health.

The growing movement for healthier, more sustainably produced foods around the world focuses not only on how foods are grown, but also on what happens between the points when they leave the farm and arrive on our plates. There is growing recognition of the downside of processed foods, including the role of questionable additives used as preservatives or flavor enhancers. It is not only what's in the food itself, but also how it is packaged that matters, especially when potentially toxic chemicals leach out of those containers and into our foods and our bodies.

We are only now coming to understand the full impacts of the use of industrial chemicals in and on our food.[44] Their use in both agriculture and consumer products results in daily exposure to an array of chemicals that builds up in the food chain. We are also exposed to some of these same chemicals from other consumer products and building materials. Of particular concern are chemicals recognized as hormone disrupters that impact the delicate hormone balance in the human body.

Hormone disrupters are especially harmful because they can exert health impacts even at minute levels of exposure and exposures in the womb can have lifelong impacts. Emerging science points to their role as obesogens. A 2011 U.S. National Institute of Environmental Health Sciences (NIEHS) expert workshop concluded that the scientific literature supports a link between certain environmental chemicals and increased risk for obesity as well as Type 2 diabetes.[45]

These chemicals can affect the size and number of fat cells or the hormones that regulate appetite and metabolism. They can also cause changes in gene expression, or epigenetic changes, which can have intergenerational impacts. Prenatal and early life exposures to chemical obesogens are especially impactful, as they may alter metabolism and development of fat cells over a lifetime.

Bisphenol A (BPA), to cite just one example, is a chemical component of polycarbonate plastic used in many food and drink containers and in epoxy resins used as coatings in food cans. The U.S. Centers for Disease Control (CDC) biomonitoring program has detected BPA in the urine of 93 percent of adults sampled.[46] Scientists have measured BPA in the blood of pregnant women, in umbilical cord blood and in the placenta.[47] BPA disrupts hormones in the human body and animal studies show that low-dose early life exposure is linked with reproductive and developmental problems, genetic damage[48] and cancer.[49] There is growing evidence from both animal and human studies of BPA's obesogenic effects.

In addition, exposure to phthalates, which are hormone-disrupting chemicals commonly found in plastics and fragranced personal care products, has been linked to liver and thyroid toxicity, reproductive abnormalities and adverse effects on the respiratory system, including asthma.[50] There is also evidence that DEHP, a phthalate used in PVC, is an obesogen.

Unfortunately, despite these risks, the regulation of these chemicals is at an early stage in both the U.S. and EU. There are no limits in the U.S. on the use of BPA at the federal level, but 12 states (California, Connecticut, Delaware, Illinois, Maine, Maryland, Maine, Minnesota, New York, Vermont, Washington and Wisconsin) have banned BPA in baby bottles and cups. The bans in Vermont, Connecticut, Minnesota and Maine also include baby food and formula containers.

While the EU has not banned endocrine disruptors, Denmark, France, Belgium and Sweden have each banned the use of BPA in all food containers used by children under three

*Chemical policy reforms and TTIP was written with Kathleen Schuler, IATP.

years old. Denmark is phasing out the use of four phthalates (DEHP, DBP, DIBP and BBP) in shower curtains, table cloths and other consumer goods because of their impacts as endocrine disruptors. In March, the European Parliament approved a resolution introduced by Swedish Member Asa Westlund calling for the EU to designate endocrine disruptors as "substances of very high concern" under its Regulation on Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) process.[51]

Designating a chemical as a "substance of very high concern" puts it on a fast track for serious review within the REACH process. REACH, which was established in 2006, puts the burden of proof on companies to establish the safety of the chemicals they use. It establishes a process of registration, evaluation and, if harm is established, restriction of those chemicals.[52] It is firmly grounded in the precautionary principle to ensure that chemicals are safe before they enter the broader environment. Using a hazard-based approach, it identifies unacceptable properties, establishes a process to generate information about whether particular chemicals cause those impacts, and encourages the substitution of chemicals deemed hazardous with safer alternatives (which, in many cases spur innovation within those industries).[53] Companies are required to develop and submit information on the safety of both new and existing chemicals.[54]

In the U.S., chemical safety is regulated under the Toxic Substances Control Act of 1976 (TSCA). In contrast to REACH, TSCA grandfathered in thousands of chemicals. The EPA has required safety testing on just 200 of the over 80,000 chemicals used in commerce. It utilizes a "risk-based" approach, which requires a complete risk assessment by government authorities before any regulations are enacted. In practice, this puts the burden of proof on the US Environmental Protection Agency (EPA) to prove that chemicals are unsafe, rather than on the industries producing the chemicals to prove that they are safe before they enter the market.[55]

TSCA requires the EPA to consider the economic impacts of restricting a chemical in addition to environmental health and safety considerations. To illustrate TSCA's failings, after ten years of rulemaking, the EPA's proposal to ban asbestos was shot down by the courts because the economic burden on industry threshold was not satisfied. Efforts to reform TSCA so that it better regulates toxic chemicals in consumer products, including chemicals that might be used in food packaging, are underway, with important votes in the U.S. Congress taking place in 2012 and 2013, but no changes have been enacted yet, and current prospects for change seem slim.

The presidential office of the U.S. Trade Representative (USTR) has been pushing back against REACH since its inception, citing its approach as a Technical Barrier to Trade (TBT). In its yearly report on TBTs, USTR states that it has raised concerns about REACH at nearly every meeting of the WTO's committee on TBTs since 2003, saying that its stricter process unfairly limits U.S. exports.[56]

The conflicts between those very different regulatory approaches will likely be on the agenda in the TTIP negotiations. In the report of the joint High-level Working Group on Jobs and Growth, both the U.S. and EU point to the need to lower "behind the border" barriers to trade, i.e., regulatory issues that constrain the free flow of goods, services and investment. Rules on chemicals would be dealt with in the Technical Barriers to Trade chapter, which would "go beyond" disciplines agreed to at the World Trade Organization, "to yield greater openness, transparency, and convergence in regulatory approaches and requirements and related standards-development processes, as well as, inter alia, to reduce redundant and burdensome testing and certification requirements, promote confidence in our respective conformity assessment bodies, and enhance cooperation on conformity assessment and standardization issues globally."[57]

This point is echoed in submissions to USTR by the American Chemistry Council, United States Industrial Fabrics Institute, Transatlantic Business Council, Dow Chemical Company, National Foreign Trade Council and DuPont, among others. The American Chemistry Council specifically cites objectives on endocrine disrupters, saying, "A lack of regulatory compatibility with respect to endocrine disrupting chemicals could have a significant impact on trans-Atlantic trade, on agricultural as well as industrial goods."[58]

It may be that these differences really are too big to bridge in the trade talks. In its position papers developed in preparation for the first round of TTIP in July, the European Commission Trade Policy Committee recognizes that the fundamental differences between TSCA and REACH means that, "neither full harmonization nor mutual recognition seem feasible on the basis of the existing framework legislations in the U.S. and EU." It prioritizes cooperation in identifying chemicals for assessment, promoting alignment in classification and labeling of chemicals, cooperation on emerging issues (including endocrine disruptors), and enhanced information sharing, particularly how to exchange data obtained from reports including confidential business information.[59]

Both the U.S. and EU have expressed interest in exploring mutual recognition agreements that would recognize results of safety assessments in one country being treated as valid in other parties to the agreement. In his testimony to the

U.S. Congress, Carroll Muffett, President of the Center for International Environmental Law, stresses that, "Mutual recognition in the chemical sector and other sensitive sectors involving public health, safety or the environment is wholly inappropriate. For chemicals, mutual recognition provisions would essentially erase the measures for chemicals that are restricted in only one jurisdiction[...]Such provisions could subject European citizens to the inability of U.S. regulators to take meaningful steps toward chemical safety under a deeply flawed TSCA."[60]

There is also a risk that these provisions, as well as the drive for "regulatory coherence" at the sub-federal level that runs throughout the TTIP objectives, could limit the progress of locally driven initiatives to move up the ladder to federal or EU-wide regulations. In the cases of endocrine disruptors such as BPA and phthalates, real progress is starting at the state level in the U.S., and at the member state level in the EU, and then building up toward meaningful change at the federal levels. The science on the impacts of these harmful chemicals in our foods is evolving, both on recognized hazards contributing to reproductive problems and cancer and in their role as obesogens. Any agreement reached in TTIP should be firmly grounded in the precautionary principle and strive to achieve the highest possible level of harmonization, rather than putting up new roadblocks to progress in removing harmful chemicals from our food systems and environments.

Procurement policies and local foods

Efforts to promote healthier, more sustainably produced foods span the entire food chain, from farm to table, and increasingly, from farm to school, hospital or other public institution. These programs recognize the value of fresh, healthy foods, and contribute to making connections between urban consumers and farmers, thereby promoting sustainable livelihoods. There are thousands of farmers markets, farm-to-supermarket efforts and other voluntary initiatives along those lines throughout the United States and Europe.

As part of this movement toward local foods, new governmental programs are emerging that include bidding preferences for sustainable and locally grown foods in public procurement programs. In the United States, the 2008 Farm Bill specifically authorized public schools to include geographic preferences for locally grown unprocessed foods in their purchasing decisions.[61] This goes beyond the Buy America provisions for those programs that for the most part require purchases of U.S. foods (allowing, of course, for imports of fruits and other foods not produced in the United States). The Farm to School programs (which are funded through USDA and state governments) take those kinds of preferences a step farther, including bidding criteria for fresh foods that are sustainably produced and grown locally. Chicago Public Schools even included preferences for antibiotic free, locally grown chicken in its school lunch program, which reaches students in 473 schools.[62]

These programs now reach almost six million students in all 50 states. These popular initiatives have been successful both because they help the school systems to source fresher, healthier foods at fair prices and because they support urban to rural connections that build communities and encourage local economic development. New proposals to broaden that approach to foods for hospitals and other public institutions have emerged in Minnesota, Oklahoma, Vermont and other states.[63] In 2013, lawmakers in Oregon approved $1 million for a new program that couples food and garden education programs with purchases of healthy and sustainable foods for school lunches from local farmers.[64]

Similar initiatives in Europe also encourage local preferences for school lunch programs. In Italy, for example, schools consider location, culture and how foods fit into their educational curriculum in making purchasing decisions.[65] As of 2010, 26 percent of school food purchases in Rome were from local farmers and 67.5 percent were organic. EU procurement rules seem to limit such preferences, but Denmark, Austria and other countries have interpreted those rules liberally to allow for sustainable and locally procurement of food in various public programs.[66]

In the United States, Food Policy Councils are also emerging to bring together farmers and gardeners, restaurateurs and wholesalers, food workers and local government representatives and other stakeholders to generate locally grounded proposals for healthier, more sustainable foods. The programs they develop run the gamut from purely private, voluntary initiatives to public procurement programs for local schools and public feeding programs. One of the most ambitious, the Los Angeles Food Policy Council, has made procurement a central element of their programs. They developed the Good Foods Purchasing Pledge (GFFP):

> The program promotes increasing levels of achievement in five crucial categories: (1) local economies, (2) environmental sustainability, (3) valued workforce, (4) animal welfare, and (5) nutrition. A tiered, points-based scoring system allows participants to choose which level of commitment best suits the Good Food goals of their organization. Participants are then awarded one to five stars based on their total score. To encourage participation, our program provides technical assistance in sourcing, monitoring progress, and measuring and recognizing success.[67]

The City of Los Angeles and the Los Angeles Unified School District adopted the GFPP in October 2012. Together, their programs and facilities provide some 750,000 meals a day, creating new opportunities for local consumers, farmers and communities. Similar initiatives are under discussion in various cities around the country.

Unfortunately, these exciting examples of participatory food democracy could be at risk under TTIP. Both the U.S. and EU have criticized "localization barriers to trade." The EU, in particular, has been insistent on the inclusion of procurement commitments at all levels of government, for all goods and in all sectors.

This kind of initiative on sub-federal procurement commitments is relatively new in trade agreements. The original General Agreement on Tariffs and Trade (GATT) of 1947 explicitly excluded government procurement from national treatment. National treatment requires that foreign firms be treated like domestic firms and is a core tenet of the post–World War II international trade system. Government procurement was also excluded from the market access commitments of the General Agreement on Trade in Services (GATS), although Article XIII:2 of GATS led to a working party that is negotiating procurement within services at the WTO.

Procurement was one of the four so called Singapore Issues (along with investment, competition policy and trade facilitation), meaning it was added to the trade agenda after the creation of the WTO, at the first Ministerial, held in Singapore in 1996. New parties continue to join the agreement but there has been little enthusiasm from the General Council to add procurement as an issue for all members.

The main component of the WTO's work on government procurement is carried out in the plurilateral (rather than global) Agreement on Government Procurement (GPA). The GPA was first agreed to during the Tokyo Round in 1981 and significantly expanded as part of the Uruguay Round, which was concluded in 1994. The expansion extended to services not just goods, to sub-national levels of government (not just national government) and to public utilities (such as energy, water and public transport). The most recent changes to the agreement, further expanding its reach, were made in 2011. The GPA has 42 WTO members but only 15 parties, as the EU is a single party at the WTO, representing its 27 member countries. As with most WTO agreements, it has two parts: the rules and obligations, and the schedules of the individual members.[68]

Thirty-seven of the 50 U.S. states are part of the GPA. Governments at every level jealously guard their government procurement rights. The issue is already one that is expected to generate tension in the TTIP negotiations. The EU outlined its general objectives on public procurement in a "non paper" prepared in advance of the first round of negotiations for TTIP. It states that,

> This negotiation would present an important opportunity for the EU and the U.S. to develop together some useful "GPA plus" elements to complement the revised GPA disciplines, with a view to improve bilaterally the regulatory disciplines. A model text agreed between the EU and the U.S., being the two largest trading partners in the world, could thus possibly set a higher standard that could inspire a future GPA revision and where appropriate serve as a basis for the works conducted under the work program outlined in the WTO GP committee's decisions adopted on the 31st of March 2012.

In addition to that long-term ambition to build on commitments in TTIP at the WTO, the non paper describes the EU's intention to include U.S. states not already covered by the GPA and bilateral arrangements, as well as larger cities and metropolitan areas such as New York, Los Angeles, Houston, Philadelphia, Phoenix, San Diego, San Jose, Jacksonville, Austin, San Francisco, Columbus, Fort Worth, Charlotte, El Paso, Memphis, Seattle, Denver, Baltimore, Washington, Louisville, Milwaukee, Portland and Oklahoma City.[69]

The U.S. agenda on procurement is not as clear (as that text hasn't yet been leaked), but some indications emerge from a review of other recent bilateral trade agreements. Article 17.7 of the U.S.-Korea FTA, for example, specifies that Parties may include procurement criteria designed to conserve natural resources or protect the environment, or to ensure compliance with labor laws, which would seem to provide room to expand those criteria for other social goals. That agreement applies only to federal-level entities, and specifically excludes agricultural goods from procurement commitments. On the other hand, the U.S.-Peru FTA includes coverage of 30 branches of the Peruvian Universidad Nacional, 25 Peruvian provincial governments, eight U.S. states and Puerto Rico. So far, the FTAs negotiated by the United States have not included commitments on public feeding programs, but those commitments are re-negotiated with each specific agreement.

Both the USTR and the EU's Directorate of Trade have asserted that one of the major objectives in the TTIP (and other current trade negotiations) is to eliminate localization barriers to trade, including local content requirements. The EU has emphasized limits on Buy America programs, while the U.S. has produced an exhaustive list of what it considers problematic programs in its annual report on Non Tariff Barriers. This expansion of previous efforts to reduce local content preferences in government procurement contracts is relatively new,

which also means that civil society, local governments and legislators need much more information on exactly which sectors are at stake and how bidding criteria that include social, environmental and public health goals could be either threatened or accommodated in the trade commitments.

The inclusion of procurement commitments on public feeding programs would be new, but that does not mean it is out of the question. In a letter sent to USTR Michael Froman and EU Trade Commissioner Karel deGucht, some 34 food, farm and other civil society groups from the EU and U.S. laid out a number of concerns on the potential impact of the trade agreement on more sustainable food systems, including the possible inclusion of farm to school and similar programs in the trade agreement. Those concerns were also raised at the stakeholder event held during the first round of negotiations in July in Washington, D.C. While the U.S. and EU trade officials did send written responses to the civil society concerns, they have been silent on this point. It remains a critical question for sustainable food advocates on both sides of the Atlantic.

TTIP and financial services

Financial firms on Wall Street and in European financial centers are paying close attention to TTIP negotiations on financial services. Of course, in the wake of the recent financial meltdown, the ramifications of a new regime for financial market regulation affect more than just the banks. The links between agriculture, food security, financial services and commodity market regulation are multifaceted. Financial services are, of course, necessary for a broad range of agricultural investments that contribute to the production and distribution components of food security. Farmers and ranchers, who often forward contract part of their anticipated crops to local elevators or sell livestock at auction, rely on commodity derivatives contracts to provide forward pricing benchmarks. Derivatives contracts include those traded on regulated exchanges, such as the Chicago Board of Trade, and the yet to be regulated over-the-counter (OTC) market of bilateral trades among financial institutions and their corporate clients.

But financial and commodity market rules, with relatively few exceptions, are written to be applied systemically, and not specifically to agriculture. There are a few exceptions, such as the Commodity Futures Trading Commission (CFTC) position-limit rule to limit financial speculation on agricultural and non-agricultural commodities. That issue has received considerable support from NGOs in favor of tighter regulations and strident opposition from the financial and non-financial firm members of the International Swaps and Derivatives Association, who have sued to prevent the implementation and enforcement of the CFTC rule.[70] However, commodity derivatives contracts comprise less than one percent of the value of all derivatives contracts, so regulators' focus has been squarely on systemic rules and their cross-border application.[71]

Following the near bankruptcy of the global financial system in 2008-2009 resulting from losses in OTC derivatives contracts by banks without reserves to cover these losses, the Group of 20 industrialized country leaders committed in September 09 to prevent future default cascades by requiring that all "standardized OTC derivatives" be paid for through central clearing houses. Centralized clearing, complete reporting of OTC trades and increased capital reserve required for the banks and other major financial institutions are supposed to prevent the contagion of bilateral OTC defaults to the entire financial system.[72]

In the U.S., that process played out through the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), which passed Congress in 2010. The CFTC is charged with developing the specific rules and regulations needed to implement Dodd-Frank provisions on derivatives trading and commodity markets. Rulemaking has been completed on position limits and definitions of trading entities and commodities covered under Dodd-Frank, although legal challenges continue to arise. CFTC rules to enable trade data surveillance on the foreign affiliate trades of U.S. OTC dealer brokers have brought harsh criticism from foreign, particularly European, bankers and regulators.

At the same time, the regulatory process for the European Markets in Financial Instruments Directive (MiFID) has unfolded along related, but somewhat different, lines. The draft MiFID would allow each EU member state to establish position limits for the share of commodity derivatives contracts that a financial entity can control.[73] The draft also allows an option for EU member states to allow a continuation of the current practice of "position management," in which the trading venues, not government regulators, "manage" contract position. Since trading venues benefit in fees by maximizing the volume of trade, this form of "self-regulation" has been ineffective in preventing excessive financial speculation in commodity contracts.

The draft MiFID would exempt OTC derivatives contracts from position limit reporting, a direct conflict with the CFTC position limit rule, which requires positions taken in OTC contracts, as well as currently regulated futures and options contracts, to be aggregated to determine the position limit for a given contract. Setting ex-ante position limits requires regulators to collect and analyze data to determine

a position limit that would allow commercial hedgers to manage commodity price risks, while allowing enough speculative capital to enable commercial hedgers to trade their positions.[74]

While the MiFID process has not yet dealt with the aggregation of all positions (including OTC), in position limits as mandated in the Dodd-Frank legislation and subsequent CFTC rule-making, it has led the way on other important issues, notably high -frequency trading (HFT).[75] Those trades, carried out electronically in microseconds, have enormous potential to amplify distortions in commodity prices, since agricultural contracts are often bundled in with energy, metals and other commodities.[76]

Cross-border rules continue to be a difficult area for U.S. and EU regulatory agendas. In the U.S., the CFTC recently extended the deadline for compliance with its cross-border rules, following a joint communiqué with the European Commission that outlined a "Path Forward" toward resolving differences in OTC derivative regulation.[77] However, the regulatory cooperation plan announced in the "Path Forward" will not suffice for the European Commission.[78] And the Office of the U.S. Trade Representative, loathe to exclude any sector from the TTIP lest the EC demand its own sectoral exclusions, has agreed to include negotiations on financial services, and announced that one person from USTR and another from the Department of the Treasury will lead those negotiations.[79]

On July 15, Michel Barnier, director general for internal markets of the European Commission, put his marker down at the outset of the TTIP negotiations: "It's impossible and it won't work," if financial services are excluded from the TTIP. He characterized some U.S. financial regulations as "discriminatory" against European financial institutions, pointing to a proposed Federal Reserve Bank rule that would require non-U.S. banks with significant activity in the U.S. to set greater capital reserves to cover losses of those banks in U.S. markets. Indeed, Commissioner Barnier threatened to recommend to EU member-state banks capital reserve requirement retaliation if the Fed passed the rule.[80] (A new Commission will be selected in 2014, so it is not clear that Commissioner Barnier will able to make this recommendation himself.) A financial services chapter in the TTIP, according to Barnier, should enable a "general framework" of mutual recognition of U.S. and EU regulatory regimes as equivalent, rather than the side-by-side comparison of rules that would take place in a CFTC or European Securities Market Authority comparability determination. Barnier's position reflects that of the Transatlantic Business Council.[81]

However, the Fed is also pressuring U.S. banks to set aside more and more secure reserves (Tier One capital) to cover trading losses.[82] If the Fed reserves rule applies to U.S. banks as well as to foreign ones, any retaliation could be directed at the Fed rule within the framework of a TTIP investor-state dispute settlement process, e.g., Deutsche Bank suing the U.S. government. The Fed loaned European private banks and the European Central Bank about $16 trillion at ultra-low interest rates between 2007 and 2010 to save the transatlantic financial institutions from bankruptcy.[83] It seems unlikely that the banks would sue under the Fed capital reserve rule. But they well might sue under the TTIP due to the implementation of a CFTC rule that they claim had impaired anticipated bank profits.

According to a recent U.N. Conference on Trade and Development (UNCTAD) briefing note, at least part of investor claims were granted in 70 percent of 31 publicly disclosed investor-state cases in 2012. Nine cases awarded damages to the private investor, the largest, in Occidental Petroleum v. Ecuador for $1.77 billion.[84] In comparison, U.S. banks reported $7.5 billion in derivatives trade revenues in the first quarter of 2013 alone, and four banks are counterparties to 93 percent of all derivatives trades.[85] Given the scale of these revenues, it is probable that an investor-state lawsuit by one of the European banks could seek the largest damage awards by far of any investor-state dispute. The prospect of such a lawsuit might cause a government to refrain from issuing a rule.

Current proposed U.S. legislation would require federal financial regulators to specify the costs to industry of each and every rule prior to issuing it. One industry study estimated the initial cost to industry of complying with the Dodd-Frank implementation at $3–5 billion, with some companies purportedly losing 20–30 percent of their profits to Dodd-Frank compliance costs.[86] Allowing the definition of investment included in investor-state dispute settlement to apply to financial services would enable industry complaints about compliance costs to be used as evidence of "nullification and impairment" of anticipated benefits from TTIP. There is a large and growing international law practice eager to argue before private arbitration tribunals, rather than public courts of law, that the government regulations are taking billions of dollars from their corporate clients.[87]

Text-based TTIP negotiations will begin in October 2013 in Brussels.[88] Nobody will know the specific content of those negotiating texts, save for the negotiators and the security cleared advisors of the advisors, mostly lobbyists for transnational corporations. The opacity of trade negotiations and the USTR "listening sessions" for NGOs without feedback contrast markedly with the relatively transparent financial and commodity market ruling making process. Effective implementation of transatlantic agreements on OTC derivatives regulation could well be short circuited by the investor

state litigation opportunities offered by the "general framework" on TTIP financial services advocated by Commissioner Barnier and the Transatlantic Business Council.

In general, U.S. and EC negotiators' insistence that neither regulation, legislation nor the public interest will be compromised by the threat of investor-state litigation under the TTIP and other free trade agreements is unconvincing.[89] The FTA current impasse of the EU-Canada over financial services[90] may well be the future of the TTIP negotiations, as proposals for financial service market access contain embedded prohibitions against specific kinds of rules.

How might a financial services chapter affect the cross-border regulation of agricultural derivatives? If the final MiFID exempts OTC derivatives from position limit calculations, the European affiliates of U.S. OTC dealers and European headquartered OTC dealers would continue business as usual to the detriment of commercial hedgers and consumers, unless the CFTC barred them from U.S. markets due to the OTC exemption in MiFID. How long would it take a large European OTC dealer broker, such as Barclays, to sue the CFTC for violating the "general framework" of mutual recognition of market rules under a TTIP financial services chapter? Because there is so much at stake, NGOs will raise such questions about a TTIP financial services chapter and agricultural commodities even in the absence of access to the negotiations text. Adding a financial services chapter that is "fully enforceable" by investor-state lawsuits, will change the balance of power among the economic sectors in the U.S. and the EU. The financialization of the global economy, i.e., the dominance of goods and services provision by mega-banks, arguably has triggered the Great Recession in which we still live.[91]

Conclusions

While there may be legitimate reasons to develop regulatory coherence between the U.S. and EU, those discussions need to happen under conditions of full transparency and should not be subsumed within a trade agreement. They should aspire to prohibit—rather than promote—efforts by corporations to play off regulatory standards in one jurisdiction against the other.

Any efforts to develop coherent approaches need to achieve a delicate balance on at least three dimensions: the appropriate level of decision-making (subsidiarity); the right risk assessment and technical capacity; and fair and sustainable livelihoods and prices for farmers and consumers. Achieving the right balance among those complex topics within the context of a trade agreement, in which proposals on any one of those issues could be traded off for market access or other proposals on entirely different issues, seems fraught from the outset. This is a risky approach in any element of the trade agreement, but is especially problematic in the arena of food and agriculture, which touches on public health, rural and urban economies and environmental protection.

Subsidiarity, the idea that decisions should be made at the smallest, lowest or least-centralized level of decision-making possible, was a central topic of debate in the formation of the European Union. Article 4 of the founding Treaty of Maastricht establishes that principle as a key element in the balance between the authorities of the member states and the EU as a whole. In the U.S., that issue, while not usually described with that term, has long been a subject of tension between states rights and federal authority. The current move for GMO labeling laws at the state level may eventually come into conflict—or ultimately influence—federal policy on that issue, and will undoubtedly raise the public profile of GMO safety across the country. In both the EU and U.S., that tension, and the grounding in the democratic concept of subsidiarity, reflects the conflict between local level innovations such as farm to school programs or restrictions on food additives or technologies based on emerging science, and the economic pressures driving commercialization even when the risks are not fully understood.

There is ample room for cooperation among regulators in the U.S. and EU on issues related to food safety and food markets. Discussions on the implementation of commodity market reforms and more coherent definitions on position limits and swaps dealers, for example, hold real potential to calm turbulent markets into a more sensible and transparent system of price formation. Similarly, discussions of locally appropriate standards for chemicals or food additives or technologies benefit from shared knowledge across the Atlantic. On the other hand, the pressure for mutual recognition agreements in TTIP on chemical policy and financial reforms, among others, creates the conditions for a push to the lowest standards prevalent in either jurisdiction.

Those discussions always reflect pressures from competing interests, but they are also always enhanced when they take place under conditions of transparency and full information. That will not be possible in TTIP as long as the negotiations remain shrouded in secrecy. This is a general problem that runs throughout the trade agreement. As an example, a starting point for discussions focused on food systems would be for governments to publish information, including submissions from industry, civil society and governments, on:

1. Approaches to food safety, GMOs and food additives within the chapter on SPS.

2. Proposals to protect or weaken the EU's use of the Precautionary Principle in setting food and chemical safety standards.

3. Definitions of the goods and services to be included in discussions on procurement, and whether emerging preferences for locally and sustainably grown foods will be protected in those accords.

4. Proposals to harmonize Dodd-Frank rules on commodity markets with rules authorized under the Market in Financial Instruments Directive, the Market Abuse Directive and other EU wide legislation.

Governments should engage in meaningful discussions with all stakeholders (not just cleared advisors) on these and other issues before each negotiating session and upon its conclusion. Those dialogues should also include frank discussions on the potential tradeoffs among sectors and hold open the possibility that the most productive avenues for progress could be outside of the trade talks, as happened with the agreement on organic standards. Careful discussions of appropriate rules for financial reforms, for example, should take place outside of the trade agreement to avoid derailing those complex and critical regulatory processes. Similarly, proposals to broaden the definition of investment to include SPS and financial market regulations, making them subject to challenge under investor-state dispute resolution, should be firmly rejected.

If this is truly to be a "high standards" agreement, if there is any hope that "harmonization" does not mean toward the lowest common denominator, then the U.S. and EU governments need to start from a thorough redefinition of "regulatory coherence" that prioritizes human and environmental well being over market openings. This could be an opportunity to recast the public debate in the United States (and perhaps even in the EU) on the Precautionary Principle as a sensible, scientific, and democratic approach to technologies that are advancing much more rapidly than knowledge on their safety.

This transparent and flexible approach seems entirely improbable given statements made by the governments up to this point. Improbable isn't the same thing as impossible though. That current approach is a political choice; alternatives are entirely possible. If not, and if the talks are to continue along the lines of other recent trade agreements, then civil society and policymakers should seriously consider putting a halt to the TTIP until a different approach is underway.

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COMMITTEE on WAYS and MEANS

Hearing Advisory

Chairman Camp Announces Hearing on President Obama's Trade Policy Agenda with U.S. Trade Representative Michael Froman

1100 Longworth House Office Building at 9:30 AM

Washington, Mar 27 | 0 comments

House Ways and Means Committee Chairman Dave Camp (R-MI) today announced that the Committee on Ways and Means will hold a hearing on President Obama's trade policy agenda with U.S. Trade Representative Michael Froman. **The hearing will take place on Thursday, April 3, 2014, in 1100 Longworth House Office Building, beginning at 9:30 A.M.**

In view of the limited time available to hear the witness, oral testimony at this hearing will be from the invited witness only. However, any individual or organization not scheduled for an oral appearance may submit a written statement for consideration by the Committee and for inclusion in the printed record of the hearing.

BACKGROUND:

International trade is essential to advancing U.S. economic growth and job creation. While the United States is the largest economy and trading nation in the world, 95 percent of the world's consumers are abroad. Accordingly, the future success of American workers, businesses, farmers, and ranchers is integrally tied with continuing America's strong commitment to finding new markets, expanding existing ones, and effectively dealing with market access barriers for U.S. goods, services, and investment. To further the trade agenda and to set forth procedures to enhance Congressional authorities in shaping and implementing trade agreements, Ways and Means Committee Chairman Dave Camp and Senate Finance Committee leaders introduced in January the *Bipartisan Congressional Trade Priorities Act of 2014* (H.R. 3830). This bipartisan, bicameral legislation establishes new and updated Congressional trade negotiating objectives that direct the Administration, significantly enhance requirements for consultation and information-sharing with Congress before, during, and after trade negotiations, and provide rules for Congressional consideration of trade agreements and their implementing bills, ultimately ensuring that Congress has the final say in approving any trade agreement. The legislation preserves the constitutional role and fulfills the legislative responsibility of Congress with respect to trade agreements. At the same time, the process ensures certain and expeditious action on the results of the negotiations and on the implementing bill, without amendment.

In addition to TPA, this hearing will provide an opportunity to explore with Ambassador Froman how the President's trade agenda will create new and expanded opportunities for U.S. companies, workers, farmers, and ranchers, and how TPA is crucial to this strategy. Those opportunities include ongoing negotiations such as the Trans-Pacific Partnership (TPP), the Transatlantic Trade and Investment Partnership (TTIP), and the Trade in Services Agreement (TiSA) negotiations, as well as post-Doha negotiations at the World Trade Organization, such as expansion of the Information Technology Agreement (ITA) and a WTO agreement on environmental

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goods. In addition, the hearing will examine important enforcement priorities, including trade-restrictive practices and non-tariff barriers from major emerging economies that prevent U.S. companies from competing on a level playing field, as well as various bilateral and multilateral trade issues and concerns. Finally, Ambassador Froman's testimony will provide an opportunity to discuss Bilateral Investment Treaty (BIT) negotiations with China, India, and others, as well as new BIT and investment policy opportunities; discussions in other bilateral and multilateral forums; and the trade and investment relationship with new and emerging trading partners.

In announcing this hearing, Chairman Camp said, **"Seeking new markets for U.S. goods, services, and investment, while ensuring enforcement of our existing agreements is key to driving strong economic growth and job creation here in the United States. U.S. trade policy is at a crossroads. We have the opportunity to complete new trade agreements, including the Trans-Pacific Partnership, negotiations with the European Union, as well as the Trade in Services Agreement negotiations and other important trade initiatives. However, trade promotion authority is essential to concluding all of these efforts, and our bipartisan, bicameral bill empowers Congress and provides important direction from Congress to get these agreements done right. I call on the President to actively engage to secure broad bipartisan support for this bill. We must also continue to develop new trade and investment opportunities and enforce our trading rights with important trading partners, including China, India, and Latin America. I look forward to hearing Ambassador Froman lay out the Administration's plan to advance U.S. economic opportunities around the world."**

FOCUS OF THE HEARING:

The hearing will provide an opportunity to explore with Ambassador Froman current and future trade issues such as: (1) passing the Bipartisan Congressional Trade Priorities Act of 2014; (2) seeking to conclude a successful Trans-Pacific Partnership agreement this year; (3) negotiating with the European Union for a comprehensive and ambitious Transatlantic Trade and Investment Partnership; (4) negotiating a Trade in Services Agreement that increases access for all sectors of our economy; (5) improving our important trade relationship with major emerging economies like China, India, and Brazil, and addressing their trade barriers; (6) ensuring appropriate trade enforcement efforts; (7) advancing WTO negotiations, including "post-Doha" issues such as Information Technology Agreement expansion and an agreement for trade in environmental goods; (8) negotiating Bilateral Investment Treaties (BITs) with China, India, and others, and exploring new BITs and investment opportunities; (9) establishing long-term, closer ties with important trading partners; and (10) renewing the U.S. Generalized System of Preferences and other trade preference programs.

DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:

Please Note: Any person(s) and/or organization(s) wishing to submit for the hearing record must follow the appropriate link on the hearing page of the Committee website and complete the informational forms. From the Committee homepage, http://waysandmeans.house.gov, select "Hearings." Select the hearing for which you would like to submit, and click on the link entitled, "Click here to provide a submission for the record." Once you have followed the online instructions, submit all requested information. ATTACH your submission as a Word document, in compliance with the formatting requirements listed below, **by the close of business on April 17, 2014**. Finally, please note that due to the change in House mail policy, the U.S. Capitol Police will refuse sealed-package deliveries to all House Office Buildings. For questions, or if you encounter technical problems, please call (202) 225-1721 or (202) 225-3625.

FORMATTING REQUIREMENTS:

The Committee relies on electronic submissions for printing the official hearing record. As always, submissions will be included in the record according to the discretion of the Committee. The Committee will not alter the

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content of your submission, but we reserve the right to format it according to our guidelines. Any submission provided to the Committee by a witness, any supplementary materials submitted for the printed record, and any written comments in response to a request for written comments must conform to the guidelines listed below. Any submission or supplementary item not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. All submissions and supplementary materials must be provided in Word format and MUST NOT exceed a total of 10 pages, including attachments. Witnesses and submitters are advised that the Committee relies on electronic submissions for printing the official hearing record.

2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.

3. All submissions must include a list of all clients, persons and/or organizations on whose behalf the witness appears. A supplemental sheet must accompany each submission listing the name, company, address, telephone, and fax numbers of each witness.

The Committee seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call 202-225-1721 or 202-226-3411 TTD/TTY in advance of the event (four business days notice is requested). Questions with regard to special accommodation needs in general (including availability of Committee materials in alternative formats) may be directed to the Committee as noted above.

Note: All Committee advisories and news releases are available on the World Wide Web at http://www.waysandmeans.house.gov/.

Tags: Full Committee

- EUC History Lesson
  Posted in Facts Are Stubborn Things on March 27, 2014 | Preview
- Chairman Camp Announces Hearing on President Obama's Trade Policy Agenda with U.S. Trade Representative Michael Froman
  Posted in Hearing Advisory on March 27, 2014 | Preview
- Camp, Brady: Facts Show HHS Has Data on How Many People Have Paid Their First Premium
  Posted in Press Releases on March 25, 2014 | Preview
- Camp Statement on Fourth Anniversary of ObamaCare
  Posted in The Prescription Pad on March 21, 2014 | Preview

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Article notes: March 31, 2014
Citizen Trade Policy Commission

Altec CEO Calls for Passage of TPA Legislation; (ALTEC PR, 2/20/14)

This article reports that Lee Styslinger III, Chairman and CEO of Altec and member of the Trade Benefits Coalition, has announced his support for President Obama's Trade Promotion Authority (Fast Track) that is currently before Congress. Mr Styslinger cited the critical importance to TPA and that it will have appositive impact on job creation and economic growth for the U.S.

Altec is an equipment and service provider for the electric utility, telecommunications, contractor, lights and signs and tree care markets and provides services to more than 100 countries.

Obama Nominates Former SOPA Lobbyist to help lead TPP Negotiations

TPP Talks at a Standstill ; (Electronic Frontier Foundation, 3/3/14)

The first article reports that President Obama has nominated Robert Holleyman, a former lobbyist in favor of the Stop Online Piracy Act (SOPA), to be a Deputy to the USTR and will thus be a part of the US team of negotiators for the TPP. The article points out that this nomination is of interest considering that the TPP talks are currently stalled with a great deal of opposition to the USTR position on providing flexibility on copyright issues.

The second article reports in more detail about the current standstill in TPP negotiations. It appears that many TPP nations, most notably Japan, continue to remain steadfast in their opposition to many of the USTR proposals.

Ambitious 2014 U.S. Trade Agenda Hailed ; (USCIB; 3/4/14)

This press release from the United States Council for International Business (USCIB) announces their strong support for President Obama's recently released 2014 Trade Agenda and maintains that that agenda promotes priorities which will expand American trade and investment in the international market and will support expanded domestic job growth and US competiveness. The press release also states that the President's 2014 Trade Agenda aligns well with USCIP priorities which include:

- Bipartisan congressional approval of TPA (Fast Track);
- Completion of the TPP negotiations;
- Finalizing approval of the Information Technology Agreement;
- Achieve significant progress in the TTIP negotiations; and
- Furthering discussions on a US-China bilateral investment treaty.

NFTC Welcomes Administration's 2014 Trade Agenda; (NFTC; 3/4/14)

This press release from the National Foreign Trade Council, Inc. (NFTC) announces their strong support for President Obama's recently released 2014 Trade Agenda. The NFTC strongly supports passage of the President's TPA proposal and congressional approval of the TPP and the TTIP.

From the Expert: A Transatlantic Partnership for Tomorrow's World (Council of State Governments; 3/5/14)

This opinion piece, authored by Vital Moreira, Chief of European Parliament's Committee on International Trade, advocates strongly for passage of the TTIP and calls it a "game changer" for the following reasons:

- Traditional tariff barriers still need to be dismantled and headway needs to made on market access issues such as procurement, services and investment;
- Progress needs to be made on differences on regulations, standards and certifications; and
- More work needs to take place on the development of global standards and rules.

EU seeks to halt use of famed cheses names for US foods; (Boston Globe, 3/12/14)

This article reports EU nations are demanding that the TTIP include provisions which would prohibit US food companies from using European cheese names such as Parmesan and Feta for cheese products sold in the US.

EU Fear of Hormone Meat, GM Food Sows Divide in Trade Talks ; (Reuters; 3/13/14)

This article reports on the significant gap between the EU nations and the US on TTIP negotiations regarding European resistance to purchase hormone meat or genetically modified food from the US.

Transatlantic trade talks hit German snag; (The Financial Times; 3/14/14)

This article reports that the TTIP negotiations have been hampered by Germany's firm opposition to the inclusion of an Investor-State Dispute Settlement mechanism. The German opposition to ISDS is based on their belief that national courts already provide sufficient legal protection for investors.

Congressional Letter to USTR; (US Congress; 3/14/14)

This letter to USTR Michael Froman was signed by 16 US Representatives, including Maine Congressman Michael Michaud, and states their strong opposition to proposed provisions to the TPP pertaining to intellectual property, investment and pharmaceutical reimbursement. The signatories base their opposition on their belief that "... these provisions, if included in the final agreement, would severely threaten access to affordable medicines in the Asia-Pacific region,

particularly in developing countries, and could have potentially serious consequences ofr patients in developed countries, including the United States."

Statement form USTR Michael Froman in Support of 2014 Trade Agenda (USTR Newsletter; 3/14/14)

This press release from USTR Michael Froman strongly endorses President Obama's 2014 Trade Agenda by stating that "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."

U.S. Objectives, U.S. Benefits in the Transatlantic Trade and Investment Partnership: A Detailed View; (USTR Newsletter; 3/14/14)

This statement from the USTR details the US position on a number of key issues to be negotiated in the TTIP including:

- The elimination of all trade tariffs;
- Reciprocal access for textile and apparel products;
- The elimination or reduction of non-tariff trade barriers;
- Compatibility of regulations and standards;
- Development of sanitary and phytosanitary standards based on existing scientific and international standards;
- Improved US market access to EU trade;
- Facilitation of the use electronic commerce to support goods and service trade;
- Securing investment rights that are available under US principles and practice;
- Facilitation of customs and trade procedures;
- Expanded and transparent provisions pertaining to government procurement;
- Recognition and enforcement of labor rights and laws;
- Protection of the environment;
- Protection of intellectual property rights;
- Establishing appropriate trading disciplines pertaining to state-owned enterprises;
- Enhancing the participation of small and medium business enterprises in international trade;
- Promoting measures that further transparency, anticorruption and competition; and
- Establishment of fair and transparent dispute settlement mechanisms for investors and exporters.

On the Wrong Side of Globalization;(New York Times; 3/15/14)

This opinion piece, authored by Joseph E. Stiglitz, maintains that as manifested in recent international trade agreements such as the TPP, globalization is not at all advantageous to the overwhelming majority of citizens in any signatory nation. Rather, through provisions like ISDS, globalization benefits international corporations to the detriment of the average citizen and the sanctity of sovereign law.

Trade judge recommends $675K fine for DeLorme; (Mainebiz; 3/18/14)

This article reports that the mapping and GPS company DeLorme, located in Yarmouth, has been fined $675,000 for a trade-related patent infringement issue.

New Study Debunks Mining Company "Falsehoods" Regarding El Salvador; (US5.campaign; 3/18/14)

This article describes the recent efforts by the country of El Salvador to ban extensive mining by a large international corporation named OceanaGold and seeks to provide factual reasons why many of the corporation's claims and justifications are simply untrue:

- The OceanaGold sudsidiary, Pacific Rim, did not satisfy the country's regulatory requirements;
- Pacific Rim did not adequately study, and thus failed to mitigate, the environmental consequences of its mining ventures in El Salvador;
- The opposition to Pacific Rim within the country is widespread and extends to the Catholic Church hierarchy;
- The mining activities of Pacific Rim has generated conflict and violence throughout the country;
- The willingness of Pacific Rim to rely on political influence, as opposed to meeting regulatory requirements, has possibly resulted in corruption;
- Profits from the mining ventures will be realized by the corporation and its shareholders;
- Pacific Rim is using ISDS rules to subvert the political debate in El Salvador about the desirability of mining ventures in that country; and
- The actual experience of an open-pit mining venture in the Philippines operated by OceanaGold/Pacific Rim illustrates the perils presented by the this type of mining operation.

The Obama Administration's Trade Agenda is Crumbling; (Cato Institute; 3/19/14)

This article puts forth a perspective which argues that the Obama administration trade policy has been relatively ineffective and has not accomplished much in the way of tangible results. Further, the author, Daniel R. Pearson, maintains that is not clear whether the Obama administration has the fortitude or political will necessary to ensure passage of the President's Fast Track authority and that without passage of Fast Track, congressional approval of whatever has been negotiated for the TPP and the TTIP will be extremely unlikely.

In Trade Talks, It's Countries vs. Companies;(Business Week; 3/20/14)

This article concludes that the advent and widespread use of ISDS mechanisms has evolved into a situation where international corporations are pitted against nations in trade disputes and that in those situations the advantage often goes to corporations. The article points out that the original use of ISDS in trade agreements represented an innovative way that international investments in a developing country could be fairly protected to ensure investor confidence and continued international investments. Since the 1950s, ISDS has evolved into a process which has the

appearance of being undemocratic and one that subverts the sovereignty of many laws, regulations and standards that are designed to protect the environment and overall public safety.

Concerns about TTIP not just in Europe: Interview with US State Legislator , Sharon Treat; (TTIP2014.EU; 3/26/14)

This interview with CTPC Chair Representative Sharon A. Treat outlines Representative Treat's concerns and objections to the TTIP which include:

- the TTIP is being used by international corporations who don't want to "play by the rules" and is likely to represent a threat to availability of affordable medicines as well as protection of existing labor and environmental standards;
- significant concerns about the TTIP are not limited to EU nations but are increasingly evident in the U.S.; and
- the TTIP should be used as a vehicle to promote free trade among small manufacturers but not as an instrument which is used to override public health and safety laws and regulations.

U.S. Trade Deficits Have Grown More Than 440% with FTA Countries, but Declined 16% with Non-FTA Countries; (Eyes on Trade; 3/28/14)

This article disputes recent claims by the U.S. Chamber of Commerce that Free Trade Agreements (FTA) actually have the effect of reducing U.S. trade deficits. Using economic data which focus on aggregate compilations, the authors of this article state that since 2006, the US trade deficit with FTA countries has increased by more than $147 billion (adjusted for inflation) whereas the trade deficit with non FTA countries has decreased by more than $130 billion in that same time period.

The Facts on Investor-State Dispute Settlement: Safeguarding the Public Interest and Protecting Investors; (USTR; 3/27/14)

This blog post by the USTR strongly defends the use of ISDS mechanisms in FTAs like the TTP and the TTIP by stating that, "ISDS creates a fair and transparent process, grounded in established legal principles, for resolving individual investment disputes between investors and states." The blog piece also disputes the notion that ISDS limits the ability of signatory nation to properly regulate financial stability, environmental protection or public health. In further defense of the use of ISDS in FTAs that the US has signed on to, the blog piece maintains that ISDS:

- provide the same legal protections for US companies doing business internationally as the protections that exist under US law;
- protect the right of governments to regulate in the public interest;
- do not inhibit the ability of sovereign governments at any level to regulate as they think appropriate;
- do not expose state or local governments to new liabilities;
- do not provide a legal basis for companies to challenge laws simply because profits are adversely affected;

- provide strong safeguards to deter frivolous challenges to legitimate public interest measures;
- ensure a legal process which is fair, unbiased and transparent; and
- ensure arbitration which is independent and impartial.

Altec CEO Calls For Passage Of TPA Legislation

Altec's Chairman and CEO, Lee Styslinger III, announced today his support of bipartisan Trade Promotion Authority (TPA) legislation.

Birmingham, AL (PRWEB) February 20, 2014

Altec's Chairman and CEO, Lee Styslinger III, announced today his support of bipartisan Trade Promotion Authority (TPA) legislation and asked that Congress and President Obama work toward quick passage of the bill.

Styslinger is a member of the Trade Benefits America Coalition, a broad-based group of U.S. business leaders who are encouraging Congress and the Obama Administration to move TPA legislation forward in an expedited manner. Congress last enacted TPA in 2002, and it expired in 2007.

"We support the position that President Obama shared in his State of the Union address on the critical importance of Trade Promotion Authority and the positive impact it will have on job creation and economic growth in the U.S.," said Styslinger. "TPA will help open foreign markets to American goods and services. We call on Congress and the President to work together so that America can negotiate and put in place trade agreements that eliminate unfair trade barriers and level the playing field for goods manufactured in the U.S."

Styslinger was a key member of George W. Bush's Export Council and was responsible for advising the President on government policies and programs that affect U.S. trade performance and export expansion opportunities.

Altec is a leading equipment and service provider for the electric utility, telecommunications, contractor, lights and signs, and tree care markets. The company provides products and services in more than 100 countries throughout the world.

Electronic Frontier Foundation

March 3, 2014

Obama Nominates Former SOPA Lobbyist to Help Lead TPP Negotiations

President Obama has nominated former SOPA lobbyist Robert Holleyman to join the team of U.S. negotiators leading the Trans-Pacific Partnership (TPP) talks. If confirmed by the Senate, the former chief executive officer of the Business Software Alliance (BSA) would serve as a Deputy to the U.S. Trade Representative. Coincidentally, the current head of the BSA is former White House IP Czar Victoria Espinel.

Holleyman is an interesting choice for the Obama administration, given the current standstill in TPP negotiations. Reports from the TPP ministerial meeting last weekend said that nothing substantive came out of those talks and that an end date for this sprawling deal is growing increasingly uncertain. One of the many topics of contention is the copyright enforcement sections. On these, the U.S. refuses to agree to provisions that would allow signatory countries flexibility in their copyright regimes.

As a result, countries like Chile and Canada are standing firm against U.S. proposals—a stance confirmed by the "Intellectual Property" chapter published by Wikileaks in November. These proposals include provisions that would place greater liabilities on Internet Service Providers, create new tools of censorship, and new restrictions on how users can access and interact with digital content. Instead of allowing other countries to choose their own approaches to copyright, Obama's choice to appoint a prominent supporter of the spectacularly failed SOPA bill indicates the White House's unwillingness to let up on its extreme stance on copyright enforcement.

The evidence of corporate influence on trade talks doesn't stop there. Recent reports revealed that prominent U.S. trade officials had received millions of dollars in bonuses before they left their corporate jobs to take up their position at the Obama administration. Soon after these revelations, the U.S. Trade Rep Michael Froman—who received $4 million in bonuses from banking giant CitiGroup—introduced plans to create a new Public Interest Trade Advisory Committee. If this was an attempt to address our criticism of the overwhelming influence of private interests in setting the U.S. trade agenda, it was—at best—a half-hearted one. As we've pointed out, fundamental issues underlie this trade advisory system, primarily that members would be gagged from discussing or publicly advocating on the provisions they have seen as a result of serving on this committee. This *Washington Post* graphic clearly illustrates the current dominating influence of corporate industries in these trade advisory committees.

TPP Talks at a Standstill

The pattern of most other TPP countries resisting relatively extreme U.S. proposals is becoming more and more common. According to some sources, Japan and the U.S. are so far from agreement on certain agricultural issues that the U.S. Trade Rep suggested to the other countries that they should exclude Japan from the talks entirely. And senior legislators from seven TPP countries demanded more transparency in

negotiations, releasing a statement demanding that the text of the agreement be released before it is signed. Even the Malaysian trade minister said publicly that he would not sign the agreement as long as the text remained secret.

Meanwhile, Obama and the U.S. Trade Rep faces mounting opposition on the domestic front. Lack of concrete assurance from the trade official that he would be steadfast in his push for environmental protections in TPP has apparently eroded the trust of some House Democratsand powerful liberal supporters. Without solid support from his own political base in the House, it will be almost impossible for Obama to get Fast Track authority. Without Fast Track, it's not clear the administration can pass the TPP at all.

Beyond the legislature, the White House lacks popular support for its trade agenda. A recent poll showed that a majority of U.S. voters oppose Fast Track and the TPP. The same survey showed that there are marginally more Republicans who oppose Obama's whole trade agenda, despite the fact that there are many more prominent Republicans in Congress who support handing Fast Track authority to Obama.

TPP's completion becomes ever more tenuous as resistance to its corporate-driven policies continue to dissolve political support for the deal. Yet Obama's nomination of Holleyman suggests that his administration has no intention of removing the draconian copyright policies out of TPP no matter how unpopular or contentious they may be. It also reflects the greater issue at hand—the White House is choosing to heed the demands of Hollywood and other corporate giants and ignore the interests of users.

Those of us in the U.S. need to get our Congress members to oppose Fast Track authority and exercise their constitutional authority to ensure that these trade deals respect our digital rights. It would be an assault on our democratic governance to allow our lawmakers to hand over their own mandate to the White House.

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.

TITLE: EU FEAR OF US HORMONE MEAT, GM FOOD SOWS DIVIDE IN TRADE TALKS
>
> SOURCE: Reuters
>
> AUTHOR: Robin Emmott
>
> URL: http://www.reuters.com/article/2014/03/12/eu-usa-trade-idUSL6N0M920R20140312
>
> DATE: 13.03.2014
>
>
>
> Europe's reluctance to buy hormone meat or genetically modified food from the United States has exposed an "enormous gulf" that threatens the world's biggest trade pact, industry and labour groups told EU and U.S. negotiators on Wednesday.
>
> Eight months into talks to create a transatlantic pact encompassing almost half the world's economy, divisions remain over opening up to each others goods, rules governing the names of foods and genetically modified food.
>
> "There is an enormous gulf between the EU and U.S. positions," said Michael Dolan, a lobbyist for the U.S. Teamsters union, who rejected the idea that the European Union should be the only market to call Greek-style cheese 'feta'.
>
> He warned that a trade deal "is likely to be smaller, more modest than its ambitions, because of so many intractable issues," telling negotiators in a forum also open to reporters.
>
> Tensions over food, which have bedevilled many trade talks around the world, risk eroding already fragile public support for a deal that proponents say would increase economic growth by around $100 billion a year on both sides of the Atlantic.
>
> Negotiators aim to finalise a deal by the end of this year.
>
> Mindful of the huge protests surrounding global trade talks in the 1990s, EU and U.S. negotiators holding a fourth round of talks this week in Brussels took the unusual step of not only receiving lobbyists but also letting in the media.
>

> What little awareness there is about the "Transatlantic Trade and Investment Partnership" (TTIP) could be distorted by anti-globalisation protesters, EU ministers have warned.
>
> At risk is a pact creating a market of 800 million people where business could be done freely, building on the almost $3 billion of transatlantic trade in goods and services each day.
>
> Difficulties over agriculture bode poorly for the talks because EU-U.S. negotiators are seeking a far more a sophisticated agreement, going beyond farm goods to bring down barriers across all industries and businesses.
>
> Even animal welfare is sensitive in a proposed accord where both sides would recognise each others standards to oil the wheels of commerce. Europeans said they consider U.S. standards concerning the slaughter of animals as being far lower than in the EU.
>
> STEAKHOUSE PLEASURES
>
> Even without such issues, U.S. farmers complain that the farm trading relationship is unfairly skewed in Europe's favour and want it addressed in the trade talks.
>
> The European Union exported $16.6 billion of farm goods to the United States in 2012, much more than the $9.9 billion that U.S. farmers sent to Europe, partly because of EU rules banning imports of genetically modified food for human consumption.
>
> "Our trade could be way bigger," said Douglas Nelson, an adviser for farm group CropLife America. Floyd Gaibler of the U.S. Grains Council said: "The TTIP is a way to normalise trade with the European Union."
>
> But barely a week goes by that EU Trade Commissioner Karel De Gucht, who handles commerce issues for the EU's 28 member states, states that European regulation of genetically modified food will not change even if a deal is done with Washington.
>
> The European Union is also closed to U.S. beef from cattle raised with growth hormones. Some Europeans are worried about what impact GM crops and hormone beef - often dubbed "Frankenstein Food" - might have on health and the environment.
>
> "The United States and the European Union have the highest standards of food safety. How is it that we have such different ideas about how

to achieve those standards?" said John Brook, regional director of the U.S. Meat Exports Federation.
>
> "Have you ever heard about a European on holiday in the U.S. not eating meat? Everyone raves about the experience of eating in a U.S. steak house," he said

Ambitious 2014 U.S. Trade Agenda Hailed

Washington, D.C., March 4, 2014 – The United States Council for International Business (USCIB) welcomed today's release of **President Obama**'s 2014 U.S. Trade Agenda. The agenda outlines an ambitious set of priorities for expanding American trade and investment around the world, in support of expanded job growth and enhanced U.S. competitiveness.

"We agree with the president that international trade and investment play a critical role in creating jobs, promoting growth and strengthening the middle class," said USCIB Senior Vice President **Rob Mulligan**."The American business community is working hard to advance and support this agenda both at home and abroad."

"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 U.S. Trade Representative **Michael 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."

Mulligan said the USTR agenda dovetailed well with USCIB's own 2014 Global Trade and Investment Agenda, Key goals in the USCIB agenda include:

- reaching bipartisan agreement on Trade Promotion Authority (TPA) legislation
- completing the Trans-Pacific Partnership (TPP) negotiations
- finalizing agreement on expansion of the Information Technology Agreement
- making significant progress on the Trans-Atlantic Trade and Investment Partnership (TTIP) as well as the Trade in International Services Agreement negotiations, and
- advancing discussions of a U.S.-China bilateral investment treaty.

"We are working closely with USTR and the other relevant U.S. agencies to advance this ambitious agenda across the board," said **Charles R. Johnston**, chair of USCIB's Trade and Investment Committee and managing director of global government affairs at Citigroup. "In addition, USCIB will work with its overseas business partners to foster support for U.S. trade and investment goals among our trading partners."

USCIB serves on the steering committee of the Trade Benefits America Coalition (www.tradebenefitsamerica.org), which seeks to enhance understanding among lawmakers and the public about the benefits of U.S. trade agreements and advocates for passage of Trade Promotion Authority. USCIB also plays a leading role in U.S. business coalitions on the TTIP and TPP talks and has provided industry insight to U.S. negotiators on many aspects of these negotiations.

"The most essential piece of the trade puzzle is Trade Promotion Authority," said Johnston. "Without TPA, we cannot negotiate effectively, and Congress's ability to help guide U.S. trade policy is limited. For these reasons, we urge the Obama administration and Congress to work together to swiftly pass effective TPA legislation."

About USCIB:

USCIB promotes open markets, competitiveness and innovation, sustainable development and corporate responsibility, supported by international engagement and regulatory coherence. Its members include U.S.-based global companies and professional services firms from every sector of our economy, with operations in every region of the world. With a unique

global network encompassing the International Chamber of Commerce, the International Organization of Employers and the Business and Industry Advisory Committee to the OECD, USCIB provides business views to policy makers and regulatory authorities worldwide, and works to facilitate international trade and investment.More at www.uscib.org.

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NATIONAL FOREIGN TRADE COUNCIL, INC.

1625 K STREET, NW, WASHINGTON, DC 20006-1604
FOR IMMEDIATE RELEASE Contact: Nicole L'Esperance
March 4, 2014 The Fratelli Group for NFTC
202-822-9491

NFTC Welcomes Administration's 2014 Trade Agenda

Washington, D.C. – The National Foreign Trade Council (NFTC) today welcomed the release of the Administration's 2014 Trade Agenda. NFTC President Bill Reinsch released the following statement. "The Administration's 2014 Trade Agenda outlines many issues of importance to the NFTC and our members. Much progress has been made in Trans-Pacific Partnership (TPP) negotiations, and the Transatlantic Trade and Investment Partnership (TTIP) talks are well underway. Once completed, these two historic agreements will significantly expand U.S. market access, increase exports and create American jobs, and we are encouraged to see that concluding these high-standard agreements is a main focus for the Administration and its trade negotiators.

"However, in order to ensure that these agreements and future agreements benefit the U.S. economy, businesses and workers, we need Congress to pass Trade Promotion Authority (TPA) legislation. We are pleased to see that passage of TPA is a top priority for the Administration, and we urge Congress to act as soon as possible this year. "We also welcome the Administration's commitment to build off the recent momentum in Bali and continue to actively pursue and be a key player in negotiating multilateral agreements through the WTO.

"Additionally, the trade agenda also highlights the Administration's commitment to work with Congress to renew Trade Adjustment Assistance legislation, an action the NFTC fully supports, as it will enhance U.S. competitiveness to promote growth and prosperity for American businesses and workers."

The Financial Times

March 14, 2014 9:00 pm
>
> Transatlantic trade talks hit German snag
>
> By Shawn Donnan in Brussels and Stefan Wagstyl in Berlin
>
>
> Germany has introduced a stumbling block to landmark EU-US trade negotiations by insisting that any pact must exclude a contentious dispute settlement provision.
>
> The ³investor-state dispute settlement² mechanism, or ISDS, would allow private investors to sue governments if they felt local laws threatened their investments. Public opposition to its inclusion has grown in both Europe and the US since the launch last year of negotiations over a transatlantic trade area.
>
> Earlier this year, the European Commission suspended negotiations over the ISDS clause to allow for a 90-day public consultation exercise, expected to be launched within days.
>
> That move was intended to help defuse some of the opposition and explain why an arbitration mechanism was needed. But opposition to ISDS has only grown since then.
>
> Now, in the biggest blow yet to those seeking its inclusion in the deal, Berlin has decided that it will push for the exclusion of the ISDS provisions in the deal.
>
> A spokesman for the economy ministry in Berlin said on Friday that the government had relayed its position to officials in Brussels, where negotiators have ended a week of talks over the proposed Transatlantic Trade and Investment Partnership (TTIP).
>
> Earlier in the week, Brigitte Zypries, a junior economy minister, told the German parliament that Berlin was determined to exclude arbitration rights from the TTIP deal.
>
> ³From the perspective of the [German] federal government, US investors in the EU have sufficient legal protection in the national courts,² she told parliament.
>
> The German position pits Berlin against the commission, the US and

business groups. All of them argue that the transatlantic deal is an opportunity to update arbitration rights that already feature in existing bilateral investment treaties and are often open to abuse.
>
> Such ISDS provisions have been a feature of investment treaties since the late 1950s, when the first was included in a bilateral agreement between Germany and Pakistan. But their use by companies as an avenue to seek compensation for government decisions has grown in recent years.
>
> In some cases, they have been used to combat perceived gross injustices against specific investors. Repsol, the Spanish oil company, was able to seek compensation from Argentina under an investment treaty after its local operations were seized by the government in Buenos Aires.
>
> They have also been used to challenge broader government policy or regulatory decisions, however. Vattenfall, the Swedish energy company, is currently seeking compensation from Germany for Berlin¹s decision to phase out nuclear power following the Fukushima disaster in Japan. In another well-publicised case, Philip Morris International is seeking compensation from Australia for lost income because of the introduction there of plain-packaging laws for tobacco products.
>
> The German position may still be open to some negotiation particularly if both the EU and the US agree to allow arbitration only in extreme cases.
> Berlin¹s final stand may also depend on the European consultation process.
> But Berlin¹s move is a sign of the complicated political context the transatlantic deal faces in Europe.
>
> Nicole Bricq, France¹s trade minister, has raised concerns before over the ISDS provision. Germany has until now backed its inclusion in the new pact.
> But Berlin has also been confronted with growing public scepticism in recent months over the transatlantic deal as a whole, and the ISDS provision in particular.
>
> At a press conference to mark the close of the fourth round of negotiations on Friday, Dan Mullaney, the leading US negotiator, declined to comment on the German decision.
>
> Ignacio Garcia Bercero, the EU¹s chief negotiator, also refused to comment on it. But he pointed out that the EU¹s original mandate to

negotiate specifically included an ISDS provision and had been approved by member states, including Germany.
>
> [3]We are working on the basis of the mandate that has been given to us,[2] said Mr Garcia Bercero.
>
> The provision is opposed by consumer groups and environmentalists on both sides of the Atlantic. They argue that the very threat of litigation could challenge everything from food safety standards to a ban on fracking now in place in France. They also argue that the court systems in both the US and EU are mature enough not to be a concern to foreign investors.
>
> Business groups argue, however, that including proper safeguards for investors in a new pact is crucial to help encourage the flow of investment across the Atlantic.
>
> [3]If you want to attract investors, you need to have all of the positive signals on your side,[2] said Hendrik Bourgeois, vice-president of European affairs for GE, the US industrial group, and chairman of the American Chamber of Commerce to the EU.
>
> Business groups and trade negotiators on both sides also argue that including the provision is vital as a precedent for other deals. Both the EU and the US have launched investment discussions with China, and the EU is expected to begin talks on an investment treaty with Myanmar next week.
> Including investor protection provisions in those deals would be more difficult if they were excluded from the EU-US agreement, negotiators and lobbyists say.
>
> The US conducted public consultations on the subject in 2009, leading to the agreement with Congress of a model investment treaty that includes robust investor-protection provisions.
>
> The European Commission hopes its consultations will do the same. But some now fear that the EU[1]s consultations may feed the opposition.
> [3]It is important to us that this [EU] public consultation is not a referendum on ISDS. It is important that [ISDS] is included in the agreement,[2] said Luisa Santos, director of the international relations department of the BusinessEurope lobby group. [3]Excluding it is not the answer.[2]
>
>

Congress of the United States

Washington, D.C. 20515

March 14, 2014

The Honorable Michael Froman
U.S. Trade Representative
Office of the U.S. Trade Representative
600 17th Street NW
Washington, D.C. 20508

Dear Ambassador Froman:

We write to express our deep concern with reports about proposed provisions regarding intellectual property, investment and pharmaceuticals reimbursement in the Trans-Pacific Partnership negotiations (TPP). We believe those provisions, if included in the final agreement, would severely threaten access to affordable medicines in the Asia-Pacific region, particularly in developing countries, and could have potentially serious consequences for patients in developed countries, including the United States.

A series of reports suggest that those provisions would go beyond the obligations under the Trade-Related Aspects of Intellectual Property Agreement (TRIPS) and would backtrack from the principles in the Bipartisan Agreement of May 10, 2007. Such measures could limit generic competition, lead to higher drug prices, and compromise access to affordable medicines. In difficult economic and budget times, it is especially important that we promote trade policies that allow governments to protect their populations and ensure access to life-saving medications. We are concerned that the provisions under discussion – such as those asking countries to enact patent linkage and patent term extension policies – would tip the balance represented in the TRIPS and May 10 compromises away from public health needs in order to further the interests of the pharmaceutical industry.

Many of us have expressed our concerns with specific elements of USTR's proposal in the past, and we appreciate your willingness to discuss them with us. However, we remain very concerned that the proposals which we understand are under consideration remain problematic and could have serious consequences for global health and security. We are particularly concerned by pharmaceutical pricing and reimbursement provisions that could undermine member countries' current or prospective, non-discriminatory drug reimbursement policies and programs (e.g. Medicare, Medicaid, the VA, and other programs).

We are also concerned by provisions that could be used to subvert the implementation of flexible patent standards to protect public health. These include the expanded use of "evergreening," which would allow patent holders, through successive patents, to obtain longer periods of exclusivity for new forms or uses of existing medications, even in the absence of any therapeutic benefits to patients. They also include exclusivity requirements for biologics that would increase costs in other countries and could restrict the U.S. from moving to a 7-year exclusivity period.

These changes, coupled with patent requirements for surgical, diagnostic, and therapeutic methods of treatment go beyond the requirements of the TRIPS agreement and could prevent or delay the availability of affordable options for the treatment of a vast number of diseases including HIV/AIDS, Tuberculosis, Malaria, Cancer, Rheumatoid Arthritis, Multiple Sclerosis, Hepatitis C, and other serious illnesses.

Congress has a central role to play in setting policies that assure affordable access to essential medicines and we are deeply disturbed that significant changes from TRIPS and the May 10 agreement would be made in a trade negotiation process that is not open for sufficient Congressional review and oversight and that could restrict policy options for this and future Congresses. We urge you to take our concerns into account and oppose any provisions that would severely reduce healthcare access and affordability at home and abroad.

Thank you for your attention to our concerns.

Sincerely,

Jan Schakowsky
Member of Congress

Barbara Lee
Member of Congress

George Miller
Member of Congress

Rosa DeLauro
Member of Congress

Michael H. Michaud
Member of Congress

Jim McDermott
Member of Congress

Louise Slaughter
Member of Congress

John Conyers , Jr.
Member of Congress

James P. McGovern
Member of Congress

Donna Edwards
Member of Congress

Keith Ellison
Member of Congress

Raúl Grijalva
Member of Congress

Henry C. Johnson, Jr.
Member of Congress

Richard M. Nolan
Member of Congress

Mark Pocan
Member of Congress

Steve Cohen
Member of Congress

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

U.S. Objectives, U.S. Benefits In the Transatlantic Trade and Investment Partnership: A Detailed View

In June 2013, President Obama, European Council President Van Rompuy and European Commission President Barroso announced that the United States and the European Union (EU) would launch negotiations on the Transatlantic Trade and Investment Partnership (T-TIP) agreement. The T-TIP is intended to be an ambitious and comprehensive trade agreement that significantly expands trade and investment between the United States and the EU, increases economic growth, jobs, and international competitiveness, and addresses global issues of common concern. For the full text of the President's T-TIP launch remarks, click here.

The launch followed a vigorous domestic consultation process with relevant stakeholders on the Obama Administration's goals and objectives for a negotiation with the EU, which were publicly described in a March 20, 2013 letter to the U.S. Congress.

This factsheet describes in more detail the Administration's specific goals and objectives, and outlines how this agreement, if successfully concluded, will benefit American workers, businesses of all sizes, and consumers. We have heard from the American public their request for an elaboration of the information we have provided about what we are working to achieve through trade negotiations, so we will continue to share information through the press, social media, and www.USTR.gov as we move forward in the negotiations.

We also invite members of the public to submit comments on the negotiations in an email to comment@ustr.eop.gov.

TRADE IN GOODS

- **We seek to eliminate all tariffs and other duties and charges on trade in agricultural, industrial and consumer products between the United States and the EU, with substantial duty elimination on entry into force of the agreement, transition periods where necessary for sensitive products, and appropriate safeguard mechanisms to be applied if and where necessary.**

The United States ships more than $730 million in goods to the EU every day. In today's highly competitive global marketplace, even small increases in a product's cost due to tariffs can mean the difference between winning and losing a contract.

The U.S. manufacturing base is growing, and we make some of the world's most advanced industrial goods. We exported more than $253 billion worth of industrial products to the EU in 2012. With elimination of EU tariffs on industrial products, including innovative and high

technology products such as industrial and electrical machinery, precision and scientific instruments, and chemicals and plastics, U.S. products will be put on equal footing with goods from the EU's other free trade agreement partners – including Chile, Mexico, South Korea, and South Africa – which receive duty-free treatment when shipped to the EU, as well as with exports from one EU Member State to another.

The United States is the world's largest agricultural export economy. U.S. farmers and ranchers increasingly rely on agricultural exports for their livelihoods, 20 percent of farm income comes from exports, and those exports support our rural communities. In fact, U.S. food and agricultural exports to the world reached an all-time high in 2013 of over $145 billion. In that year, we sent just over $10 billion of agricultural exports to the EU, a figure that can and should be much higher. Our goal in T-TIP is to help U.S. agricultural sales reach their full potential by eliminating tariffs and quotas that stand in the way of exports.

Eliminating tariffs would provide a level playing field for our agricultural producers, including for our apple growers who pay more than seven percent in duties when shipping to the EU, but whose EU competitors pay no duties on their shipments of apples to the United States. U.S. olive oil producers would also benefit from tariff elimination, since U.S. olive oil is subject to $1,680 in duties per ton on shipments to the EU, but their EU competitors pay only $34 per ton on shipments to the United States. Eliminating tariffs and quotas will help U.S. farmers, ranchers, manufacturers, workers, and their families, while giving Europeans access to safe, high-quality American food and agricultural goods.

For more information on industrial and manufacturing trade, visit www.ustr.gov/trade-topics/industry-manufacturing. For more information on agricultural trade, visit www.ustr.gov/trade-topics/agriculture.

TEXTILES AND APPAREL

- **We seek to obtain fully reciprocal access to the EU market for U.S. textile and apparel products, supported by effective and efficient customs cooperation and other rules to facilitate U.S.-EU trade in textiles and apparel.**

U.S. textile and apparel manufacturers sold nearly $2.4 billion worth of products to the EU last year. Eliminating the remaining duties on our exports will create new opportunities for integration into European supply chains and to sell high-quality "made-in-USA" garments to European consumers. Enhanced U.S.-EU customs cooperation will also help ensure that non-qualifying textiles and apparel from third countries are not being imported into the United States under T-TIP.

For more information on textiles and apparel trade, visit www.ustr.gov/trade-topics/textiles-apparel.

NON-TARIFF BARRIERS AND REGULATORY ISSUES

- **We seek to eliminate or reduce non-tariff barriers that decrease opportunities for U.S. exports, provide a competitive advantage to products of the EU, or otherwise distort trade, such as unwarranted sanitary and phytosanitary (SPS) restrictions that are not based on science, unjustified technical barriers to trade (TBT), and other "behind-the-border" barriers, including the restrictive administration of tariff-rate quotas and permit and licensing barriers, which impose unnecessary costs and limit competitive opportunities for U.S. exports.**

- **While maintaining the level of health, safety and environmental protection our people have come to expect, we seek greater compatibility of U.S. and EU regulations and related standards development processes, with the objective of reducing costs associated with unnecessary regulatory differences and facilitating trade, *inter alia* by promoting transparency in the development and implementation of regulations and good regulatory practices, establishing mechanisms for future progress, and pursuing regulatory cooperation initiatives where appropriate;**

- **We seek to build on key principles and disciplines of the WTO Agreement on Technical Barriers to Trade (TBT) through strong cross-cutting disciplines and, as appropriate, through sectoral approaches, to achieve meaningful market access, and establish ongoing mechanisms for improved dialogue and cooperation on TBT issues;**

- **We seek to build on key principles and disciplines of the World Trade Organization (WTO) Agreement on the Application of Sanitary and Phytosanitary Measures (SPS) to achieve meaningful market access, including commitments to base SPS measures on science and international standards or scientific risk assessments, apply them only to the extent necessary to protect human, animal, or plant life or health, and develop such measures in a transparent manner, without undue delay; and to establish an on-going mechanism for improved dialogue and cooperation addressing bilateral SPS issues.**

Non-tariff barriers (NTBs) can decrease market opportunities for U.S. exports and provide unfair competitive advantages to EU products. These barriers take the form of restrictive licensing, permitting, and other requirements applied *at* the border, but also barriers *behind* the border, such as unwarranted technical barriers to trade and sanitary and phytosanitary measures. Through T-TIP, we seek to identify ways to reduce costs associated with regulatory differences by promoting greater compatibility between our systems, while maintaining our high levels of health, safety, and environmental protection. Achieving an outcome that results in greater transparency, participation, and accountability in regulatory processes is also critical to addressing and preventing NTBs, and why we have made that a key part of our approach in T-TIP.

With respect to TBT, the United States and the EU already have a shared commitment and responsibility to prevent and reduce unnecessary TBTs through the World Trade Organization's

Agreement on Technical Barriers to Trade. But we know we can do more. Achieving our TBT objectives in T-TIP would mean going beyond existing commitments by setting us on a path to increase transparency and openness in the development of standards and technical regulations, ensure that U.S. bodies are permitted to test and certify products sold in Europe, promote EU recognition of international standards used to support global trade by U.S. exporters and producers, and establish an ongoing mechanism to discuss TBT concerns. Not only would our companies be more competitive, innovative, and efficient as a result, but T-TIP could set a positive example to other countries around the world.

For more information on TBT, visit www.ustr.gov/trade-agreements/wto-multilateral-affairs/wto-issues/technical-barriers-trade.

With respect to SPS, ensuring that the rules governing agricultural and food products are based on science and do not pose unwarranted obstacles to trade is as important to American farmers and ranchers as eliminating tariffs and quotas. If we successfully address certain SPS barriers in T-TIP, Europeans will be able to enjoy safe, high-quality U.S. beef, pork, poultry, and other products that we currently ship to consumers all over the world. In addition to eliminating barriers and opening markets for our farmers and ranchers, we seek to have the EU provide greater regulatory transparency and to engage in regular dialogues to help prevent barriers from being erected in the first place.

For more information on SPS, visit http://www.ustr.gov/trade-topics/agriculture/sanitary-and-phytosanitary-measures-and-technical-barriers-trade.

With respect to "regulatory coherence and transparency," T-TIP offers an opportunity to develop cross-cutting disciplines on regulatory practices that have long been known to support economic growth, market integration, and removal of "behind the border" trade barriers. This includes the promotion of greater transparency, participation and accountability in the development of regulations. It also includes evidence-based analysis and decision-making, and a whole-of-government approach to regulatory management. Giving stakeholders – public and private, foreign and domestic – adequate opportunity to comment on proposed regulations and ensuring that regulatory processes not only respect the democratic principles on which our laws are built, but provide regulators with input from a wide range of stakeholders. Transparent regulatory processes ensure better quality regulations that can achieve important objectives, such as protecting health, safety and the environment. On the other hand, a lack of transparency and accountability in regulatory and standards processes can lead to unnecessary, costly, or duplicative rules that reduce our competitiveness and act as discriminatory barriers to U.S. exporters. Embracing sound regulatory objectives in T-TIP will not only draw our economies closer together, but will serve as a positive example for third-country markets around the world.

Finally, the United States and EU will be examining ways to increase regulatory compatibility in specific sectors through a range of regulatory cooperation tools as well as other steps aimed at reducing or eliminating unnecessary regulatory differences. With extensive input from stakeholders, and in collaboration with our regulators, we aim to promote greater regulatory compatibility while maintaining our high levels of health, safety, and environmental protection.

RULES OF ORIGIN

- **We seek to establish rules of origin that ensure that duty rates under an agreement with the EU apply only to goods eligible to receive such treatment and define procedures to apply and enforce such rules.**

We believe that only qualifying U.S. and EU goods should benefit from the T-TIP agreement, not goods produced in third countries. Our larger companies with complex supply chains and our smaller businesses that can't afford consultants gain when they can determine whether their exports or imports will be subject to reduced or zero duties when crossing borders. Through T-TIP, we will seek to put objective and transparent rules online that explain: (i) to U.S. exporters and producers whether their goods qualify for preferential treatment when shipped *to* the EU; and (ii) to U.S. importers whether their goods qualify for preferential treatment when shipped *from* the EU. Rules of origin would also establish clear, transparent procedures for claiming origin and record-keeping and other requirements for those who prepare origin certifications.

For more information on rules of origin, visit www.ustr.gov/trade-agreements/wto-multilateral-affairs/wto-issues/customs-issues/rules-origin.

TRADE IN SERVICES

- **We seek to obtain improved market access in the EU on a comprehensive basis, and address the operation of any designated monopolies and state-owned enterprises, as appropriate; and**

- **We seek to reinforce transparency, impartiality, and due process with regard to authorizations to supply services, obtain additional disciplines in certain services sectors, and improve regulatory cooperation where appropriate.**

The United States is the largest services exporter in the world, and services industries account for four out of five U.S. jobs. Whether ensuring that U.S. express delivery firms are able to compete for EU shipping business or permitting telecommunication service providers to connect U.S. companies with EU consumers online, lowering barriers in the services sector will have a beneficial impact on the entire U.S. economy. Reducing barriers between the United States and the EU will make it easier, for example, for U.S. architecture firms to send blueprints for projects in Europe in real time and without costly delays. Open and transparent trade in services also benefits U.S. startups by increasing access to otherwise unreachable customers. Achieving our objectives to improve market access in the EU would improve choice and quality for consumers on both sides of the Atlantic and give U.S. services companies access to a large number of new customers.

For more information on trade in services, visit http://www.ustr.gov/trade-topics/services-investment/services.

Financial services are also an important component of the transatlantic economy. Our goals are to ensure high-standard rules for investment in the financial services sector, as well as lock in existing and create new market openings for our financial services suppliers. A successful T-TIP will increase financial services market access to the EU as well as provide consumers with access to high-quality financial services and greater choice with regard to suppliers. At the same time, we will continue to ensure that our government retains full discretion to regulate the financial sector and to take the actions necessary to ensure the stability and integrity of the U.S. financial system.

For more information on trade in financial services, visit http://www.ustr.gov/trade-topics/services-investment/services.

ELECTRONIC COMMERCE AND INFORMATION AND COMMUNICATION TECHNOLOGY (ICT) SERVICES

- **We seek to develop appropriate provisions to facilitate the use of electronic commerce to support goods and services trade, including through commitments not to impose customs duties on digital products or unjustifiably discriminate among products delivered electronically;**

- **We seek to include provisions that facilitate the movement of cross-border data flows.**

The Internet provides U.S. retailers and service providers with an increasingly powerful platform for selling their goods and services to purchasers in some of the world's wealthiest economies, such as France, Germany, the United Kingdom, and Italy. U.S. filmmakers, musicians, and software developers should be able to sell their movies, music, video games, and other digital products to Europe's more than 500 million consumers without having to worry about customs duties and fees, or otherwise being disadvantaged, just because their products are delivered over the Internet instead of by CD or DVD. And European purchasers should generally be able to validate their online purchases of these items with an electronic signature rather than having to put pen to paper. Furthermore, free flows of data are a critical component of the business model for service and manufacturing enterprises in the U.S. and the EU and key to their competitiveness.

For more information on e-commerce and ICT, visit www.ustr.gov/trade-topics/services-investment/telecom-e-commerce.

INVESTMENT

- **We seek to secure for U.S. investors in the EU important rights comparable to those that would be available under U.S. legal principles and practice, while ensuring that EU investors in the United States are not accorded greater substantive rights with respect to investment protections than U.S. investors in the United States;**

- **We seek to ensure that U.S. investors receive treatment as favorable as that accorded to EU investors or other foreign investors in the EU, and seek to reduce or eliminate artificial or trade-distorting barriers to the establishment and operation of U.S. investment in the EU;**

- **We seek to provide and maintain meaningful procedures for resolving disputes between U.S. investors and the EU and its Member States that are in keeping with the goals of expeditious, fair and transparent dispute resolution and the objective of ensuring that governments maintain the discretion to regulate in the public interest.**

The United States and the EU have the world's largest investment relationship. Transatlantic investments total $4 trillion, directly supporting seven million American and European jobs, with millions more in indirect jobs. These investments help our manufacturing sector, generating 18 percent of U.S. exports to the world. Furthermore, jobs created by foreign investment tend to pay better than other private sector jobs. That is why we need to build on these achievements and help generate more jobs, growth, and exports through certain, clear, and fair investment rules that encourage even more investment in job- and export-supporting economic activity.

For more information on investment, visit www.ustr.gov/trade-topics/services-investment/investment.

CUSTOMS AND TRADE FACILITATION

- **We seek to establish disciplines to ensure transparent, efficient, and predictable conduct of customs operations and ensure that customs measures are not applied in a manner that creates unwarranted procedural obstacles to trade; and enhance customs cooperation between the United States and the EU and its Member States.**

Red tape at the border adds costs and creates delays. U.S. exporters benefit from knowing ahead of time precisely how much they'll pay in customs duties and fees – and from the ability to pay electronically – so that they can build those costs into their goods' final price. Further, farmers and ranchers succeed when their products don't perish on the dock and they don't have to pay for additional warehousing simply because of arbitrary delays at the border. Reducing the amount of time spent moving goods through border procedures benefits all traders and has the compounding effect of reducing trade costs.

In today's fast-paced world, it is critical that people have the ability to move goods on an expedited basis without burdensome customs filing requirements. Procedures that allow for pre-arrival processing, advance rulings, release of goods under bond, uniform appeal procedures,

express shipments and use of *de minimis* values also contribute to expedited release that benefits U.S. exporters. Additionally, greater cooperation among customs authorities helps ensure not only that high-quality, authentic U.S. goods can be delivered to consumers more rapidly, but also that those genuine goods are not competing with smuggled or counterfeit products.

For more information on customs and trade facilitation, visit www.ustr.gov/trade-agreements/wto-multilateral-affairs/wto-doha-negotiations/trade-facilitation.

GOVERNMENT PROCUREMENT

- **We seek to expand market access opportunities for U.S. goods, services, and suppliers of goods and services to the government procurement markets of the EU and its Member States;**

- **We seek to ensure fair, transparent, and predictable conduct of government procurement and that U.S. suppliers of goods and services receive treatment as favorable as that accorded to domestic and other foreign goods, services, and suppliers in the EU and its Member States.**

Both U.S. and European governments buy a broad range of goods and services from private sector businesses, which leads to job-supporting opportunities for industries that provide information technology goods, consulting services, infrastructure, and other products. Achieving our T-TIP objectives will ensure U.S. companies get a fair shot at eligible government procurement opportunities, as well as open new opportunities for U.S. companies in the 28 EU Member States. This would mean expanded opportunities to bid on government contracts in areas including construction, engineering, and medical devices.

For more information on government procurement, visit www.ustr.gov/trade-topics/government-procurement.

LABOR

- **We seek to obtain appropriate commitments by the EU with respect to internationally recognized labor rights and effective enforcement of labor laws concerning those rights, consistent with U.S. priorities and objectives, and establish procedures for consultations and cooperation to promote respect for internationally recognized labor rights.**

Our trade agreements are designed to prevent a race to the bottom on labor protections. We include strong labor commitments to help ensure that increased levels of trade and investment with our partners are not being driven by a weakening of worker rights. Trading partners must not only have laws and regulations on their books that recognize fundamental labor rights; they

must also enforce them. U.S. businesses can't compete fairly if their foreign competitors aren't required to provide their workers the same levels of protection afforded workers in the United States.

The United States and Europe already maintain high levels of protection for their workers. T-TIP should reflect this shared commitment, which may become a model for others to follow, and encourage even greater transatlantic cooperation.

For more information on trade and labor, visit www.ustr.gov/trade-topics/labor.

ENVIRONMENT

- **We seek to obtain, consistent with U.S. priorities and objectives, appropriate commitments by the EU to protect the environment, including conserving natural resources, and to effectively enforce environmental laws, and seek opportunities to address environmental issues of mutual interest.**

The United States is a leader in seeking high levels of environmental protection and the effective enforcement of environmental laws in trade agreements. We include strong environmental commitments in our trade agreements to help ensure that our trading partners do not weaken environmental protections in order to encourage trade or investment. Through our agreements, the United States has joined with trading partners in eliminating barriers to trade in cutting-edge environmental technologies like clean energy, promoting the protection of wildlife and endangered species, and addressing key issues like harmful fisheries subsidies and illegal logging.

The United States and Europe already maintain high levels of environmental protection. T-TIP should reflect this shared commitment, which may become a model for others to follow, and encourage even greater transatlantic cooperation.

For more information on trade and the environment, visit www.ustr.gov/trade-topics/environment.

INTELLECTUAL PROPERTY RIGHTS

- **We seek to obtain, consistent with U.S. priorities and objectives, appropriate commitments that reflect the shared U.S.-EU objective of high-level IPR protection and enforcement, and to sustain and enhance joint leadership on IPR issues;**

- **We seek new opportunities to advance and defend the interests of U.S. creators, innovators, businesses, farmers, and workers with respect to strong protection and**

effective enforcement of intellectual property rights, including their ability to compete in foreign markets.

The United States and the EU have the world's most successful creative industries, and intellectual property protection and enforcement are essential for encouraging innovation in new technologies, stimulating investment in research and development, and supporting exports of U.S. products and the creation of American jobs. Nearly 40 million American jobs are directly or indirectly attributable to "IP intensive" industries. These jobs pay higher wages to their workers, and these industries drive approximately 60 percent of U.S. merchandise exports and a large share of services exports. We will seek in T-TIP to build on shared strengths and principles reflective of our strong and balanced systems, while promoting good policies in third countries as well.

For more information on intellectual property rights, visit www.ustr.gov/trade-topics/intellectual-property.

STATE-OWNED ENTERPRISES

- **We seek to establish appropriate, globally relevant disciplines on state trading enterprises, state-owned enterprises, and designated monopolies, such as disciplines that promote transparency and reduce trade distortions.**

U.S. and European businesses and workers deserve a level playing field, especially when state-owned enterprises (SOEs) that receive significant government backing engage in commercial activity. Achieving this objective would help establish disciplines to encourage SOEs to operate in markets in a transparent manner that does not distort trade or put our companies at a disadvantage. Agreed SOEs rules in T-TIP can also serve as a model to third country markets around the world.

SMALL-AND MEDIUM-SIZED ENTERPRISES (SMES):

- **We seek to strengthen U.S.-EU cooperation to enhance the participation of SMEs in trade between the United States and the EU.**

SMEs are the backbone of the American and European economies. The United States' 30 million SMEs account for nearly two-thirds of net new private sector jobs in recent decades. SMEs that export tend to grow even faster, create more jobs, and pay higher wages than similar businesses that do not. T-TIP will enhance already strong U.S.-EU SME cooperation and help SMEs on both sides of the Atlantic seize job-supporting trade and investment opportunities.

For more information on SMEs, visit www.ustr.gov/trade-topics/small-business.

TRANSPARENCY, ANTICORRUPTION AND COMPETITION

- **We seek to obtain improved transparency in the administration of EU and Member State trade and investment regimes, and rules that ensure trade- and investment-related measures are adopted and applied in an open and transparent manner that provides meaningful opportunities for public comment, notice, and review;**

- **We seek to obtain appropriate commitments on anticorruption;**

- **We seek to address matters of mutual interest regarding competition policy and process and to further improve cooperation on competition policy.**

For U.S. businesses to compete in the global market, they must have clear, predictable laws and regulations that are administered by officials who are not subject to undue influence. That is why we are seeking commitments in T-TIP to publish promptly all laws, regulations, administrative rulings and other procedures that affect trade and investment. We will also seek opportunities for interested parties to learn about and provide meaningful input on measures before they are adopted and finalized.

Corruption distorts competition and often prevents the public from receiving the highest quality goods and services. Accordingly, we have sought to ensure that our trade agreements include appropriate provisions to address corruption, and we will be doing so in our T-TIP negotiations. We and the EU also agree that the sound and effective enforcement of competition law is a matter of importance to the efficient operation of our respective markets and trade between them. Competitive markets provide the environment necessary for entrepreneurship and innovation, protects against anticompetitive behavior that distort market outcomes, and helps consumers obtain more innovative, high-quality goods and services at lower prices.

DISPUTE SETTLEMENT

- **We seek to establish fair, transparent, timely, and effective procedures to settle disputes on matters arising under a trade and investment agreement with the EU, including through early identification and settlement of disputes through consultation.**

We recognize that trade agreements that are effectively enforced establish a set of high-standard rules and obligations that help keep markets open to U.S. exporters and investors and ensure a level playing field. When we negotiate and implement a trade agreement, we expect our trading partners to stick by the rules and obligations they agreed to. However, when our trading partners fall short of what they promised – whether to reduce tariffs, implement strong labor and environment provisions, or otherwise provide U.S. exporters fair and non-discriminatory treatment – we need a means to hold them accountable. This is why we have this important

objective to establish a fair and open dispute settlement mechanism. Dispute settlement gives us a means to discuss our concerns in a timely way and to seek compensation if they are not addressed. Dispute settlement with trading partners in T-TIP will give the American public the confidence that we not only negotiate strong, high-standard obligations, but that we also have the means to enforce them.

For more information on dispute settlement, visit www.ustr.gov/trade-agreements/wto-multilateral-affairs/wto-issues/dispute-settlement.

New York Times

March 15, 2014

On the Wrong Side of Globalization

By JOSEPH E. STIGLITZ

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 billthis 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.

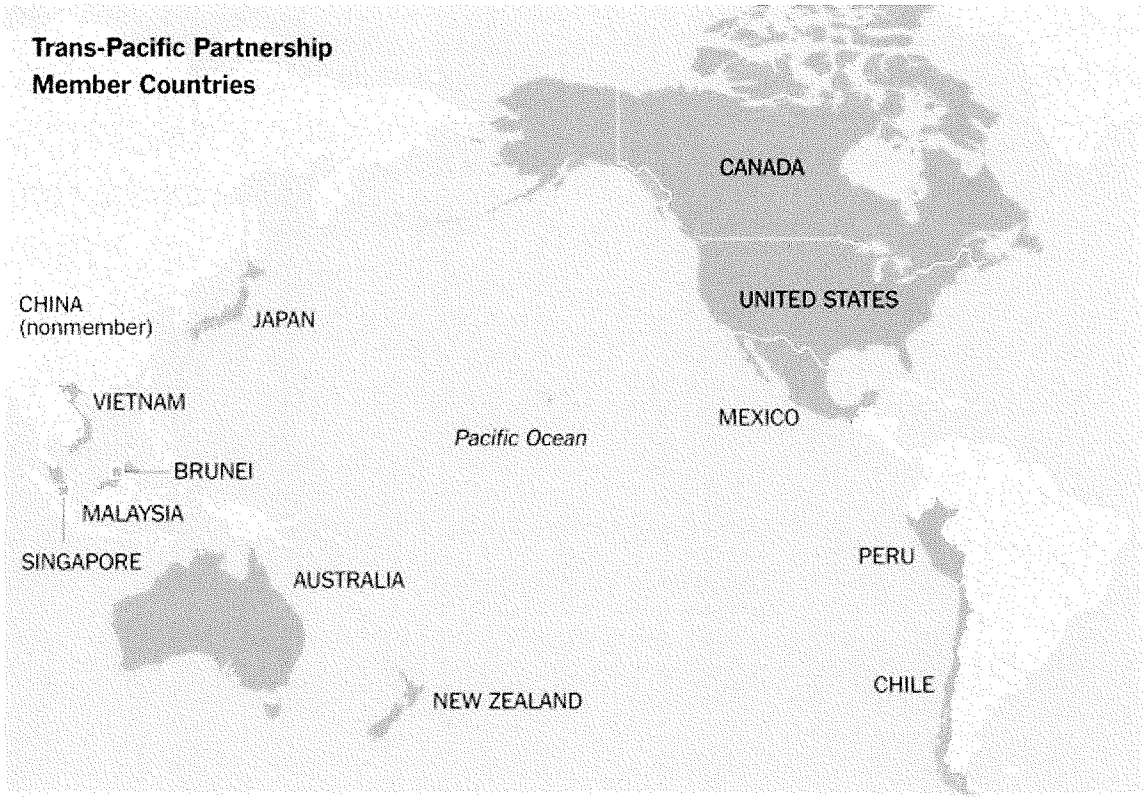
Worse, agreements like the TPP are only one aspect of a larger problem: our gross mismanagement of globalization.

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 was40 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.

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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.

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.CATO.ORG/PUBLICATIONS/FREE-TRADE-BULLETIN/OBAMA-ADMINISTRATIONS-TRADE-AGENDA-CRUMBLING

FREE TRADE BULLETIN

The Obama Administration's Trade Agenda Is Crumbling

By Daniel R. Pearson

March 19, 2014

Introduction
The nation has been living with the Obama administration's trade policy for five years, with relatively little to show for it. In the remaining three years, is the executive branch likely to obtain Trade Promotion Authority (TPA) and successfully conclude the Trans-Pacific Partnership (TPP) and the Transatlantic Trade and Investment Partnership (TTIP)? Although free traders very much want all of this to happen, hard-headed experience indicates it's most likely that the administration will accomplish none of this.

Why such a downbeat conclusion? Debates over the North American Free Trade Agreement (NAFTA) and the Uruguay Round in the 1990s illustrated how very difficult it could be to build support for the negotiation of trade agreements and for the passage of enacting legislation. Building such support requires a firm commitment to the cause of trade liberalization, an understanding of the economics that make open markets so desirable, an eagerness to explain the benefits to those who are undecided, and a willingness to invest a whole lot of political capital to round up the required votes. It's not clear whether any of those conditions currently exist.

Is the President Sufficiently Committed?
It's important to acknowledge that all recent U.S. administrations have found the politics of international trade to be really quite difficult. For example, George W. Bush generally was seen as a supporter of trade liberalization. Yet, in 2002 he imposed substantial temporary safeguard tariffs against imports of steel products. This decision was driven in large part by political factors relating to the U.S. steel industry, which was in poor financial condition at the time. The Bush administration made a decent recovery from that protectionist start by negotiating and attaining congressional approval of free-trade agreements with Chile, Singapore, Australia, Morocco, Central American countries and the Dominican Republic (CAFTA-DR), Bahrain, Oman, and Peru. The Bush team also negotiated agreements with Colombia, Panama, and South Korea, but did not succeed in getting Congress to approve them. It's fair to say that negotiating free trade agreements is hard. Building domestic political support for them and achieving their passage in Congress appears to be even harder.

Sensitive to the politics of trade within Democratic constituencies, candidate Obama ran in 2008 as a protectionist, indicating that he wanted to renegotiate the 14-year-old NAFTA agreement. Although he probably wasn't actually in favor of raising tariffs, a substantial portion of his political base — organized labor, environmentalists, anti-globalists — liked his rhetoric and expected him to adhere to that line. But isn't the same thing true of Bill Clinton? Yes, Clinton ran against NAFTA as a candidate in 1992, promising to reopen the agreement to fix it. However, after moving into the Oval Office, he put effort into making sure that the agreement actually became law.

The Clinton administration had some adults in the room. Lloyd Bentsen, the long-term senator from Texas, became secretary of the Treasury. He understood intuitively the importance of NAFTA to the U.S.-Mexico relationship and strongly favored implementing the agreement. Clinton selected Mickey Kantor to

be U.S. trade representative. Kantor, an attorney with strong connections to organized labor, helped to reassure blue-collar Americans that their interests would be heard. He was instrumental in making adjustments to the agreement, thus fulfilling the president's pledge. And Vice President Al Gore, in what many believe to be his finest hour (perhaps deserving of a Nobel Peace Prize?), successfully debated Ross Perot on the merits of the NAFTA prior to its consideration by Congress. The Clinton Administration had key officials who were committed to making NAFTA a reality.

On the other hand, the Obama Administration spent its first term focused on other priorities. Its primary emphasis was on the enforcement of existing trade agreements. For instance, in September 2009 the administration imposed additional duties for a three-year period against imports of tires from China on the theory that they were disrupting the U.S. tire market. This action harmed U.S. consumers and Chinese producers in an effort to provide some benefit to the relatively small number of U.S. workers in the tire industry,[1] but it did nothing to advance the cause of trade liberalization. The administration also established the National Export Initiative (NEI) with the rather mercantilistic goal of doubling U.S. exports within five years, a target that seems unlikely to be reached.[2] The only meaningful accomplishment in the direction of trade liberalization was allowing three free-trade agreements that had been negotiated by the Bush administration (Panama, Colombia, and South Korea) to become law. So far the Obama team has not developed a compelling and economically sound argument on behalf of open global markets. Perhaps no official of cabinet level or higher has the experience, understanding, and commitment required to make a vigorous case in favor of trade liberalization.

Meanwhile, groups that normally support the Obama presidency — labor, environment, and various other NGOs — have been doing a great deal of "community organizing" in opposition to the trade agenda. A February 21, 2014, article in *Inside U.S. Trade* reports that the StopFastTrack.com coalition has collected more than 600,000 petition signatures against legislation to provide fast-track negotiating authority.[3] StopFastTrack.com claims "more than 100 organizations as members, including the AFL-CIO, the Sierra Club, Public Citizen, the American Civil Liberties Union, the Communication Workers of America and the Electronic Frontier Foundation."[4] Fast track legislation would allow Congress to establish negotiating priorities. It also would enable the administration to present trade agreements to Congress for an up-or-down vote, thus avoiding amendments that might pick the agreement apart piece by piece. Anti-trade lobbying in this election year has been sufficiently effective to induce a large number of members of Congress to express their unwillingness to vote for fast track. Opponents include Senate Majority Leader Harry Reid and House Minority Leader Nancy Pelosi, so the resistance within the president's own party is really quite strong. It's fair to say that the administration has allowed itself to get out-organized by its own supporters.

Administration efforts to reach out to anti-trade organizations appear to have been somewhat infrequent and not terribly successful. A February 20, 2014, *Huffington Post* article by Ryan Grim and Zach Carter reports on a February 18 off-the-record discussion between USTR Michael Froman and a group of liberal organizations in a weekly gathering known as "Common Purpose," which involves "an administration official and representatives of the Democratic coalition, from labor and environmental groups to consumer advocates and online progressive groups."[5] Anonymous reports from a handful of attendees indicate that Froman made little progress toward building support for the administration's trade agenda and may have spawned a backlash. He offered the argument, which also has been made in public settings, that globalization is happening regardless of what the United States does or doesn't do. By engaging in trade agreements, he said, America has the potential to shape globalization according to U.S. values.[6]

Some NGOs have raised concerns that the TPP and TTIP negotiations are overly secretive and that membership on USTR's existing advisory committees is overly slanted in the direction of people who work for businesses involved in international trade. To address that issue, Froman proposed to establish a Public Interest Trade Advisory Committee comprised of civil society groups to provide input to USTR. This concept apparently was not warmly embraced. The *Huffington Post* article reports that the Sierra Club declined to serve on such a committee.[7] With respect to Obama's trade policy, an anonymous participant in the February 18 "Common Purpose" meeting was quoted to have said afterward, "The base of the Democratic Party is in complete opposition."[8] It's not clear whether any senior official in the Obama

administration would be able to quiet the restless liberal troops, much less persuade them to support an agreement that actually liberalizes trade.

Cart before the Horse
Without fast track, the administration's trade agenda is on very shaky ground. It seems inconceivable that the other countries negotiating TPP or TTIP would be willing to complete those packages under circumstances in which Congress would be free to amend them by refusing to approve provisions that are politically sensitive in the United States. Ambassador Froman appears to be interested in completing the TPP negotiations, then using that agreement as bait to get the Congress to vote in favor of fast-track authority. That approach is backward and has a very low probability of working. Officials in other countries are well aware of the history of the Kennedy Round of GATT negotiations in the 1960s. The Kennedy Round was started following passage of the Trade Expansion Act of 1962, which granted five years of authority for the president to negotiate tariff reductions or eliminations. However, that legislation was silent with regard to negotiations on issues other than tariffs.

By the time the Kennedy Round had finished, U.S. negotiators had agreed not only to numerous tariff cuts, but also to two non-tariff changes: a modification to U.S. customs valuation rules; and certain adjustments in U.S. antidumping procedures. Some domestic constituencies were not enamored of those non-tariff provisions. When faced with that opposition, Congress simply decided not to enact the statutory changes required to implement the agreements on customs valuation and antidumping, so the United States didn't live up to its side of the bargain. Governments that had made concessions in exchange for those U.S. policy reforms were not amused. Immediately it became impossible to get other countries to negotiate with the United States under similarly uncertain conditions. To rectify that situation, Congress provided a broad grant of negotiating authority — covering both tariff and non-tariff measures — in the Trade Act of 1974. The only free-trade agreement to be implemented since then without fast track was the U.S.-Jordan FTA, which enjoyed widespread support from both political parties and was passed by voice vote in 2001.[9]

Serious Questions Confronting the Administration Democratic opposition in the Congress appears to be forcing a delay in considering fast track at least until after the November 2014 election. This administration has provided no precedent in which it has fought and won a similar battle against important parts of its political base. The White House should carefully evaluate whether it wishes to undertake such an uphill challenge later this year on behalf of trade liberalization. Some relevant questions:

- Is the Baucus-Hatch-Camp bill agreeable? If not, what specific fast-track legislation could the administration support?
- If the administration is serious about obtaining fast track, which senior officials would be the ones to make that case with the liberal base? What arguments would they use?
- Who would be the administration's spokesperson to push back on a consistent basis against the ongoing anti-trade blather that is trumpeted as if it is true?
- Is the White House willing to take the political hit that may accompany a bruising campaign to obtain the needed votes on Capitol Hill? Is gaining fast track more important than maintaining the president's approval rating?
- Is the president comfortable using a portion of his remaining political capital on behalf of a policy objective that is viewed by many (incorrectly) as primarily benefiting the agricultural and business communities?
- If Democrats do well in the election, would it be easier or harder to enact fast track? (And if Democrats do poorly at the polls … ?)
- By the end of 2014 with only two years left in its tenure, will the administration become such a lame duck that it will have insufficient leverage to accomplish its goal of passing fast track?
- Is the administration willing to take the risk that — after trying really hard to obtain it — fast track can't be achieved? Would this outcome make them look even more feckless and impotent in the eyes of the world?

- How important is the president's desire to be seen as a global leader who leaves a legacy of progress on international economic policy?
- If fast track is granted late this year, will there be enough time to conclude the TPP and TTIP negotiations prior to when the administration leaves office?
- What, if anything, should be done in the TPP and TTIP negotiations between now and the granting of fast track? Should they be suspended? Or should the United States attempt to maintain the façade that negotiating authority will be forthcoming in just a few months?

The Way Forward for Supporters of Trade Liberalization

Those who support further negotiations to liberalize global markets have every right to be disappointed that seven years have elapsed since U.S. negotiators last had fast track authority. The trade-policy tide has been flowing the other way, pushed along by voices that often seem to have little interest in promoting economic growth, and even less interest in presenting arguments that are based on sound analysis. Pro-trade organizations appear eager to engage in a strong and sustained lobbying effort on behalf of the Baucus-Hatch-Camp bill, if it becomes clear that the administration is seriously committed to obtaining fast track. It is to be hoped that 2014 will turn out to be a year of progress. However, that depends almost entirely on decisions that the Obama administration must make.

But what if the decision to press forward never comes? What if the potential to expand trade in the final years of the Obama administration slips away? Then it will be time for proponents of liberalization to take the long view. It should be seen as an opportunity to lay the groundwork for a meaningful trade agenda that could begin to unfold in 2017. Any incoming administration — either Democratic or Republican — is likely to be more inclined toward free trade than the current crew.

It's unclear whether nations negotiating the TPP would be willing to wait three years until the United States gets its act together. Although possible, it probably is unlikely that they would conclude an agreement without the United States. Assured access to the U.S. market is valuable to many countries, so a version of TPP that doesn't include the world's largest economy is worth less to them. Those countries also must deal with their internal politics; their governments might change before any agreement can be finalized. The future of TPP is quite uncertain.

TTIP may have a better chance of surviving an extended hiatus. The term of the new European Commission that will take office later this year will extend well into the next U.S. presidential term. So, if the incoming commissioners like the concept of TTIP, they have a chance of being able to make it happen before they leave office. However, that may be counterbalanced by the European Parliament, which some observers expect to become more populist and anti-trade following the upcoming election in May. The EU's commitment to TTIP may be strengthened by having a U.S. partner that truly is ready to move forward.

Supporters of trade liberalization should actively make the case for freer trade during the years in which the U.S. government is on the sidelines. Domestic audiences need to hear the positive side of the story. Foreign audiences may benefit by seeing that responsible parties are working to reposition the United States to play a leadership role on global trade policy in the future.

Some basic messages have resonated from the time of Adam Smith and David Ricardo. Among them:

- *All resources are scarce; thus, all have value.* Open and competitive markets do a wonderful job of making sure that scarce resources are put to their best and highest uses. Border restrictions complicate the operation of markets and impose costs on producers and consumers.
- *Comparative advantage still works in the 21st century.* Countries and people are relatively better at doing some things than others. People should be encouraged to focus on things they do well, and then trade to obtain other goods and services.
- *People need to be free to buy from and sell to whomever they choose.* Freedom of commerce is a fundamental human right. Any governmental restriction on that right must only be imposed

when essential to serve an important societal objective, and must be structured to minimize limitations to individual liberty.

- *Imports are good.* They help to ensure that consumers are able to benefit from a wide variety of competitively priced items, thus expanding consumer choice and helping to raise living standards. They also provide world-class competition for domestic manufacturers, stimulating innovation and product improvements.
- *Exports also are good.* They are needed in order to pay for desired imports. And, since comparative advantage means that all nations are relatively better at doing some things than others, countries have an obligation to allow their surplus products to be exported so that others will be able to buy them.
- *Both imports and exports create jobs.* Economic activity that doesn't cross borders also creates jobs. All productive economic activity is good. Having more of it is better.

Pro-trade organizations ought to present these and other arguments actively as they work on behalf of liberalization. It would be a mistake to retreat until a more supportive administration appears. There is little doubt that less-thoughtful views would fill the vacuum. Despite the fact that the pro-trade team is on the side of economic growth and opportunity, it has been losing the contest for people's hearts and minds. It may be tempting to blame the other side for not playing fair, but the more constructive approach is to redouble efforts to help people understand that freer trade is good for the United States and good for the world.

Conclusion

The administration faces difficult choices. It should promptly sort out whether it is willing to bear the political costs of obtaining fast-track authority. If so, it must put together a credible plan for overcoming substantial opposition and begin to work toward achieving successful votes in Congress. If not, it should advise its partners in the TPP and TTIP negotiations that concluding those agreements will take a long time — likely stretching into the next U.S. administration — thus allowing those countries to make pragmatic decisions about how and whether to proceed.

In short, it is still theoretically possible for the administration to salvage its trade agenda. In practice, however, the political price of trying to do so is most likely to prove too high.

Notes

[1] Dylan Matthews, "How Obama's Tire Tariffs Have Hurt Consumers," *Washington Post*, October 23, 2012, http://www.washingtonpost.com/blogs/wonkblog/wp/2012/10/23/how-obamas -tire-tariffs-have-hurt-consumers//?print=1.
[2] Robert J. Bowman, "Is the President's National Export Initiative a Dud?" SupplyChainBrain, July 1, 2013, http://www.supplychainbrain.com/content/blogs/think-tank/blog/article/is-the-presidents-national-export-initiative-a-dud/.
[3] Inside U.S. Trade, "Civil Society, Labor Groups Churn Out Petitions, Letters Against Fast Track," February 21, 2014, www.insidettrade.com.
[4] Ibid.
[5] Ryan Grim and Zach Carter, "The Veal Pen Is Becoming a Dangerous Place," *Huffington Post*, February 20, 2014.
[6] Ibid.
[7] Ibid.
[8] Ibid.
[9] Carolyn C. Smith, "Trade Promotion Authority and Fast-Track Negotiating Authority for Trade Agreements: Major Votes," Congressional Research Service, January 12, 2011.

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

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.

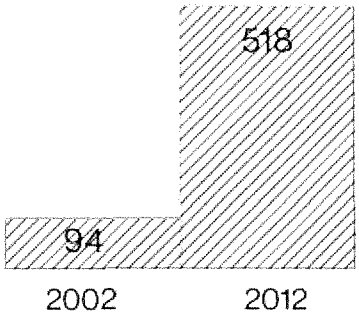
Yet that fix is now the subject of a bitter disagreement between corporations and governments that's impeding progress on two of the biggest free-trade treaties ever, both involving the U.S.: the Trans-Pacific Partnership (TPP) and the Transatlantic Trade and Investment Partnership (TTIP).

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.

HTTP://TTIP2014.EU/BLOG-DETAIL/BLOG/USA%20CONCERNS.HTML

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 Atantic 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-tarriff 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.

Eyes on Trade | March 28, 2014

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 that 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
FTA TOTAL:		**($33.20)**	**($180.30)**	**($147.10)**
Non-FTA TOTAL:	[2006]	**($818.20)**	**($687.60)**	**$130.60**

FTA Deficit INCREASE: 443%

Non-FTA Deficit DECREASE: 16%

Source: U.S. International Trade Commission. Units: billions of 2013 dollars.
*(*Measured since 1989 due to data availability.)*

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.

STATE OF MAINE

Citizen Trade Policy Commission

DRAFT AGENDA

Monday, February 24, 2014 at 1 P.M.
Room 220, Burton M. Cross State Office Building
Augusta, Maine

1 PM Meeting called to order

I. Welcome and introductions

II. Review of current status of TTP and TTIP (Representative Sharon Anglin Treat)

III. Discussion of draft letters to the USTR on ISDS, procurement and pharmaceuticals

IV. Discussion of 2014 CTPC Assessment

V. Review draft of 2013 Annual Report of the CTPC

VI. Articles of interest (Lock Kiermaier, Staff)

3:30 PM Adjourn

Citizen Trade Policy Commission
c/o Office of Policy & Legal Analysis
State House Station #13, Augusta, ME 04333-0013 Telephone: 207 287-1670
http://www.maine.gov/legis/opla/citpol.htm

STATE OF MAINE

Citizen Trade Policy Commission

February 24, 2014

The Honorable Michael Froman
United States Trade Representative
600 17th Street NW
Washington, DC 20508

Re: Comments concerning the pharmaceutical and medical device reimbursement and intellectual property provisions of the Trans-Pacific Partnership

Dear Ambassador Froman:

The Maine Citizen Trade Policy Commission (CTPC) is established in Maine State Law "..to assess and monitor the legal and economic impacts of trade agreements on state and local laws, working conditions and the business environment; to provide a mechanism for citizens and Legislators to voice their concerns and recommendations; and to make policy recommendations designed to protect Maine's jobs, business environment and laws from any negative impact of trade agreements." In seeking to fulfill its statutory mandate, the Commission voted unanimously during its meeting of February 24, 2014 to submit this letter to you regarding our views on the pharmaceutical and medical device reimbursement and intellectual property provisions of the Trans-Pacific Partnership.

The CTPC understands from several public reports that U.S. negotiators are now considering pharmaceutical reimbursement text in the TPP that would (1) use the pharmaceuticals annex in the Australia-US Free Trade Agreement (AUSFTA) as the drafting template rather than the provisions of the Korea-US agreement (KORUS); (2) specifically designate Medicare Part B as the only U.S. healthcare program subject to the rules of this Annex; (3) limit any appeals of reimbursement decisions to Medicare Part B beneficiaries; and (4) exclude text that may previously have been under consideration (according to leaked documents) that reimbursement decisions have a "transparent basis consisting of competitive market-derived prices in the party's territory".

The CTPC has never supported including pharmaceutical reimbursement provisions in any trade agreement, including AUSFTA, because these provisions reduce access to affordable medicines and insert policy into trade agreements that is best left to domestic regulation.[1] That said, the AUSFTA pharmaceutical annex raises fewer concerns than either KORUS or leaked TPP reimbursement text, and we are encouraged by USTR's apparent willingness to reconsider its earlier approach. In particular, we agree strongly with the opt-in approach that would specifically list any covered programs. The opt-in would clarify ambiguous text in

[1] See, eg, the CTPC's 2012 statutorily required biennial Assessment of the potential impact of trade policy on Maine's citizens, economy, laws and policies. The Assessment, posted online□here: http://www.maine.gov/legis/opla/CTPC2012finalassessment.pdf, concluded that the impact of the TPP reimbursement provisions on pharmaceutical pricing in Maine, and on access to healthcare, could be significant.

previous FTAs and insure that Medicaid, 340(B) and other pharmaceutical programs partially administered at the sub-central level by U.S. states are not bound by these rules.

As noted above, however, even the AUSFTA provisions raise concerns. The CTPC strongly urges the inclusion of the following provisions in any healthcare reimbursement and transparency annex in the TPP to address these concerns:

1. The Agreed Principles should specifically include language specifying that healthcare and medicines affordability, safety and efficacy are recognized criteria in government reimbursement decisions governed by the Annex.

2. There should be no appeal of reimbursement decisions but instead a review based on domestic law and limited to beneficiaries.

3. If applicants are afforded an opportunity to provide comments during the reimbursement decision process, beneficiaries and the public should also be allowed to provide comments.

4. Internet posting and other provisions relating to dissemination of information about pharmaceuticals must be bound by a Party's domestic laws and regulations. In other words, the provisions of the TPP must respect domestic policies concerning direct-to-consumer advertising and off-label marketing.

5. The Annex must specifically state that a decision regarding the listing of a pharmaceutical product or setting a reimbursement price through a program covered by the Annex may not be challenged under the country-to-country dispute settlement *nor under the investor-state dispute settlement provisions (ISDS) of the Chapter on Investments.* Both of these changes are critical, and the greater concern lies with the possibility that investors could use the ISDS to challenge these domestic policy decisions.

We also wish to reiterate the longstanding position of the CTPC that the TPP's Intellectual Property Chapter must balance encouraging innovation with assuring affordability. The publically reported USTR position pushing for a lengthy 12-year data exclusivity period for biologics is excessive and will significantly delay the development of generic versions of these pricey and life-saving medicines. The CTPC urges the USTR to modify its position to a more reasonable timeframe that will better protect the affordability of these important medicines.

Thank you for your consideration of these recommendations. The CTPC stands ready to discuss these recommendations with you and to respond to any requests for further information or clarification.

Sincerely,

Senator Troy Jackson, Chair

Representative Sharon Anglin Treat, Chair

cc:
Senator Susan Collins
Senator Angus King
Representative Michael Michaud
Representative Chellie Pingree
Kay Wilkie, IGPAC Chair
Rebecca Rosen, USTR, Director of Intergovernmental Affairs and Public Engagement
Barbara Weisel, USTR, TPP lead negotiator
Stanford McCoy, USTR, AUSTR for Intellectual Property and Innovation

Inside U.S. Trade - 01/17/2014

U.S. Poised To Scale Back TPP Proposal On Drug Reimbursement Rules

Posted: January 16, 2014

The Obama administration is poised to scale back its proposal in the Trans-Pacific Partnership (TPP) negotiations for disciplines on how national drug pricing and reimbursement programs make their determinations, amid mounting criticism from domestic stakeholders that these rules could constrain the operation of U.S. federal and state health care programs, according to informed sources.

The U.S., together with Japan and Australia, has developed a revised proposal for a TPP annex on transparency requirements and procedural disciplines that is roughly in line with the provisions included in the U.S.-Australia free trade agreement, sources said.

Previous U.S. proposals on this topic had sought to go beyond the disciplines laid out in the Australia FTA and even beyond the stronger provisions of the U.S.-Korea FTA (*Inside U.S. Trade*, Nov. 4, 2011).

One of the differences about the new U.S. approach is that it would scale back the scope of an appeal mechanism that TPP countries would have to provide for reimbursement decision by health care agencies, sources said.

While previously the U.S. had sought to require appeals both of a decision by an agency not to list a certain drug on its reimbursement list and of the specific reimbursement rate given to a listed drug, the new proposal would leave the scope of the appeal mechanism up to the individual country, they said.

The U.S. effort to discipline drug reimbursement programs in TPP, which is driven by U.S. pharmaceutical companies and medial device makers, appears to be aimed in part at the Pharmaceutical Management Agency of New Zealand (PHARMAC). U.S. drug manufacturers have long argued that the mission of PHARMAC is to drive down drug prices at the expense of respect for intellectual property and transparency.

Although that objective is driven by U.S. offensive interests, the issue has gained a higher profile over the last year among public health and interest groups who are worried about the impact on U.S. health care programs. These groups first became aware of the issue last summer, and have since then ramped up their efforts to lobby the Obama administration and Congress, sources said.

For instance, a group of 15 organizations representing senior citizens, government workers and other advocates flagged the issue in a Nov. 8 letter to President Obama, listing a series of existing U.S. programs and proposals that could be subject to challenge under USTR's TPP proposal for drug reimbursement programs.

Among the signatories of the letter were the AARP and the American Federation of State, County and Municipal Employees. Some of the letter's signatories, though not AARP, followed up by taking out a full page ad in three Washington political newspapers this week. In response, USTR has held briefings over the past several weeks with these groups and congressional staff to

try to reassure them that U.S. health programs will not be affected by the TPP.

A spokeswoman for the Office of the U.S. Trade Representative emphasized that same message in a statement e-mailed to *Inside U.S. Trade*. "We are working to reach agreement with our partners on transparency and good governance provisions that are covered by what we already have in U.S. law. Nothing we are doing in TPP, including our proposals on transparency and procedural fairness, will undermine or weaken the Affordable Care Act, Medicare, Medicaid, or the Veteran's Health Administration," the spokeswoman said.

The spokeswoman said the U.S. is working with other TPP partners "to refine the proposals and find ways forward," and acknowledged that "one possible way forward that has been proposed is to look at the U.S.-Australia FTA."

"Several TPP partners have expressed interest in ways to clarify the scope of applicability of the transparency and good governance provisions we are proposing in this annex. We are discussing ways to do that," the spokeswoman said.

In addition to including more general language on the scope of the appeal mechanism, the new U.S. approach contains several other modifications that appear aimed at easing worries expressed by these U.S. domestic groups and members of Congress.

Essentially, the changes proposed by USTR appear to make it less likely that U.S. federal and state health care programs would be affected by the TPP disciplines, although one advocate stressed that the Australia FTA provisions are still worrisome because they are skewed toward promoting innovation without equal regard for public health considerations like drug affordability, cost effectiveness, safety and efficacy.

A congressional aide said USTR's newest proposal addresses "a lot of the concerns" that had been voiced about the proposal's impact on U.S. health care programs, although he expressed frustration that it took the agency so long to pay attention. "USTR has only as of late come around to backing language that is more in line with the Australia Free Trade Agreement, and therefore less likely to put Medicare at risk," he said.

The second change in the new U.S. approach settles any questions about which health programs would be covered under the TPP disciplines. It does that by requiring each TPP country to submit a positive list of entities that would be covered, sources said. USTR has indicated it would list Medicare, a federal health program for senior citizens, but not Medicaid, which is a health program for poor people administered by U.S. states.

The USTR spokeswoman confirmed this aspect of the proposal. "In the case of the United States, the scope would likely include our long-standing Medicare National Coverage Determination (NCD) process, which we would leave completely unchanged. Other programs, such as Medicaid, 340B, or the Veteran's Health Administration, would not be covered," she said.

The third change would leave up to the discretion of each TPP country the question of what party is entitled to use the appeal mechanism. Under the new approach, a TPP country would be able to limit parties entitled to appeal the reimbursement decision to beneficiaries of the health

program, not a drug company.

This interpretation would mean that Medicare could be deemed in compliance with the appeal requirement, since it currently allows beneficiaries to appeal a decision by the federal government not to reimburse for a certain drug, although it does not allow drug companies the same right of appeal, sources said.

But one advocate noted that under the U.S. system, beneficiaries often designate drug companies to carry out the appeal on their behalf, since private individuals may not have the expertise or resources to carry out such an appeal.

According to the USTR spokeswoman, the U.S. approach in TPP does not specify which individual would be the "applicant" entitled to launch an appeal under the independent review mechanism, and it can vary depending on the type of system. But the spokeswoman emphasized that, under the U.S. system, the applicant for a Medicare NCD is the individual beneficiary.

Experts pointed out that Medicare Part B -- which covers drugs and services provided by hospitals, including outpatient services -- is the only part of Medicare that uses the NCD system and would therefore be covered under the U.S. proposal in TPP.

Medicare Part D, which covers prescription drugs provided outside of hospitals, does not have a similar type of central entity that determines which specific medicines will be subject to reimbursement. Under Medicare Part D, private insurers receive a subsidy from the federal government and determine on their own which medications are covered.

Since there is no government body making reimbursement decisions, Medicare Part D would not likely be subject to TPP disciplines on reimbursement, experts said.

Inside U.S. Trade - 01/17/2014, Vol. 32, No. 3

STATE OF MAINE

Citizen Trade Policy Commission

February 24, 2014

The Honorable Michael Froman
United States Trade Representative
600 17th Street NW
Washington, DC 20508

Re: Negotiations in the TTIP concerning procurement provisions affecting sub-central governments

Dear Ambassador Froman:

The Maine Citizen Trade Policy Commission (CTPC) is established in Maine State Law "..to assess and monitor the legal and economic impacts of trade agreements on state and local laws, working conditions and the business environment; to provide a mechanism for citizens and Legislators to voice their concerns and recommendations; and to make policy recommendations designed to protect Maine's jobs, business environment and laws from any negative impact of trade agreements." In seeking to fulfill its statutory mandate, the Commission voted unanimously during its meeting of February 24, 2014 to submit this letter to you indicating our concerns over possible measures in the Transatlantic Trade and Investment Partnership (TTIP) that could undermine our efforts to rebuild local food systems that are healthy, fair and sustainable, and the possibility that European Union officials are directly reaching out to state governments seeking their agreement to be bound by procurement provisions under consideration in the TTIP.

Current Maine law (10 MRSA §13) requires that if the U.S. government provides the State with the opportunity to consent to or reject binding the State to a trade agreement, or a provision within a trade agreement, then an official of the State, including but not limited to the Governor, may only bind the State or give consent to the U.S. government to bind the State after consultation with the CTPC and the Legislature's approval. In addition, Maine has specific procurement administrative rules (Bureau of General Services, Ch. 130; http://www.maine.gov/sos/cec/rules/18/chaps18.htm) for textiles and footwear prohibiting purchasing of goods that do not comply with certain fair labor, equal rights, and health and safety standards.

In addition, the State of Maine and many local governments have proactively promoted "Buy local" and "Maine Made" programs including Farm to School, Farm to Hospital and other initiatives aimed at sourcing healthy, local and regional foods into institutions as a way of enhancing nutritional and other health outcomes for consumers, supporting local economies, and improving farm profitability. We oppose any provisions in the TTIP that would limit preferences in public procurement programs for healthy, locally grown foods.

We are concerned that proposals being advanced in the TTIP negotiations could restrict or even eliminate criteria that favor local or regionally-grown foods as "localization" barriers to trade. We understand that the EU is pushing for procurement commitments in the trade agreement at all levels of government, including municipal, state and federal contracts. These commitments could open these publicly funded contracts to bids from EU firms, and could restrict the kinds of criteria that local communities deem important in making those decisions. We understand from public reports that the EU is insisting on procurement commitments that "go beyond" those already agreed to in the multilateral Government Procurement Agreement (GPA), which currently includes 37 U.S. states.

While the U.S. excluded "procurement of any agricultural good made in furtherance of an agricultural support program or a human feeding program" from its commitments under the international GPA, the EU has stated clearly that it would like to achieve new commitments in this agreement on goods and services not already covered in the GPA, as well as its goal to, "[e]nsure that rules on off-sets/set asides or domestic preferences such as, but not limited to, Buy America(n) and SME [Small and Medium Enterprise] policies, do not restrict procurement opportunities between the EU and the U.S."

The fact that the U.S. and EU have refused to publish negotiating texts -- which is accepted practice at the World Trade Organization and other multilateral negotiations -- means that we are compelled to consider what might be at risk under this accord. We do not know which sectors might be included, whether bidding criteria designed to promote social, environmental, economic, health and other public goals could be threatened, or even how decisions would be made – or by whom – on whether states or cities are included in procurement commitments in the trade agreement. We urge you to immediately publish negotiating texts on these and other important issues in the trade agreement to foster an informed public debate.

We also wish to bring to your attention the possibility that EU officials are directly contacting state governments seeking commitments to be bound by the procurement provisions in TTIP before these provisions have even been decided upon or made public. Although we do not know of any Maine officials being contacted by EU officials, members of the CTPC have been told that such contacts may be occurring between the EU and officials in other states. If this activity is in fact taking place, it would be highly inappropriate. Any requests to bind state governments should come from our own federal government after informing the Intergovernmental Policy Advisory Committee (IGPAC) that such outreach is planned.

That said, we have been repeatedly assured by USTR negotiators that the US is not seeking to bind sub-central governments in the procurement chapter without their approval, a position that we support. We are asking by means of this letter that you confirm that this understanding is correct. Further, we ask that you insure that any outreach to states and local governments concerning the procurement chapter will be conducted between the federal government and sub-

central governments and involve notification of and consultation with IGPAC, and will not involve direct EU to state government contacts.

We would welcome opportunities to discuss these issues with you and hope for an open dialogue based on concrete information and consultation.

Sincerely,

Senator Troy Jackson, Chair

Representative Sharon Anglin Treat, Chair

cc:
Senator Susan Collins
Senator Angus King
Representative Michael Michaud
Representative Chellie Pingree
Kay Wilkie, IGPAC Chair
Rebecca Rosen, Director of Intergovernmental Affairs and Public Engagement, USTR

STATE OF MAINE

Citizen Trade Policy Commission

February 24, 2014

The Honorable Michael Froman
United States Trade Representative
600 17th Street NW
Washington, DC 20508

Re: Support for Public Stocktaking Process on Investment and Investor-to-State Dispute Settlement Policies

Dear Ambassador Froman:

The Maine Citizen Trade Policy Commission (CTPC) is established in Maine State Law "..to assess and monitor the legal and economic impacts of trade agreements on state and local laws, working conditions and the business environment; to provide a mechanism for citizens and Legislators to voice their concerns and recommendations; and to make policy recommendations designed to protect Maine's jobs, business environment and laws from any negative impact of trade agreements." In seeking to fulfill its statutory mandate, the Commission voted unanimously during its meeting of February 24, 2014 to submit this letter to you indicating our strongly held concerns regarding the current process being used to negotiate the Trans-Atlantic Trade and Investment Partnership (TTIP) and the possible inclusion of provisions pertaining to the use of the Investor-State Dispute Settlement (ISDS) process.

In concert with many U.S.-based organizations representing labor, health, consumers, family farms, the environment and small business interests, we write to urge you to join your counterparts from the European Union and embark upon a thorough, open, public consultation process to review the costs and benefits of the investor protection policies in the TTIP. The Commission specifically urges the USTR to release proposed text for public review and analysis and to postpone negotiation of the investment chapter pending an opportunity for this public consultation.

As you know, on January 21, 2014, the European Commission announced that it would "consult the public on the investment provisions of a future EU-US trade deal, known as the Transatlantic Trade and Investment Partnership (TTIP)." In the release, EU Trade Commissioner Karel De Gucht explained, "some existing arrangements have caused problems in practice, allowing companies to exploit loopholes where the legal text has been vague. I know some people in Europe have genuine concerns about this part of the EU-US deal. Now I want them to have their say." We applaud the creation of a public consultation process for Europeans. As a state-authorized commission that represents Maine businesses, non-governmental organizations, and citizens, we would like to have the same opportunity as our counterparts across the Atlantic.

USTR has pointed to the existence of the U.S. trade advisory committee process and the posting on its website of the Model Bilateral Investment Treaty (Model BIT) as meeting public requests for transparency and consultation. We respectfully disagree. The public availability of generic text cannot replace the opportunity to read and comment on actual proposed language under consideration in TTIP. Further, we have on many occasions detailed the inadequacies of the current advisory committee process, including the limited substantive consultation with U.S. state governments, and the disproportionate access given to corporate advisors in contrast to the limited resources and participation of state officials, small business representatives, and public interest stakeholders. In particular, we refer you to a March 12, 2012 letter we wrote to your predecessor Ron Kirk regarding the process used to negotiate international trade treaties (http://www.maine.gov/legis/opla/ctpcletmarch62012.pdf) and to the 2012 Assessment conducted by Professor Robert Stumberg of Georgetown University which documented numerous instances in which the negotiating process has been significantly less than inclusive and open (http://www.maine.gov/legis/opla/CTPC2012finalassessment.pdf) .

As you know, concerns about overbroad investor protections, and about the ISDS process in particular, are long-standing. ISDS provides foreign investors the right to bypass domestic courts (including constitutionally-created Article III courts) and challenge the U.S. government directly before an international arbitration tribunal; a right that home-grown investors do not share. The ISDS panels are neither democratically selected nor accountable to any public- nor are they required to consider basic principles of U.S. law (such as sovereign immunity or the "rational basis" standard), nor must they weigh the public interest against the alleged violation of an investor's rights. Under this system, the U.S. government can only be a defendant (the investor takes on no corresponding responsibilities), and even when the U.S. government "wins," the U.S. people lose because valuable government resources (an average of $8 million a case) are expended to defend these often meritless claims.

A public consultation process in which American workers, families, communities, small businesses and civil society organizations have a real voice will be an important step toward creating more balanced investment policies that reflect the diverse needs and interests of real people and their communities, not simply large, global corporations.

We urge you to take this step to ensure that U.S. trade policymaking is at least as inclusive as that of our trading partners.

We look forward to hearing from you.

Sincerely,

Senator Troy Jackson, Chair

Representative Sharon Anglin Treat, Chair

cc:
Senator Susan Collins
Senator Angus King
Representative Michael Michaud
Representative Chellie Pingree
Kay Wilkie, IGPAC Chair
Rebecca Rosen, USTR, Director of Intergovernmental Affairs and Public Engagement
Daniel Bahar, USTR, DAUSTR for Investment

STATE OF MAINE

Citizen Trade Policy Commission

Discussion: CTPC Assessment for 2014

February 24, 2014

Statutory Requirement for Assessment:

The CTPC's statutory mandate was amended by PL 2007, Chapter 266 to require that the CTPC must hold regular meetings, gather information from the public through public hearings, to submit an annual report on its activities and ***to conduct a biennial assessment on the impacts of international trade agreements on Maine***.

Process Used for the 2012 CTPC Assessment

To comply with the requirement that the CTPC must conduct a biennial assessment on the impacts of international trade treaties on Maine, in early 2012 the commission started a process to conduct the required assessment:

- The CTPC considered 5 final candidates who were highly qualified in the subject of international trade;
- After a detailed review of the 5 candidates, the CTPC selected Professor Robert Stumberg, Professor of law at Georgetown University and Director of the Harrison Institute for Public Law, to conduct the 2012 CTPC Assessment;
- The CTPC contracted with Professor Stumberg at a cost of $10,000 to conduct an assessment which focused on the following 3 subjects regarding the TransPacific Partnership Agreement (TPPA) and its possible effects on Maine:

  - o Pharmaceuticals;
  - o Procurement; and
  - o Tobacco

The contract with Professor Stumberg required him to:

- o Produce a first draft of the assessment by June 8, 2012;
- o Present the draft assessment in person at a Public Hearing by June 15, 2012;
- o Submit a final draft of the assessment by June 25, 2012

A copy of the 2012 Assessment can be viewed online at:
http://www.maine.gov/legis/opla/CTPC2012finalassessment.pdf

Possible Topics for the 2014 CTPC Assessment

The CTPC has a complete freedom to choose any international trade related topic(s) for the 2014 Assessment. Possible topics include:

- TTIP & Agriculture
  - GMO labeling
  - Farm-to-School and other procurement provisions
  - Agricultural policies relevant to Maine such as dairy supports
- TTIP & financial services
- TTIP & possible preemption of Maine environmental laws and regulations
- TTIP & energy policy
- ISDS as a factor in all of the above (except procurement which it does not apply to)

Possible Candidates to Conduct the 2014 CTPC Assessment

The list of possible candidates to conduct the 2012 Assessment included the following individuals:

- Professor Matthew Porterfield of Georgetown Law School; has a particular expertise on tobacco issues;
- Professor Sean Flynn of American University Law School; has a particular expertise on pharmaceuticals;
- Karen Cordry, IGPAC member and Bankruptcy and Special Issues Counsel for National Association of Attorneys General; has expertise in tobacco and procurement issues:
- Ellen R. Shaffer, Co-Director, Center for Policy Analysis on Trade and Health/CPATH; particular expertise in health care and pharmaceutical issues; and
- Professor Robert Stumberg, Professor of Law at Georgetown University and Director of the Harrison Institute for Public Law; particular expertise in tobacco, procurement and environment.

Depending on the topic selected by the CTPC, an additional possible candidate might be the Global Development and Environment Institute at Tufts University (http://ase.tufts.edu/gdae/)

Resources for 2014 CTPC Assessment

According to the Office of the Executive Director for the Legislative Council, the CTPC has $10,000 budgeted to conduct the 2014 Assessment.

Article notes: February 24, 2014
Citizen Trade Policy Commission

Don't fast track a polluters' bill of rights; (FOE blog, 1/24/14)

This opinion piece urges readers to oppose the current Fast Track legislation being considered by Congress for the following reasons:

- It would undercut the constitutional authority of Congress to review and approve international trade agreements; and
- It would rush approval of the "environmentally hazardous" TPP and TTIP.

Commentary: Trade agreements need meaningful congressional review, congresswoman says; (Chellie Pingree, Portland Press Herald, 1/27/14)

This opinion piece written by Maine Congresswoman Chellie Pingree states her opposition to Fast Track legislation proposed by the USTR for the following reasons:

- The TPP and TTIP are complicated trade agreements and deserve a thorough review by Congress as required by the Constitution;
- The precedent represented by NAFTA provides little evidence of domestic job creation, strengthening of trade and lower consumer prices; and
- The TPP and TTIP are likely to include many non-tariff provisions and are actually largely focused on the removal of "non-tariff barriers" .

SOTU: President's Base Opposes Fast Track for TPP (Citizen Trade; 1/27/14)

This article discusses the opposition to Fast Track authority by more than 550 labor, environmental , family farm and other organizations that are traditionally supportive of President Obama's policy priorities. This opposition was voiced in a recent letter to the President signed by these organizations which voiced the following concerns about Fast Track authority:

- It undermines Congressional authority to review and approve international trade agreements;
- It would allow the President to sign trade agreements prior to Congressional approval;
- It would allow the Executive Branch to alter federal laws to comply with trade agreements; and
- It would limit Congressional debate and prohibit amendments.

Attorney General Mills calls for trade deal to protect Maine's anti-tobacco efforts; (Maine AG Press Release, 1/28/14)

Text of letter to USTR Michael Froman, signed by more than 40 state AGs; (1/27/14)

The press release from Maine Attorney General Janet Mills details her opposition to the current TPP provision regarding the treatment of tobacco "like any other product for sale" and maintains that the inclusion of such a provision would undermine Maine's effort to regulate tobacco to protect the public health and welfare. Along with more than 40 Attorneys General from other states, AG Mills signed a letter to that effect which was sent to USTR Michael Froman.

Timing of TPA Depends on Obama, Says Former Chief of Staff to USTR, Cato Scholar Says Jettison Investor-State Dispute Settlement; (BNA; 1/29/14)

This article details the assertion of Timothy J. Keeler, former USTR Chief of Staff, that the timing of when Fast Track authority will be considered by Congress for approval will depend on the President's willingness to expend his political capital. The article also reports on the assertion from Dan Ikenson, from the Cato Institute, that passage of the TPP and the TTIP would be enhanced if both agreements "jettisoned" inclusion of ISDS provisions.

Statement by United States Trade Representative Michael Froman on the Bipartisan Congressional Trade Priorities Act of 2014; (USTR Newsletter; 1/31/14)

In this statement, USTR Froman advocates strongly for bipartisan approval of the President's Fast Track authority proposal and maintains that the proposal will:

- Open new trade markets;
- Support U.S. jobs;
- Increase exports of Made in America products; and
- Ensure a level playing field for the US to compete in international trade.

Executive Summary: Investor-State dispute settlement under TTIP – a risk for environmental regulation?; (Heinrich Boll Foundation; 2/5/14)

As stated in this summary, ISDS provisions likely to be included in the TTIP have the potential to:

- Restrict the ability of sovereign governments to develop environmental rules and regulations;
- Require fair and equal treatment for all investors;
- Prohibit indirect expropriation; and
- Inclusion of the so called "umbrella clause"

(A complete copy of this 25 page report on ISDS and the TTIP can be viewed online at http://boell.org/downloads/HBS-TTIP_2.pdf)

USTR calls All-Day Briefing for Cleared Advisers on TPP for Next Week; (Inside U.S. Trade; 2/6/14)

This article reports that in response to criticism about the alleged secrecy surrounding the TPP negotiations, the USTR planned an all day briefing on February 11th for cleared advisers.

USTR cancels TPP [Vermont] briefing over presence of media; (Politico; 2/10/14)

This article reports that the USTR cancelled a briefing to Vermont state legislators when it was learned that media would be covering the event.

USTR TPP Briefing To Cleared Advisers Reveals Major Outstanding Issues (Inside U.S. Trade; 2/12/14)

This article reports that the USTR briefing for cleared advisers that took place on February 11th revealed that a number of major issues are yet to be resolved in the TPP. These unresolved issues include:

- intellectual property;
- state-owned enterprises; and
- labor rights.

It is also reported that the TPP is unlikely to be finalized, as hoped by the Obama administration, by April 2014.

The Trans Pacific Partnership is in trouble on Capitol Hill. Here's why.; (Washington Post; 2/19/14)

This article reports that there is significant resistance in Congress towards approving President Obama's request for Fast Track authority and the approval of the TPP. Much of the current opposition to Fast Track comes from prominent Congressional Democrats including Senate Majority Leader Harry Reid and House Minority Leader Nancy Pelosi. The article suggests that from a political standpoint, it would not be fruitful for the President to push hard for approval of these measures at the current time.

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

Portland Press Herald 1/27/14

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.

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

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, 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

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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.

National Association
of Attorneys General

PRESIDENT
J.B. Van Hollen
Wisconsin Attorney General

PRESIDENT-ELECT
Jim Hood
Mississippi Attorney General

VICE PRESIDENT
Marty Jackley
South Dakota Attorney General

IMMEDIATE PAST PRESIDENT
Douglas Gansler
Maryland Attorney General

EXECUTIVE DIRECTOR
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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http://www.naag.org/

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

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.

Sincerely,

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 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

Douglas F. Gansler
Maryland Attorney General

Martha Coakley
Massachusetts Attorney General

Bill Schuette
Michigan Attorney General

Lori Swanson
Minnesota Attorney General

Jim Hood
Mississippi Attorney General

Chris Koster
Missouri Attorney General

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Jon Bruning
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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

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.

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.

print

email

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.

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

Inside U.S. Trade
Daily News

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, Australian 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.

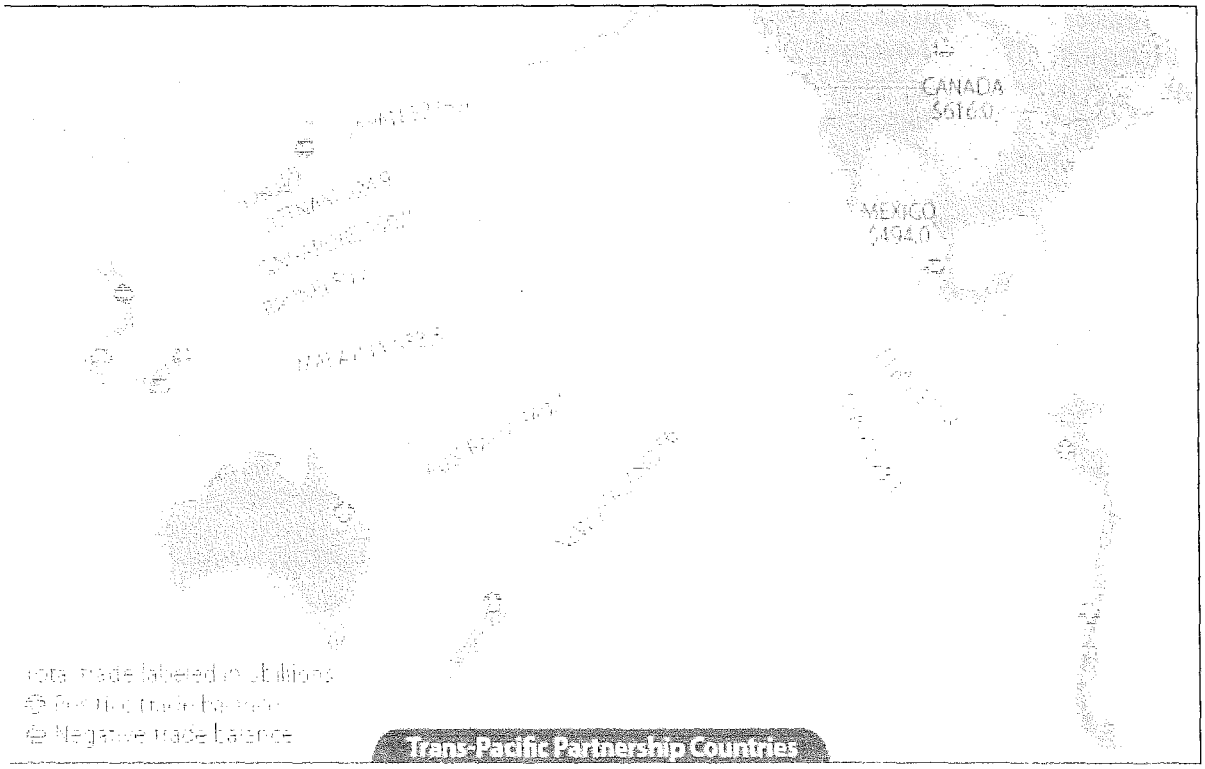
- BY ED O'KEEFE
- The Washington Post | The Fix (Blog)
- February 19 at 2:55 pm

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 extend, 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.