

Angus King: Rethinking Free Trade

Angus King H'07, a distinguished lecturer at the College since 2004, is a regular contributor to the Bowdoin Daily Sun. In his latest post, the former two-term governor of Maine argues that free trade isn't all that it's cracked up to be.

Imagine the governor of one of our states going to the Congress and making the following argument:

“We are a small state that is struggling economically; we’re predominantly rural and would like to expand our manufacturing base. But it’s hard because we’re subject to those onerous federal environmental laws, which make building factories more expensive, as well as those pesky federal safety and wage and hour laws, which drive up the cost of labor.

“So we would appreciate it if you would exempt us from all those laws; then, we could attract jobs from the rest of the U.S. and sell our products for less than what they would cost to make in the other states. Consumers in the other states would get cheaper goods and we’d get lots of new jobs. And maybe, eventually, our economy will improve to the point where we can buy stuff from the other states as well. So how about it?”

Sound preposterous? Absolutely; the guy would be laughed out of Congress and not even get through the door at the White House. And yet, this is essentially what happens when we sign a free trade agreement with another country, especially one with minimal environmental and labor laws. In terms of trade and access to our markets they are, in effect, becoming states—no tariffs, no borders, no hassles—but very special states, indeed, exempt from the rules that apply to their competitors unlucky enough to still be located in one of the original 50.

*...what have been the results of this deal over the past couple of decades?
Nothing less than the hollowing out of the American economy.*

Pretty nice deal—rights (including access to the richest market in the world) without responsibilities.

And what have been the results of this deal over the past couple of decades? Nothing less than the hollowing out of the American economy. It now appears that the financial boom of the nineties was largely fake—little real value was created (but a lot of people got very rich without producing anything)—and it papered over (literally, in many cases) the real story of the last twenty years, which is the stunning decline in U.S. manufacturing. Between 2001 and 2009, we lost over 42,000 factories (you read that right, it’s factories) and more than five and a half million manufacturing jobs, representing an amazing 32% decline in manufacturing employment in less than a decade.

Obviously, this isn’t just about trade. Technology itself, for example, eliminates jobs by making workers more productive. But it’s hard to argue that trade policy didn’t have a lot to do with it when the identical products that were once made here are now made offshore, often under the same label. Just here in Maine, Hathaway Shirt, Cole Haan, Bass and Dexter shoes, as well as countless small wood processing mills come easily to mind.

This came home to me in less abstract terms the day I went to the closing of the Hathaway Shirt factory in Waterville. (I always felt that if I got to go to the celebrations—ribbon-cuttings and such—I should also go on the not-so-fun days as well). After reassuring the workers that we would provide training and transition support and that better opportunities were around the corner, I went down the line of the soon-to-be-jobless workers shaking hands. Most were downcast but reasonably cordial, until I got to one

woman toward the end of the line. She refused my offered hand, looked me in the eye and said, “Why should I shake hands with someone who let them ship my job away?”

I had no good answer, and I still don't.

The classical concept of open markets and free trade makes perfect sense between societies on more or less the same political, economic and social level—the U.S. and Canada, Germany and France, the UK and Denmark. Healthy competition will make businesses in each country more creative and productive and consumers in each country will gain the benefit of the efficiency and productivity engendered by the competition. But all those countries share a baseline of rules, assumptions, and economic expectations so the competition is all about productivity, not who can have the lowest environmental standards or labor costs.

(By the way, this is why the no-federal-regulation-of-anything philosophy that is emerging in the Republican presidential campaign is so dangerous. It's my opening case multiplied by 50—and the race to the bottom among states (all in the name of being “business-friendly”) would make your head spin. “Wetland laws in Vermont slowing your construction plans? Come on down to Texas and get your permits before you even apply!” I have first-hand knowledge here; I vetoed increases in Maine's minimum wage laws more than once out of concern that if we were substantially above the national baseline, it would add to the perception that we were anti-business. In other words, the pressure is already there; take away the nationwide standards that form a floor on environmental and labor issues and it will be “Back to the Future”—fifteen years from now will look more like 1920 than anything we've experienced in our lifetimes.)

A one-third decline in manufacturing jobs in eight years ain't evolution, it's revolution and a most unpleasant one at that.

Now, I understand that protectionism is generally not a good idea and that the Smoot-Hawley Tariff contributed to the severity of the Great Depression. I also know that businesses move and seek lower cost locales wherever possible and had been doing so long before NAFTA and the admission of China to the WTO (the empty mills in New England pre-date both), but two things make the current situation different: time and the living standards gap between us and our new trading partners.

By time, I mean the acceleration of the time it takes for major economic changes to take place. The shift of textiles, shoes and furniture from New England to the American south took a couple of generations, from the late forties to the late nineties. This gave individuals, communities and the region time to adjust while the changes took place. Now, the changes are much more abrupt—the economy of a whole town or region wiped out in matter of months or a few years instead a more gradual change over decades. A one-third decline in manufacturing jobs in eight years ain't evolution, it's revolution and a most unpleasant one at that.

The second difference between the current situation and historical trends is the vast gap between the laws and expectations of industrialized countries and those of the desperate-to-catch-up third world. Environmental protection costs money; keeping workers safe costs money; paying workers a wage sufficient to survive economically in our economy costs money—and there is simply no way our manufacturers can compete over the long run with their counterparts (often other U.S. companies) in places where these costs are either minimal or non-existent.

I remember being approached by a Maine manufacturer of tools who wanted me to understand why he had outsourced one of the parts of his product to China. “Most people don't understand the cost difference,” he said. “Here, the part costs me about \$14.00. Having it made there, the identical part is

about \$3.50, delivered.” I literally felt a cold shiver pass through me, and subsequent events haven’t made it feel much better.

I’m convinced that one of the reasons this keeps happening is that our media and political elites are physically located in places largely immune to the real impacts of this reverse tidal wave. They literally don’t see it. If the Congress met in Dayton, Ohio, or Schenectady or Wilton, Maine, or any one of thousands of struggling towns scattered throughout the country, I suspect they would be much more reluctant to let this happen without more of a fight.

So should we slap high tariffs on imported goods or quotas to restrict what comes in? Probably too late for that in most cases—and the result would be an immediate increase in prices which probably wouldn’t be the best thing as we struggle to get out of the recession we’ve been in off and on for the past ten years. But as we talk about new deals and the renewal of old ones, I think we should be much more aggressive about the price of admission to our markets—some measurable progress on environmental laws (do you have clean air and water standards or not?), real labor protections, and respect for intellectual property would be a good place to start.

We wouldn’t let Maine or Mississippi duck the standards; why should Colombia get a pass?

Posted on October 27th, 2011 in [Bowdoin](#)



Association Of State And Territorial Health Officials
2231 Crystal Drive, Suite 450 | Arlington, Virginia 22202
(202) 371-9090 | www.astho.org

President Barack H. Obama
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear President Obama:

We write today to express our deep concern regarding provisions being advanced by the United States Trade Representative (USTR) for the Trans-Pacific Partnership (TPP) Agreement regarding tobacco.

Tobacco use remains the leading preventable cause of death in the United States, accounting for approximately one of every five deaths (438,000) each year. More deaths are caused by tobacco use than from HIV/AIDS, illegal drug use, alcohol use, motor vehicle injuries, suicides, and murders combined. Each year, tobacco use results in \$157 billion in direct and indirect medical costs.

To most effectively combat tobacco-related morbidity and mortality and ensure significant program outcomes, tobacco use prevention and control programs must be fully integrated and supported within state health agencies. Infrastructure must be built and maintained for these programs, as well as adequate organizational and financial support.

The Association of State and Territorial Health Officials' (ASTHO) members have a strong history of supporting programs that improve tobacco prevention and control efforts in their states. ASTHO is the national nonprofit organization representing public health agencies in the United States, the U.S. Territories, and the District of Columbia. ASTHO members, the chief health officials of these jurisdictions, formulate and influence sound public health policy and ensure excellence in state-based public health practice. ASTHO members, along with our key public health partners and 20 affiliate organizations, represent the leaders in state, territorial, and local health departments.

We are deeply concerned that the language proposed by the USTR undermines the efforts of states and the nation to effectively address tobacco use, conduct tobacco control programs and enforce tobacco policies. We request your leadership to ensure that tobacco control measures and tobacco products are "carved out" of existing and future trade agreements, including the Trans-Pacific Partnership (TPP) currently being negotiated. The "carve out" language must be

broad in scope as it relates to tobacco prevention and control and unambiguous in its intent. It is critical that trade agreements protect the nation's health by not superseding current and future public health efforts.

Sincerely,

Paul E Jarris, MD

Paul Jarris, MD, MBA
Executive Director
Association of State and Territorial Health Officials

November 13, 2013 11:52 pm

TPP faces headwinds as US Congress pushes on currency

By James Politi in Washington

The Obama administration faced increasing pressure from Congress to push for aggressive currency measures in Pacific trade talks, amid mounting signs of US political unease over the negotiations and shape of a possible agreement.

Dave Camp, the Republican chairman of the House ways and means committee and the most senior US lawmaker on trade in the lower chamber, warned Barack Obama's trade team to do "more" to address currency as the Trans-Pacific Partnership talks approach their final stages.

"It's time to have a serious discussion about the pros and cons of including currency provisions in trade agreements, and what those provisions might look like," [Mr Camp said](#). "If the administration continues to delay its engagement on this politically and economically important issue, it will undermine support for TPP and could delay our ability to conclude TPP."

A majority of members of Congress have urged Mr Obama to include provisions that would punish countries for undervaluing their currencies in the trade talks with 11 other Pacific nations. The push for including currency measures in TPP became more acute since Japan joined the negotiations, amid concerns that it has been manipulating and undervaluing the yen to boost exports.

On Wednesday, Lindsey Graham, a Republican senator from South Carolina, and Sandy Levin, a senior Democratic congressman from Michigan, held a roundtable with US economists supporting the inclusion of currency in TPP and indicated they were unlikely to vote for the deal if their demands were not met.

"This is the place to take a stand," said Mr Graham. "It needs to be dealt with," added Mr Levin.

US business groups fear that forcing Japan's hand on currency could cause it and other nations to balk at the trade deal and unravel the entire negotiation. The US and other countries have held nearly two dozen negotiating sessions on TPP and have been hoping to conclude the pact by the end of the year.

This week, Jack Lew, the US treasury secretary, travelled to four critical TPP countries, including Japan, Singapore, Malaysia and Vietnam, to push for the deal. But Mr Lew did not offer a clear sign of how hard Treasury might push – if at all – for currency to be part of TPP in the final stages of the talks.

“I think if you look at the agreements that we’ve reached in the G7 and the G20, there is an important set of understandings about how currency and matters should be handled, in terms of the substance,” Mr Lew told reporters in Singapore. “And we have continued to pursue that in multilateral and bilateral discussions.”

Meanwhile, political opposition to the Obama administration’s second term trade agenda was laid bare [as about 150 members of the president’s own Democratic party in the House signaled their opposition](#) to “fast track” legislation that would make it easier for the TPP to move through Congress. Their letter came [a day after 22 Republicans in the House also said](#) they would fight any request for fast track negotiating authority from the president.

“The US cannot afford another trade agreement that replicates the mistakes of the past. We can and must do better,” said the letter led by Rosa DeLauro and George Miller, two senior House Democrats.

Political scepticism of TPP was further stoked [by the release by WikiLeaks of secret text dating back to August of the intellectual property chapters](#) in the trade talks, which showed the US pushing for tough rules and protections for drug patents, copyright laws, and open data flows. Consumer groups said the texts offered evidence that the Obama administration’s priorities in the TPP pact were driven by corporate demands from Hollywood, big pharmaceuticals and technology companies.

The Obama administration has always argued that TPP would help bolster economic growth and job creation across the US, and that it would make sure not to undermine consumer protections, or regulatory, environmental and labour standards.

Washington Post

Five key questions – and answers – about the leaked TPP text

By Henry Farrell, Updated: November 15 at 9:07 am

Susan Sell is a professor of political science at George Washington University, who has carried out landmark research on international negotiations over intellectual property. Below is her response to five questions about the intellectual property chapter of the [proposed Trans-Pacific Partnership agreement](#), which the Obama administration has been negotiating with trading partners behind closed doors. A draft of the chapter was [leaked to WikiLeaks](#) two days ago.

The draft TPP text was kept secret from the general public. Who has seen it and why?

The United States Trade Representative and the Obama administration have kept the treaty texts secret from the public. However, they have shared texts with 700 or so “cleared advisers,” all of whom come from intellectual property rights holders’ industries. Members of the Industry Trade Advisory Committee on Intellectual Property Rights have had access to texts all along. These members include representatives of the Pharmaceutical Research and Manufacturers of America, the Recording Industry Association of America, the Entertainment Software Association, as well as firms such as Gilead Sciences, Johnson and Johnson, Verizon, Cisco Systems, and General Electric.

Select members of Congress have had very limited access to the draft treaty texts. After Thursday’s leak of the intellectual property chapter it is obvious why the USTR and the Obama administration have insisted on secrecy. From this text it appears that the U.S. administration is negotiating for intellectual property provisions that it knows it could not achieve through an open democratic process. For example, it includes provisions similar to those of the failed Stop Online Piracy Act (SOPA), and Protect Intellectual Property Act (PIPA), and the Anti-Counterfeiting Trade Agreement (ACTA) that the European Parliament ultimately rejected. The United States appears to be using the non-transparent Trans-Pacific Partnership negotiations as a deliberate end run around Congress on intellectual property, to achieve a presumably unpopular set of policy goals.

What’s in it that is interesting?

Some of the most interesting information in the leaked chapter identifies those who are proposing or opposing particular provisions. The United States (often with Australia, sometimes Japan) has taken extreme hard-line positions. For example, only the United States and Japan oppose the objectives in the treaty (Article QQ.A.2) that mention economic and social development, maintaining a balance between the interests of rights holders and users, protecting the public domain, quality examination procedures, and access to affordable medicines. I was

somewhat surprised to see how strongly other countries are pushing back against U.S. demands, especially on issues related to access to medicines, Internet Service Provider liability, damages, and copyright in digital media.

People call it a Hollywood wish list – why?

Some provisions of the text resurrect pieces of SOPA and PIPA and ACTA that many found to be objectionable. The entertainment industries (movies and music) championed these agreements and sought stronger protections in the digital realm. These industries were stunned when SOPA and PIPA got killed. Only the United States and New Zealand oppose a provision that would require compensation for parties wrongfully accused of infringement (QQ.H.4). The United States is alone in proposing criminal procedures and penalties “even absent willful trademark, counterfeiting or copyright or related rights piracy”.

Only the United States and Australia oppose a provision limiting Internet Service Provider liability (QQ.I.1); U.S. copyright holders would like ISPs to be held liable for hosting infringing content. The United States also proposes extending copyright to life plus 95 years for corporate-owned copyrights. Hollywood consistently presses for longer copyright terms and it is doing so here.

What are the implications for access to medicine worldwide?

The United States is proposing a number of provisions designed to strengthen and extend brand-name pharmaceutical companies’ monopoly privileges. For example, several provisions would support the pharmaceutical firms’ practice of “ever-greening” in which a firm will hold a patent on drug ‘x’ in tablet form, then later obtain a patent on drug ‘x’ in a gel cap, and later still obtain another patent on the same drug in capsule form. This extends patent life on a known substance, despite no new medical efficacy; thus it delays generic competition.

The United States seeks patents for new uses of a known product (all other countries but Australia oppose this). The United States alone proposes damages for patent infringement of up to three times the amount of injury suffered. The United States and New Zealand oppose compensation for victims of enforcement abuse (QQ.H.4.4). The United States also proposes giving customs officials ex officio powers to seize goods in transit that are suspected of being counterfeit. Several years ago European seizures of lawfully produced Indian generic drugs en route to customers in Africa and Brazil threatened to disrupt generic supply chains, and India threatened to take its dispute over this practice to the World Trade Organization. Other U.S. proposals would create exclusive new rights over clinical trial data, so that generic firms would be prohibited from using those results to prove efficacy and bioequivalence. The United States also proposes patents for medical procedures. Overall, these provisions would reduce generic competition, reduce access to medicines, and raise drug prices. This seems ironic in light of Obama’s professed domestic commitment to affordable health care.

What political impact will the publication have?

If these provisions are widely publicized, I expect vigorous debate over the implications of these measures. Various activist groups are mobilizing already, and I think they are hoping for another SOPA/PIPA/ACTA defeat. In the short term, I expect that the release of this text will increase Congressional opposition to extending Fast Track negotiating authority to President Obama. Congress has already expressed displeasure at being shut out of this process. When its members see how provisions that had been defeated in a domestic, democratic, and deliberative process in January 2012 have been included in TPP I suspect that they will not be happy.

Susan Sell is professor of political science at George Washington University. She spent 2012-2013 as a fellow at the Woodrow Wilson Center, Washington DC, carrying out research for a new book on current debates over intellectual property. Her book, "[Private Power, Public Law: The Globalization of Intellectual Property Rights](#)" is the standard account in international relations of how intellectual property became an international issue.

© The Washington Post Company

Friends of the Earth

Statement on Brussels round of TTIP negotiations

Posted Nov. 15, 2013 / Posted by: Adam Russell

Negotiators from the United States and the European Union have been meeting this week in Brussels to craft a massive trade deal: the Transatlantic Trade and Investment Partnership, also referred to as the Trans Atlantic Free Trade Agreement.

The negotiations that concluded today focused on the TTIP investment chapter. The U.S. seeks to include investor-state arbitration, which would allow investors to seek awards of money damages, of unlimited size, in compensation for the cost of complying with environmental and other public interest regulations, including climate change measures. Under existing trade agreement investment chapters and bilateral investment treaties, oil and gas and companies have repeatedly challenged countries' environmental policies.

Michelle Chan, economic policy director for Friends of the Earth U.S., has this to say about the negotiations:

“A TTIP investment chapter would be a corporate power tool. It would allow Chevron and other energy giants to sue governments if environmental or other regulations interfere with their expected future profits by, for example, restricting oil and gas drilling, imposing pollution controls, or limiting the use of hydraulic fracturing. This would freeze in place our current dependence on fossil fuels, and result in climate disaster.”

Magda Stoczkiewicz, director of Friends of the Earth Europe also released a statement today saying, “It is unbelievable that the EU and US are discussing plans to allow companies to sue governments if they see their profits affected by a democratically agreed decision. It is no exaggeration to say that this is a direct attack on democracy.”

Bloomberg News

Obama's Secrecy Is Hurting Free-Trade Talks

By [the Editors](#) Nov 18, 2013 2:28 PM ET

Negotiators meeting this week to put the final touches on what would be the biggest free-trade deal in U.S. history must be wondering if their American hosts are helping or hurting the cause.

The talks concern the [Trans-Pacific Partnership](#), a trade agreement linking several economies -- those of the U.S., [Japan](#), [Malaysia](#), [Vietnam](#) and eight other Pacific Rim countries -- whose output exceeds \$28 billion. Along with an even [bigger trade deal](#) under way with the European Union, the TPP would create tens of thousands of new jobs in the U.S. and help spur growth in the global economy. Not incidentally, it could also provide a much-needed salve to a wounded White House.

But both pacts could founder for some of the same reasons President [Barack Obama](#)'s health-care law is in trouble: the administration's penchant for secrecy and a reluctance to consult lawmakers. The president risks losing both deals unless members of Congress are allowed to help define their contents.

[Michael Froman](#), the U.S. trade representative, calls this week's meeting in [Salt Lake City](#) "[the endgame](#)" for the TPP, which has been three years in the making. Yet even lawmakers who sit on committees with jurisdiction over trade complain about being in the dark. Some have been allowed to view portions of drafts of the text, but never the entire thing. The information blackout has led 151 Democrats and 30 Republicans to oppose giving Obama the fast-track authority he seeks to ratify the trade deals.

That's a problem. No major trade agreement has been clinched without fast-track legislation, which expired in 2007. It's a powerful tool that lets the president assure trading partners that what the U.S. has agreed to won't be undone by lawmakers who dislike some of the parts. Congress gets an up-or-down vote, but it doesn't get to amend the proposed treaty.

In return for giving up its prerogatives, however, Congress deserves to be clued in. It should play a role in refining the deal's components, which cover everything from pharmaceutical patents to new rules for the Internet. In short, fast-track authority must be earned. So far, Obama hasn't done that.

The lack of openness was apparent last week when [Wikileaks released](#) a draft of the TPP's intellectual property chapter, complete with the negotiating positions of all 12 countries. One surprise: The U.S. wants to give brand-name drugs more than 20 years of protection against

generic competition, potentially raising the cost of treating HIV/AIDS, malaria and other diseases in low-income countries and alarming some public-health advocates.

The U.S. also wants the signatories to allow patents for surgical procedures, life forms and seeds, possibly raising the cost of food and health care in [developing countries](#). And it wants to extend copyright terms to the life of the author plus 70 years (95 years for corporate-owned works).

The leak also revealed that the U.S. wants tougher legal measures so it can pursue hackers and others who violate digital copyrights. This was the goal of Hollywood's [ill-considered](#) pet legislation, the Stop Online Piracy Act, which was thankfully shelved last year.

The administration may cite the controversies such provisions would provoke as a reason for keeping them secret. Yet just because a deal creates tension among competing interests isn't a license to keep them uninformed. And the U.S. has invited more than 500 corporate advisers to help it negotiate a deal.

Corporations and trade groups, however, don't represent the broader interests of consumers, workers, environmentalists and ... oh, yes, taxpayers. Theoretically at least, representing them is Congress's rightful role. Keeping it in the dark feeds the perception that the TPP is a special-interest free-for-all.

More trade is, in general, a good thing. It can lead to better-paying jobs and faster-growing economies. At the same time, free-trade deals can result in job losses and pay cuts among blue-collar workers.

Today's trade deals, moreover, aren't just about eliminating quotas and tariffs. Environmental regulations, [food safety](#), public health and worker rights all get wrapped up in modern trade talks, which are as much about shaping global rules of competition as about prying open markets.

The TPP and the EU treaties will have more legitimacy, and the odds of Obama getting fast-track authority will grow, if more transparency leads to more debate. Voters and taxpayers shouldn't have to rely on leaks to find out what's in a trade treaty.

To contact the Bloomberg View editorial board: view@bloomberg.net.



TAFTA: The European Union's Secret Raid on U.S. Public Water Utilities

Fact Sheet • November 2013

The United States and the European Union are secretly negotiating a trade deal that could make it easier for the world's biggest water companies to privatize our public water systems. The Transatlantic Free Trade Agreement (TAFTA) — officially called the Transatlantic Trade and Investment Partnership — could allow EU corporations to take over local government services like water and sewer systems in the United States.¹ Privatized water systems — including notable takeovers by European water companies — generally deliver worse service at higher prices.²

European Water Privatizers

The European Union is home to the world's largest water companies. The two biggest are from France: Veolia Environnement and Suez Environnement.³

Already, three of the five largest water companies in the United States are from the EU:

- Veolia Environnement operates as Veolia Water North America and is the second largest water company in the country, serving about 10.5 million people in 32 states.⁴
- Suez Environnement operates as United Water and is the third largest water company in the country,⁵ serving about 5.5 million people in 21 states.⁶
- Severn Trent, a British company, is the fifth largest water company in the United States, serving more than 3 million people in 22 states.⁷

Foreign Power Grab

TAFTA could smooth the way for these and other European companies to control more U.S. public water systems. The deal could give private water companies a powerful arsenal to use against local communities. TAFTA could undermine communities' ability to halt hostile privatization efforts, hinder attempts to reclaim water systems from EU corporations and make it harder to hold private water companies accountable.

The deal could allow EU water companies to challenge municipal decisions about owning and operating water utilities at

secret international tribunals. This nontransparent arbitration system leaves little room for appeal and has no respect for local and state law. An EU company could even challenge an unfavorable decision by a public domestic court in this private international venue.⁸ In effect, the tribunal would have the power to second-guess local rules and public safeguards on behalf of EU companies.⁹

An EU water company could hike its customers' water bills by challenging state oversight of utility rates.¹⁰ The companies could also seek monetary damages if a local government sought to compel improved service or terminate a private water contract prematurely.¹¹ This would make it much harder for U.S. communities to exit harmful water privatization deals or buy back their local water systems from EU corporations.

U.S. Experiences With EU Water Companies

EU water corporations have a dreadful track record in the United States. Communities have experienced everything from negligent customer service and system deterioration to water leaks and sewage spills.

Spilling sewage in the San Francisco Bay, Calif. In a 2008 lawsuit, the watchdog group San Francisco Baykeeper accused the Veolia-managed Burlingame wastewater treatment plant of illegally dumping more than 10 million gallons of wastewater into the San Francisco Bay over the preceding six years and of failing to report violations.¹² Baykeeper believed that

without court intervention, the city and Veolia would continue to violate the Clean Water Act.¹³ This followed a 2006 Baykeeper suit against the city of Richmond and Veolia for allegedly dumping more than 17 million gallons of sewage into tributaries that empty into the San Francisco Bay over the preceding three years.¹⁴ The watchdog said that the spill rates of the Veolia-run systems were among the highest in the state.¹⁵ Both cities settled with Baykeeper by agreeing to make multimillion-dollar improvements.¹⁶

Losing almost half of the water in Camden, N.J. In 2009, the New Jersey State Comptroller's Office issued a scathing audit of United Water's management and operation of Camden's water and sewer systems. The audit found that inadequate contract supervision and the company's poor performance cost the city millions of dollars and potentially jeopardized the health and safety of its residents.¹⁷ The system was losing 45 percent of its water,¹⁸ and inadequate upkeep of wells, tanks and other equipment posed potential health and safety risks.¹⁹

Neglecting system upkeep in Lee County, Fla. In 2000, after five years of poor service from British multinational Severn Trent, the Lee County commission voted unanimously to bring its water and sewer systems back under public control to make vital improvements.²⁰ County officials said that the company failed to do about 300 different maintenance tasks and that it would cost more than \$8 million to restore the neglected systems to the condition that they were in prior to privatization.²¹

Take Action

The Obama administration is seeking broad authority from Congress to "fast track" TAFTA and other free trade agreements. In order to stop TAFTA and protect our public water supplies, we must defeat fast track. Tell your Senators and Representatives to oppose fast track by going to: <http://www.foodandwaterwatch.org/global/global-trade/tpp-and-tafta-free-trade-with-a-high-price>

Endnotes

- 1 EU-US High Level Working Group on Jobs and Growth. "Final Report." February 11, 2013 at 6; European Commission. "Commission Staff Working Document: Impact Assessment Report on the Future of EU-US Trade Relations." March 12, 2013 at 13, 20 to 23 and 59; European Commission. "Public Procurement: Initial EU Position Paper." July 16, 2013.
- 2 See, e.g., Food & Water Watch. "Money Down the Drain: How Private Control of Water Wastes Public Resources." February 2009.
- 3 Pinsent Masons. (2012). *Pinsent Masons Water Yearbook 2012-2013*. London: Pinsent Masons at 28 to 29.
- 4 *Ibid.* at 213; Food & Water Watch. "Veolia Water North America: A Corporate Profile." August 2013 at 1.
- 5 Pinsent Masons, 2012 at 213; "PWF's 17th Annual Water Partnerships Report." *Public Works Financing*, vol. 280. March 2013 at 12.
- 6 United Water. (Press release). "United Water supports Value of Water campaign." October 1, 2013.
- 7 Pinsent Masons, 2012 at 213; "PWF's 17th Annual Water Partnerships Report," 2013 at 8 and 12; Kriess, Fred. "Severn Trent Services: NAWC PPP Panel." Presented at the 2013 NAWC Water Summit, San Diego, CA. October 8, 2013 at 2.
- 8 Gerbasi, Jennifer and Mildred W. Warner. "Privatization, public goods and the ironic challenge of free trade agreements." *Administration and Society*, vol. 39, iss. 2. April 2007 at 138.
- 9 *Ibid.* at 136.
- 10 *Ibid.* at 136.
- 11 *Ibid.* at 133 to 138.
- 12 *San Francisco Bay Keeper v. City of Burlingame; Veolia North America Operating Service*. "Complaint for declaratory and injunctive relief and civil penalties." United States District Court of Northern District of California, February 11, 2008 at 16 to 23; Lagos, Marisa. "Burlingame being sued over sewage." *San Francisco Chronicle*. February 11, 2008; San Francisco Baykeeper. (Press release). "San Francisco Baykeeper is sick of sewage." February 11, 2008.
- 13 *San Francisco Bay Keeper v. City of Burlingame; Veolia North America Operating Service*, 2008 at 16, 18 and 20.
- 14 San Francisco Baykeeper. (Press release). "City of Richmond pledges to clean up its sewage system." October 18, 2006.
- 15 *Ibid.*; San Francisco Baykeeper, February 2008.
- 16 *San Francisco Baykeeper v. City of Burlingame, Veolia Water North America Operating Services*. "Consent Decree." United States District Court of Northern District of California. October 6, 2008; Granquist, Nicole. (Memorandum). "Summary of Action Items Required by City of Richmond and/or Veolia Under Settlement Agreement with Baykeeper and West County Toxics Coalition." November 13, 2006 at 1; Kay, Jane. "Burlingame, S.F. Baykeeper settle over sewage." *San Francisco Chronicle*. August 21, 2008; San Francisco Baykeeper, October 2006.
- 17 Boxer, A. Matthew. Office of the State Comptroller, State of New Jersey. "A Performance Audit of the Management Services Agreement for the City of Camden's Water and Wastewater Collection Systems." (PA-06). December 16, 2009 at 1 and 5; New Jersey Office of the State Comptroller. (Press release). "State Comptroller finds Camden's mismanagement of water contract cost taxpayers millions." December 16, 2009.
- 18 Boxer, 2009 at 5.
- 19 *Ibid.* at 6 and 9 to 14.
- 20 Melsek, Lee. "County ends privatization of water, sewer, returns operation to staff." *The News-Press* (Fort Myers, FL). October 18, 2000; Melsek, Lee. "Audit questions savings." *The News-Press* (Fort Myers, FL). September 29, 2000.
- 21 Hoyem, Mike. "Lee: Firm owes \$8 million." *The News-Press* (Fort Myers, FL). May 5, 2001; The Association of Metropolitan Sewerage Agencies and the Association of Metropolitan Water Agencies. "Evaluating Privatization II: An AMSA/AMWA Checklist." 2002 at 28.

For more information:

web: www.foodandwaterwatch.org

email: info@fwwatch.org

phone: (202) 683-2500 (DC) • (415) 293-9900 (CA)

Copyright © November 2013 Food & Water Watch



News releases

Friends of the Earth confronts U.S. Trade Rep. at luncheon on Pacific trade deal

Posted Nov. 19, 2013 / Posted by: Adam Russell

WASHINGTON, D.C. – This week, U.S. Trade Representative Michael Froman is engaging in a concerted effort to generate political support among environmentalists for the Trans Pacific Partnership trade agreement. On Tuesday afternoon, a major event was held at Charlie Palmer’s Steak House, a restaurant located near the Capitol building, during which Froman asked conservation and environmental groups for their backing.

Friends of the Earth joined community activists to protest Froman’s attempt to characterize the TPP as environmentally friendly. Erich Pica, president of Friends of the Earth, spoke out at the luncheon gathering and had this to say at its conclusion:

“Friends of the Earth sent a clear message to Ambassador Froman that while we support enforceable environmental commitments within the TPP, the deal as a whole is a huge danger to the planet. In particular, the investment chapter would allow multinational corporations to undermine important environmental and health regulations. It would also have a chilling effect on future environmental policies that are desperately needed to address climate change, save ecosystems and protect communities.”

###

Contact:

William Waren, [\(202\) 222-0746](tel:(202)222-0746), wwaren@foe.org

Adam Russell, [\(202\) 222-0722](tel:(202)222-0722), arussell@foe.org

Categories: [Economics for the Earth](#), [News Releases](#)

- See more at: <http://www.foe.org/news/news-releases/2013-11-friends-of-the-earth-confronts-us-trade-rep-at-tpp-luncheon#sthash.PO97jhz0.dpuf>

Washington Post

[The Switch](#)

Here's why Obama trade negotiators push the interests of Hollywood and drug companies

- By [Timothy B. Lee](#)
-
- November 26 at 2:22 pm

At least a dozen officials have moved from USTR to industry groups since the turn of the century. ([Elliott Brown](#))

Earlier this month, the transparency organization WikiLeaks [leaked the "intellectual property" chapter of the Trans-Pacific Partnership](#), a trade agreement that is being negotiated in secret by Pacific Rim nations. The draft text showed that the positions taken by U.S. negotiators largely mirrored the provisions of U.S. law, but the U.S. negotiating position also had an unmistakable bias toward expanding the rights of copyright and patent holders.

Those positions are great for Hollywood and the pharmaceutical industry, but it's not obvious that they are in the interests of the broader U.S. economy. To the contrary, critics contend that the rights of copyright and patent holders have been expanded too much. Those concerns do not seem to have swayed the trade negotiators in the Obama administration.

Two major factors contribute to the USTR's strong pro-rightsholder slant. An obvious one is the revolving door between USTR and private industry. Since the turn of the century, at least a dozen USTR officials have taken jobs with pharmaceutical companies, filmmakers, record labels, and technology companies that favor stronger patent and copyright protection.

A more subtle factor is the structure and culture of USTR itself. In its role as a promoter of global trade, USTR has always worked closely with U.S. exporters. That exporter-focused culture isn't a problem when USTR is merely seeking to remove barriers to selling U.S. goods overseas, but it becomes problematic on issues like copyright and patent law where exporters' interests may run directly counter to those of American consumers.

USTR's enthusiasm for stronger copyright and patent protections could become a liability for the Obama administration's broader trade agenda. Last year, grassroots copyright activists [blocked the ratification](#) of one trade agreement by the European Union over its copyright provisions. There's a risk that a similar fate could befall the TPP.

This is your USTR on drugs

On May 3, 2004, the United States and Australia signed a bilateral trade agreement. The agreement included a [section on intellectual property](#) that had numerous provisions favorable to pharmaceutical manufacturers. For example, it barred generic drug makers seeking approval for their drugs from citing safety or efficacy information originally submitted by brand-name drug makers for a period of five years after the information is submitted, making it more difficult for generic drug makers to enter the market.

The lead American negotiator was Ralph Ives, who was promoted to Assistant USTR for Pharmaceutical Policy soon after the negotiations concluded. He was aided by Claude Burcky, Deputy Assistant USTR for Intellectual Property. Less than three months after the Australia agreement was signed, the Sydney Morning Herald [reported](#) that both men would take jobs at pharmaceutical or medical device companies. Their new employers stood to benefit from some of the pro-patent-holder provisions of the treaty. Ives took a job at AdvaMed, a trade group representing medical device manufacturers. Burcky moved to the pharmaceutical and medical device company Abbott Labs.

Since then, Abbott has hired two other USTR veterans, [Andrea Durkin](#) and [Karen Hauda](#), according to the women's LinkedIn pages. Another USTR official, [Kira Alvarez](#), has gone through the revolving door twice over the last 15 years. Her LinkedIn profile indicates that she served at USTR from 2000 to 2003, spent four years at the pharmaceutical giant Eli Lilly, and then returned to USTR in 2008 as Deputy Assistant USTR for Intellectual Property Enforcement. She was there for five years before she took a job at AbbVie, a pharmaceutical firm that spun off from Abbott earlier this year.

According to his official biography at the site of the Biotechnology Industry Association, Joseph Damond "was chief negotiator of the historic U.S.-Vietnam Bilateral Trade agreement" during his 12 years at USTR. He then spent five years at the Pharmaceutical Research and Manufacturers of America before moving to BIO. Justin McCarthy went through the revolving door in the other direction. According to a [USTR press release](#), McCarthy was responsible for intellectual property issues at the pharmaceutical company Pfizer from 2003 to 2005 before he was hired at USTR. He now works at a [lobbying firm](#).

Some USTR critics argue that the close ties between USTR and large pharmaceutical and medical device companies has a corrupting influence on the agency.

"What's the next job that everyone at USTR has," asks Jamie Love. "It's working for some industry trade group." Love is the director of Knowledge Ecology International, a group that seeks to liberalize patent law in order to expand access to medicines in developing countries. Love believes the revolving door gives industry groups undue influence over U.S. trade negotiators.

Abbott and AbbVie declined to comment for this story. Neither BIO nor Justin McCarthy's lobbying firm responded to e-mails seeking comment. But AdvaMed disputes an accusation from Love that it has been lobbying USTR on patent issues. "Neither AdvaMed nor Ives has ever provided USTR comments on a provision of the TPP IP chapter," an AdvaMed spokeswoman stated by email.

In an e-mailed statement, a spokeswoman for USTR also denied that the revolving door with industry groups affected her agency's independence. "USTR implements a strict set of ethics policies including recusals where there are potential conflicts of interest and post-employment restrictions," she said. "U.S. negotiating positions reflect Administration policies and U.S. law that are the result of years of work by a huge variety of elected officials and policymakers."

A pro-Hollywood tilt

For the most part, it's true that the provisions sought by USTR mirror U.S. law. But critics say it's a bit of a funhouse mirror: not all provisions of U.S. law are exported with equal enthusiasm. When it comes to provisions of U.S. law that are favorable to rightsholders, American negotiators have sought to require other countries to ape U.S. law in great detail. But, when it limits copyright or patent holders' rights, the language favored by the United States tends to be more abstract and open-ended.

For example, U.S. copyright law has a particularly broad concept of fair use, as highlighted by a [recent ruling](#) finding that the Google Book Search project was legal under the fair use doctrine. But the leaked TPP draft makes no attempt to export this innovation-friendly portion of U.S. law. The language favored by American negotiators merely states that nations "shall endeavor to achieve an appropriate balance" in their copyright systems by adopting "limitations or exceptions" such as a right to comment and criticism. The details are left up to individual member states, leaving room for them to adopt a narrower concept of fair use than exists in the United States, or to decide that their existing laws already fit the bill.

There are also at least two cases where U.S. negotiators have proposed TPP language that runs contrary to the rulings of American courts. In a March ruling, the Supreme Court ruled that American textbook publishers could not use copyright law to bar customers from purchasing textbooks abroad (where they are often cheaper) and reselling them in the United States. Yet the August TPP draft shows the United States still proposing that authors have "the right to authorize or prohibit the importation" of books that had been produced overseas. Margot Kaminski, a copyright scholar at Yale, believes this provision [runs directly counter](#) to the Supreme Court's interpretation of the law.

Another example: U.S. courts are split on whether "temporary copies" of works stored in computer memories for brief periods of time can trigger copyright liability. The Obama administration has sought to enshrine into America's international agreements the principle that temporary copies *do* trigger copyright liability, without waiting for the courts to clarify US law. If a future Supreme Court ruling holds that temporary electronic copies do not trigger copyright liability, the US could suddenly be in violation of its treaty obligations.

"Very polite"

In a [new paper](#), Kaminski argues that this pro-rightsholder bias reflects the one-sided way that USTR seeks advice on copyright and patent issues. The agency has established [16 industry trade advisory committees](#) to provide advice about the complex issues USTR deals with in the course of its negotiations. As the name suggests, the ITACs are designed to gather feedback from

industry groups. There are no public interest groups, academics, or other non-industry experts on ITAC 15, which focuses on "intellectual property" issues.

And that matters because groups with ITAC seats have access to confidential information about the U.S. negotiating position that isn't available to the public. Sherwin Siy, an attorney at the advocacy organization Public Knowledge, has had multiple meetings with USTR representatives during the course of the TPP negotiations. But he says it was difficult to give USTR meaningful feedback because he didn't know what positions U.S. negotiators were advocating.

"They're willing to sit in a room with us and listen to our objections and our issues and be very polite," Siy says. But "whether or not that actually means anything is at best a black box."

When USTR wants technical advice on transposing U.S. law into international agreements, it naturally turns to the industry representatives on the ITACs. And it stands to reason that the advice the agency receives in response would be a bit one-sided. Where U.S. law is ambiguous, industry groups naturally gravitate toward interpretations of U.S. law that favor their employers' interests. And because public interest groups and independent experts aren't allowed to see proposed language (aside from occasional leaks), the agency may not even realize that it is exporting a warped interpretation of U.S. law.

A software split

The pharmaceutical industry isn't the only industry that has snapped up former USTR officials. BSA, a software industry group that counts Microsoft, Adobe, and Oracle among its members, has hired two former USTR officials. According to his [LinkedIn page](#), Emory Simon worked at USTR from 1984 to 1993. He now works at BSA. Earlier this year, the BSA brought in another USTR veteran, Victoria Espinel, as its new president. She served at USTR, including as Assistant USTR for Intellectual Property and Innovation, from 2001 to 2007. Then, in 2009, she was nominated to be the nation's first "IP Czar," responsible for coordinating the executive branch's enforcement efforts, a post she held until she moved to the BSA in September.

Former USTR officials have also taken jobs at [IBM](#), [Microsoft](#), and [Apple](#).

Copyright and patent issues divide the technology sector. Internet companies such as Google, open source companies such as Red Hat, and many tech startups favor less restrictive copyright and patent rules. Older, more established companies, especially those that sell packaged software, tend to favor stronger legal protections. For example, BSA, IBM, and Microsoft have been three of the leading opponents of [a US legislative proposal](#) to expand a program designed to invalidate low-quality patents.

USTR isn't as well connected to the portions of the technology sector that favor less extensive copyright and patent protections. Our research didn't turn up any examples of former USTR officials who have taken jobs at companies or trade groups that fall on this side of the debate.

Those companies also seem under-represented in USTR's advisory process for copyright and patent issues.

For example, the Computer and Communications Industry Association represents companies such as Google and Red Hat whose businesses are harmed by broad patent protection and aggressive anti-piracy efforts. Earlier this year, CCIA nominated a copyright lawyer named Andrew Bridges to ITAC 15, the advisory panel focused on intellectual property. Bridges, who has made a career out of defending innovators against copyright lawsuits, would have provided a counterweight to the views of ITAC 15 members such as the Recording Industry Association of America and the Entertainment Software Association.

But the Obama administration rejected Bridges's nomination, suggesting that he instead be seated on ITAC 8, which focuses on "Information and Communications Technologies, Services, and Electronic Commerce." But Bridges is an expert on copyright law, not telecommunications or e-commerce. He felt his skills would be wasted on ITAC 8, and declined the seat. Today, Cisco is the only Silicon Valley company on the 16-member ITAC 15.

"They see it as part of their job"

Content companies have also hired USTR veterans. According to [his LinkedIn page](#), Greg Frazier worked at USTR from 2000 to 2001. In 2004, he took a job at the Motion Picture Association of America. The MPAA declined to comment for this story and says Frazier no longer works at the trade group. Joe Papovich's [LinkedIn page](#) says he served at USTR for two decades, before taking a job at the Recording Industry Organization of America. He left the RIAA after eight years to start his own lobbying firm. RIAA declined to comment on Papovich's role at the organization.

Hollywood, the recording industry, the pharmaceutical industry, and the packaged software industry represented by BSA all have something in common: they're in the business of shipping physical objects—pills, CDs, DVDs, and Blu-Ray disks—whose contents are protected by copyright or patent law. That business model makes it a natural fit for USTR's approach to policy issues.

"USTR sees itself as an advocate for U.S. exporter interests," says Bill Watson, a trade expert at the Cato Institute. "It's trying to negotiate market access for particular U.S. industries that ask for it. That bias leads USTR to think that because U.S. companies want more IP protection abroad, it's in their interest to negotiate that."

But the interests of specific exporting industries are not necessarily the same as the interests of the U.S. economy as a whole. Excessive copyright and patent protection can stifle innovation and raise costs for consumers. And imposing U.S. law on other countries also limits the flexibility of lawmakers here in the United States, who might want to make the law less friendly to rightsholders sometime in the future.

Kaminski argues that USTR needs to fundamentally rethink how it approaches these issues. "USTR looks at IP from the perspective of 'we're sending out goods into the world,'" she says.

"Somebody needs to educate them that this is not about exporting goods, it's about governing information infrastructure."

A USTR spokeswoman says the agency has been working hard to make the negotiating process more transparent. "We have significantly increased our stakeholder outreach to stakeholders on all sides on trade-related IP issues over the past five years," she said in an e-mailed statement.

"Of course, we are always looking to do better," she added. "We are currently in the final stages of considering a new ITAC member representing a major internet company, for example, and we will continue to look to expand membership."

Timothy B. Lee covers technology policy, including copyright and patent law, telecom regulation, privacy, and free speech. He also writes about the economics of technology. He has previously written for Ars Technica and Forbes.

Published on Tuesday, November 26, 2013 by [Common Dreams](#)

Monsanto, the TPP, and Global Food Dominance

by [Ellen Brown](#)

“Control oil and you control nations,” said US Secretary of State Henry Kissinger in the 1970s. “Control food and you control the people.”

Global food control has nearly been achieved, by reducing seed diversity with GMO (genetically modified) seeds that are distributed by only a few transnational corporations. But this agenda has been implemented at grave cost to our health; and if the Trans-Pacific Partnership (TPP) passes, control over not just our food but our health, our environment and our financial system will be in the hands of transnational corporations.

Profits Before Populations

[According to an Acres USA interview](#) of plant pathologist Don Huber, Professor Emeritus at Purdue University, two modified traits account for practically all of the genetically modified crops grown in the world today. One involves insect resistance. The other, more disturbing modification involves insensitivity to glyphosate-based herbicides (plant-killing chemicals). Often known as Roundup after the best-selling Monsanto product of that name, glyphosate poisons everything in its path except plants genetically modified to resist it.

Glyphosate-based herbicides are now the most commonly used herbicides in the world. Glyphosate is an essential partner to the GMOs that are the principal business of the burgeoning biotech industry. Glyphosate is a “broad-spectrum” herbicide that destroys indiscriminately, not by killing unwanted plants directly but by tying up access to critical nutrients.

Because of the insidious way in which it works, it has been sold as a relatively benign replacement for the devastating earlier dioxin-based herbicides. But a barrage of experimental data has now shown glyphosate and the GMO foods incorporating it to pose serious dangers to health. Compounding the risk is the toxicity of “inert” ingredients used to make glyphosate more potent. Researchers have found, for example, that [the surfactant POEA can kill human cells](#), particularly embryonic, placental and umbilical cord cells. But these risks have been conveniently ignored.

The widespread use of GMO foods and glyphosate herbicides helps explain the anomaly that [the US spends over twice as much per capita on healthcare](#) as the average developed country, yet it is rated far down the scale of the world’s healthiest populations. [The World Health Organization has ranked](#) the US LAST out of 17 developed nations for overall health.

[Sixty to seventy percent of the foods in US supermarkets](#) are now genetically modified. By contrast, in at least 26 other countries—including Switzerland, Australia, Austria, China, India, France, Germany, Hungary, Luxembourg, Greece, Bulgaria, Poland, Italy, Mexico and Russia—[GMOs are totally or partially banned](#); and significant restrictions on GMOs exist in about sixty other countries.

A ban on GMO and glyphosate use might go far toward improving the health of Americans. But the Trans-Pacific Partnership, a global trade agreement for which the Obama Administration has sought Fast Track status, would block that sort of cause-focused approach to the healthcare crisis.

Roundup's Insidious Effects

Roundup-resistant crops escape being killed by glyphosate, but they do not avoid absorbing it into their tissues. Herbicide-tolerant crops have substantially higher levels of herbicide residues than other crops. In fact, many countries have had to increase their legally allowable levels—by up to 50 times—in order to accommodate the introduction of GM crops. In the European Union, [residues in food are set to rise 100-150 times](#) if a new proposal by Monsanto is approved. Meanwhile, [herbicide-tolerant “super-weeds” have adapted to the chemical](#), requiring even more toxic doses and new toxic chemicals to kill the plant.

Human enzymes are affected by glyphosate just as plant enzymes are: the chemical blocks the uptake of manganese and other essential minerals. Without those minerals, we cannot properly metabolize our food. That helps explain the rampant epidemic of obesity in the United States. People eat and eat in an attempt to acquire the nutrients that are simply not available in their food.

[According to researchers Samsell and Seneff](#) in *[Biosemiotic Entropy: Disorder, Disease, and Mortality](#)* (April 2013):

Glyphosate's inhibition of cytochrome P450 (CYP) enzymes is an overlooked component of its toxicity to mammals. CYP enzymes play crucial roles in biology Negative impact on the body is insidious and manifests slowly over time as inflammation damages cellular systems throughout the body. Consequences are most of the diseases and conditions associated with a Western diet, which include gastrointestinal disorders, obesity, diabetes, heart disease, depression, autism, infertility, cancer and Alzheimer's disease.

More than 40 diseases have been linked to glyphosate use, and more keep appearing. In September 2013, [the National University of Rio Cuarto, Argentina, published research](#) finding that glyphosate enhances the growth of fungi that produce aflatoxin B1, one of the most carcinogenic of substances. A doctor from Chaco, Argentina, told Associated Press, “We've gone from a pretty healthy population to one with a high rate of cancer, birth defects and illnesses seldom seen before.” Fungi growths have increased significantly in US corn crops.

Glyphosate has also done serious damage to the environment. [According to an October 2012 report by the Institute of Science in Society](#):

Agribusiness claims that glyphosate and glyphosate-tolerant crops will improve crop yields, increase farmers' profits and benefit the environment by reducing pesticide use. Exactly the opposite is the case. . . . [T]he evidence indicates that glyphosate herbicides and glyphosate-tolerant crops have had wide-ranging detrimental effects, including glyphosate resistant super

weeds, virulent plant (and new livestock) pathogens, reduced crop health and yield, harm to off-target species from insects to amphibians and livestock, as well as reduced soil fertility.

Politics Trumps Science

In light of these adverse findings, why have Washington and the European Commission continued to endorse glyphosate as safe? Critics point to lax regulations, heavy influence from corporate lobbyists, and a political agenda that has more to do with power and control than protecting the health of the people.

In the ground-breaking 2007 book [*Seeds of Destruction: The Hidden Agenda of Genetic Manipulation*](#), William Engdahl states that global food control and depopulation became US strategic policy under Rockefeller protégé Henry Kissinger. Along with oil geopolitics, they were to be the new “solution” to the threats to US global power and continued US access to cheap raw materials from the developing world. In line with that agenda, the government has shown extreme partisanship in favor of the biotech agribusiness industry, opting for a system in which the industry “voluntarily” polices itself. Bio-engineered foods are treated as “natural food additives,” not needing any special testing.

[Jeffrey M. Smith, Executive Director of the Institute for Responsible Technology, confirms](#) that US Food and Drug Administration policy allows biotech companies to determine if their own foods are safe. Submission of data is completely voluntary. He concludes:

In the critical arena of food safety research, the biotech industry is without accountability, standards, or peer-review. They’ve got bad science down to a science.

Whether or not depopulation is an intentional part of the agenda, [widespread use of GMO and glyphosate is having that result](#). The endocrine-disrupting properties of glyphosate have been linked to infertility, miscarriage, birth defects and arrested sexual development. In Russian experiments, animals fed GM soy were sterile by the third generation. Vast amounts of farmland soil are also being systematically ruined by the killing of beneficial microorganisms that allow plant roots to uptake soil nutrients.

In Gary Null’s eye-opening documentary [*Seeds of Death: Unveiling the Lies of GMOs*](#), Dr. Bruce Lipton warns, “We are leading the world into the sixth mass extinction of life on this planet. . . . Human behavior is undermining the web of life.”

The TPP and International Corporate Control

As the devastating conclusions of these and other researchers awaken people globally to the dangers of Roundup and GMO foods, transnational corporations are working feverishly with the Obama administration to fast-track the Trans-Pacific Partnership, a trade agreement that would strip governments of the power to regulate transnational corporate activities. Negotiations have been kept secret from Congress but not from corporate advisors, 600 of whom have been consulted and know the details. [According to Barbara Chicherio](#) in *Nation of Change*:

The Trans Pacific Partnership (TPP) has the potential to become the biggest regional Free Trade Agreement in history. . . .

The chief agricultural negotiator for the US is the former Monsanto lobbyist, Islam Siddique. If ratified the TPP would impose punishing regulations that give multinational corporations unprecedented right to demand taxpayer compensation for policies that corporations deem a barrier to their profits.

. . . They are carefully crafting the TPP to insure that citizens of the involved countries have no control over food safety, what they will be eating, where it is grown, the conditions under which food is grown and the use of herbicides and pesticides.

Food safety is only one of many rights and protections liable to fall to this super-weapon of international corporate control. [In an April 2013 interview on The Real News Network](#), Kevin Zeese called the TPP “NAFTA on steroids” and “a global corporate coup.” He warned:

No matter what issue you care about—whether its wages, jobs, protecting the environment . . . this issue is going to adversely affect it

If a country takes a step to try to regulate the financial industry or set up a public bank to represent the public interest, it can be sued

Return to Nature: Not Too Late

There is a safer, saner, more earth-friendly way to feed nations. While Monsanto and US regulators are forcing GM crops on American families, Russian families are showing what can be done with permaculture methods on simple garden plots. [In 2011, 40% of Russia’s food was grown on dachas](#) (cottage gardens or allotments). Dacha gardens produced over 80% of the country’s fruit and berries, over 66% of the vegetables, almost 80% of the potatoes and nearly 50% of the nation’s milk, much of it consumed raw. [According to Vladimir Megre](#), author of the best-selling Ringing Cedars Series:

Essentially, what Russian gardeners do is demonstrate that gardeners can feed the world – and you do not need any GMOs, industrial farms, or any other technological gimmicks to guarantee everybody’s got enough food to eat. Bear in mind that Russia only has 110 days of growing season per year – so in the US, for example, gardeners’ output could be substantially greater. Today, however, the area taken up by lawns in the US is two times greater than that of Russia’s gardens – and it produces nothing but a multi-billion-dollar lawn care industry.

[In the US, only about 0.6 percent](#) of the total agricultural area is devoted to organic farming. This area needs to be vastly expanded if we are to avoid “the sixth mass extinction.” But first, we need to urge our representatives to stop Fast Track, vote no on the TPP, and pursue a global phase-out of glyphosate-based herbicides and GMO foods. Our health, our finances and our environment are at stake.

This work is licensed under a Creative Commons Attribution-Share Alike 3.0 License.

Ellen Brown developed her research skills as an attorney practicing civil litigation in Los Angeles. In *[Web of Debt](#)*, her latest of eleven books, she turns those skills to an analysis of the Federal Reserve and “the money trust.” She shows how this private cartel has usurped the power to create money from the people themselves, and how we the people can get it back. She is president of the Public Banking Institute, <http://PublicBankingInstitute.org>, and has websites at <http://WebofDebt.com> and <http://EllenBrown.com>.

Greens win greater transparency on secret trade deal

Web: peter-whish-wilson.greensmps.org.au/

December 2013

Today in the Senate the Australian Greens have successfully moved a motion that will bring greater transparency on the biggest free trade deal in this country's history, the Trans-Pacific Partnership Agreement (TPPA) currently being negotiated in secret with the United States and 10 other nations.

"Today's result is an important step forward in compelling Tony Abbott to end the secrecy and hidden agendas that have defined his Government to date," said Senator Peter Whish-Wilson, Australian Greens spokesperson for trade.

The order for production of documents was passed today by the Australian Senate.

"Our order for production of documents will make the final text of the TPPA publically available before being signed off by Cabinet, so the entire Australian community can scrutinise this trade deal to ensure it's more than just 'free' but is 'fair' for our nation.

"What is important about this achievement is that it will take the politics out of the TPPA process and end the secrecy around Australia's biggest ever trade negotiations.

"It was recently revealed in Senate Estimates, despite previous assurances to the contrary, that the Abbott Government is considering signing on to Investor-State Dispute Settlement (ISDS) provisions.

"These provisions and others within the agreement pose a real a threat to Australia's public interest laws that protect our environment and rural industries, and underpin public health.

"These revelations on the Abbott Government's openness to ISDS provisions followed a leak of a single chapter of the agreement - one small piece of the TPPA puzzle - that showed the kind of damage that could be done by a secret deal.

"Tony Abbott should respect the will of the Senate and end the TPPA trade deal secrecy so a broad range of stakeholders can have their say on our nation's future," Senator Whish-Wilson concluded.

Here's the motion.

MOTION

I move that –

(1) there be laid on the table the final text of the Trans-Pacific Partnership (TPP) plurilateral free trade agreement by the Minister representing the Minister for Trade and Investment well before it is signed.

Senator Peter Whish-Wilson

Emma Anglesey

Campaigns Advisor

Office of Senator Peter Whish-Wilson

PO Box 5194

Launceston Tasmania 7250

Ph: 03 6331 0033

Fax: 03 6331 2044

Web: peter-whish-wilson.greensmps.org.au/



Knowledge Ecology International

Attending and mending the knowledge ecosystem

Navigation

- [Site Map](#)
- [Recent posts](#)
- [Feed aggregator](#)
- [Polls](#)
- [Groups](#)

Round II of the *Paris Accord* took place in Paris on October 23 and 24, 2009.

Book navigation

- [Copyright and Related Rights](#)
- [About KEI](#)
- [Access to Medical Technologies](#)
- [Competition Policy](#)
- [Databases](#)
- [Economics of Creativity and Knowledge](#)
- [Enforcement and Remedies to Infringement](#)
- [Events](#)
- [General Access to Knowledge Issues](#)
- [Government Funded Inventions](#)
- [Knowledge Governance Fora](#)
- [Medical diseases, conditions and technologies](#)
- [Nuclear Proliferation](#)
- [Patent Policy](#)
- [Prizes to stimulate innovation](#)
- [Publications and Research Notes](#)
- [Timelines](#)
- [Transparency](#)

Home » Blogs » thiru's blog

Vatican criticizes Trans Pacific Partnership: Holy See statement to 9th WTO Ministerial Conference in Bali

Submitted by thiru on 5. December 2013 - 6:36

The 9th Ministerial Conference of the World Trade Organization (WTO) is taking place in Bali, Indonesia from 3-6 December 2013. At the Ministerial, H.E. Archbishop, Silvano M. Tomasi, Apostolic Nuncio, Permanent Observer of the Holy See to the United Nations and Other International Organizations in Geneva delivered a withering critique of the Trans Pacific Partnership and the Transatlantic Trade and Investment Partnership. In particular, the Holy See singled out the "most damaging concessions developing countries make in regional and bilateral agreements are those enhancing the monopolies on life-saving medicines, which reduce access and affordability and those that provide excessive legal rights to foreign investors."

Here are some choice excerpts from the Holy See's statement:

While a minority is experiencing exponential growth in wealth, the gap is widening to separate the vast majority from the prosperity enjoyed by those happy few. This imbalance is the result of ideologies that defend the absolute autonomy of the marketplace and of financial speculation. Consequently, there is an outright rejection of the right of States, charged with vigilance for the common good, to exercise any form of control. A new tyranny is thus born, invisible and often virtual, which unilaterally and relentlessly imposes its own laws and rules. An even worse development is that such policies are sometimes locked in through trade rules negotiated at the WTO or in bilateral or regional FTAs.

As a result, many countries opted to liberalize trade through Regional or Bilateral Trade Agreements. The number of such agreements has increased exponentially during the last 15 years. Currently there is a clear tendency to further enlarge these RTAs to form mega-regional trade agreements such as the Transatlantic Trade and Investment Partnership, or the Trans-Pacific Partnership. Certainly, the enlargement of regional trade agreements is a step towards further trade liberalization but we have to bear in mind that these agreements inevitably threaten the desirability to reach an agreement on a truly multilateral basis. In fact, by entering a regional trade agreement a country reduces the incentives to extend its efforts on trade liberalization at a multilateral level. Most importantly, we know that only the multilateral system is a clear, equitable system that provides effective guarantees for small and poor countries that tend to be penalized in a Regional Trade Agreement where it is asymmetric. Among the most damaging concessions developing countries make in regional and bilateral agreements are those enhancing the monopolies on life-saving medicines, which reduce access and affordability and those that provide excessive legal rights to foreign investors, limiting the policy space for nations to promote sustainable and inclusive development.

Attachment	Size
HolySeeMC9Bali2013.pdf	238.6 KB

[thiru's blog](#)
[Add new comment](#)
[Printer-friendly version](#)
[Send by email](#)

User login

Username: *

Password: *

[Log in using OpenID](#)

- [Request new password](#)

European Commission Desperately Tries To Justify Inclusion Of Corporate Sovereignty In TAFTA/TTIP; Fails Dismally

<http://www.techdirt.com/articles/20131206/08270425482/european-commissions-desperately-tries-to-justify-inclusion-corporate-sovereignty-taftattip-fails.shtml>

from the *is-that-really-the-best-you've-got?* Dept

Techdirt has been writing about corporate sovereignty (also known as investor-state dispute settlement -- ISDS) for **a year** now. Back in April, we noted that it was likely to be part of the **TAFTA/TTIP negotiations**, which were just about to start. Since then, more and more **people** have **woken up** to its **dangers**, and called for corporate sovereignty to be dropped from the negotiations.

The European Commission is evidently feeling the heat, because it has put together a couple of documents with the evident aim of justifying the inclusion of ISDS in TAFTA/TTIP, and sent them to the committee that will be writing the final report on whether or not the European Parliament should accept the TAFTA/TTIP agreement once finalised. The first document is entitled "**EU--Canada CETA: main achievements**" (pdf and embedded below). It provides us with a rare official glimpse of what is in the still-secret trade agreement between Canada and the EU.

Many of the "clarifications" to corporate sovereignty concepts listed there are welcome: for example, in defining what loose concepts like "fair and equitable treatment", and "indirect expropriation" really mean. But the credibility of the document is undermined by the very first point:

The CETA reaffirms the right of the EU and Canada to regulate to pursue legitimate public policy objectives such as the protection of health, safety, or the environment.

The fact that the European Commission even feels a need to affirm this means that it recognizes that corporate sovereignty does, indeed, threaten the fundamental rights of nations to legislate freely, and without fear of being hauled up before ISDS tribunals. And however much the European Commission may try to "clarify" the corporate sovereignty provisions, clever lawyers will always find ways for their clients to sue countries for daring to bring in laws protecting health, safety or the environment that cause profits to dip. This means that there is only one sure way to preserve the sovereignty of nations, and prevent them becoming the object of multi-billion dollar lawsuits, **as is happening currently under other trade agreements like NAFTA**, and that is to remove ISDS completely. Evidently worried by this argument, the European Commission has put together another document, a "factsheet" called "**Investment Protection and Investor-to-State Dispute Settlement in EU agreements**" (pdf and embedded below) that tries to head it off.

The opening paragraph once again makes a false equivalence between the right of states to regulate and the need to protect investors:

Investment protection provisions, including investor-state dispute settlement are important for investment flows. They have generally worked well. However, the system needs improvements. These relate to finding a better balance between the right of states to regulate and the need to protect investors, as well as to making sure the arbitration system itself is above reproach e.g. transparency, arbitrator appointments and costs of the proceedings.

The basic argument of the fact sheet can be found in the following paragraphs (bolded phrases in original): *Investment is a **critical factor for growth and jobs**. This is particularly the case in the EU, where our economy is very much based on being open to trade and investment. Investment is key in creating and maintaining businesses and jobs. Through investment, companies build the global value chains that play an increasing role in the modern international economy. They not only create new opportunities for trade but also **value-added, jobs and income**. That is the reason why trade agreements should promote investment and create new opportunities for companies to invest around the world.*

Companies investing abroad do encounter problems which -- for a variety of reasons -- cannot always be solved through the domestic legal system. These problems range from the rare, but dramatic, occurrences of expropriations by the host country by force, discrimination, expropriation without proper compensation, revocation of business licences and abuses by the host state such as lack of due process to not being able to make international transfers of capital.

Precisely because of these risks**, provisions to protect investments have been part and parcel of all the **1400 bilateral agreements entered into by EU Member States since the late 1960s**. The EU itself is party to the Energy Charter Treaty, which also contains provisions to protect investments and investor to state dispute settlement. Worldwide, there are over 3400 such bilateral or multiparty agreements in force containing provisions to protect investments. They provide **guarantees** to companies that their investments will be treated fairly and on an equal footing to national companies. By creating legal certainty and predictability for companies, investment protection is also **a tool for states around the world to attract and maintain FDI [foreign direct investment] to underpin their economy.

In essence, it's a kind of syllogism: investment is critically important for the EU economy; investors need corporate sovereignty guarantees to protect their investment; so TAFTA/TTIP must contain ISDS to "attract and maintain" foreign investment -- in this case, from the US. The clear implication is that without corporate sovereignty, US investors will be reluctant to put their money in Europe, and vice versa.

The European Commission has another page on its Web site that provides some context. Here's what it says about **the current levels of investment between the two trade blocs**:

Total US investment in the EU is three times higher than in all of Asia.

EU investment in the US is around eight times the amount of EU investment in India and China together.

EU and US investments are the real driver of the transatlantic relationship, contributing to growth and jobs

on both sides of the Atlantic. It is estimated that a third of the trade across the Atlantic actually consists of intra-company transfers.

In other words, even though corporate sovereignty is not enshrined in any treaties between the US and EU, the scale of investment (in both directions) is unmatched anywhere else on the planet. It would seem that the European Commission's argument for the necessity of ISDS falls down at some point. It's not hard to see where.

The second paragraph quoted above from the fact sheet lists some of the "rare" problems that arise when investing in foreign countries: "expropriations by the host country by force, discrimination, expropriation without proper compensation, revocation of business licences and abuses by the host state such as lack of due process to not being able to make international transfers of capital." Does the European Commission seriously think either the EU or US is going to engage in any of those activities, or that, if they ever did, investors in those areas would be unable to use local courts to seek redress?

The European Commission's argument in favor of corporate sovereignty is invalid because it mixes two quite distinct situations. It tries to use the problems of investment in just a few emerging economies -- that is, ones without stable governments or honest judiciaries -- which gave rise to ISDS chapters in the first place, and then pretend that similar problems are an issue in the US and EU, and so require the same solution: corporate sovereignty.

But that's simply not true. TAFTA/TTIP is a completely different kind of agreement, quite unlike any of the "1400 bilateral agreements entered into by EU Member States since the late 1960s." Placing arbitration tribunals above the well-developed legal systems of both the EU and US in order to encourage investment that is **already taking place on a massive scale**, is simply nonsensical. It underlines the European Commission's obvious inability to come up with any real justification for the inclusion of a corporate sovereignty chapter in TAFTA/TTIP.

Follow me @glynmoody on [Twitter](#) or [identi.ca](#), and +glynmoody on [Google+](#)

Tradoc 151918

Bali trade agreement: WTO set the bar high but has achieved little

The Doha Development Round was launched 12 years ago and it was a classic case of the World Trade Organisation biting off more than it could chew



The WTO launched the Doha Round 12 years ago but the negotiations have yet to yield any concrete results. Photograph: Achmad Ibrahim/AP

The deal signed by the 159 members of the World Trade Organisation in Bali is a triumph. But only in the way that Dunkirk was a triumph for Britain in 1940. The WTO has avoided a calamity. It lives to fight another day as a body that can cut global trade agreements. But no more than that.

The package signed off is what's left of 12 years of haggling, wrangling and stalemate since the Doha Development Round was launched 12 years ago. It adds up to very little.

Trade negotiators set the bar high in Doha. They crafted an ambitious agenda which included freer trade in agriculture, manufactured goods, and services. Trade in environmental goods was included. Ministers pledged to update the WTO's rules to prevent dumping of low-cost products. In the event, it was a classic case of the WTO biting off more than it could chew. There were too many issues, most of them complex

and contentious. The talks quickly became embroiled in power games. The expectation in 2001 was that rich countries would provide access to their markets for the agricultural produce of poor countries and in return developing countries would cut tariffs on imported manufactured goods from the west.

This tit-for-tat arrangement proved elusive. By the time Roberto Azevêdo took over at the WTO in the summer all that was left of the original Doha Round was trade facilitation, improving customs procedures to make it easier for goods to flow in and out of countries.

But even so-called "Doha lite" was put at risk when India and the US clashed over food security. New Delhi said it wanted the right to stockpile grain and sell it at cut-price rates to its poor citizens; the US said India had to abide by WTO rules on government food subsidies. India said there would be no trade facilitation deal until the terms of a "peace clause" had been secured. Friday's compromise allows India to keep its temporary arrangement in place for four years until a permanent solution is found.

Azevêdo's relief at the outcome will be tempered by the knowledge that it has taken two decades to negotiate this scanty deal. In the meantime, WTO members have been going their own way, seeking to sign bilateral agreements such as that between the EU and the US. The threat of WTO marginalisation remains.

As Churchill said after Dunkirk: "Wars are not won by evacuations."

[Previous](#)

[Blog home](#)

[Next](#)

More from the Guardian [What's this?](#)

[Kenya sci-fi series imagines European immigrants fleeing to Africa](#) 03 Dec 2013

[Germany may arm police with 'Nazi Shazam' phone app](#) 03 Dec 2013

[Anti-poverty groups condemn WTO pact as big business boost](#) 06 Dec 2013

[WTO trade deal 'very close' as India continues to hold out on food subsidies](#) 06 Dec 2013

[Energy companies say nothing on £50 price reduction](#) 06 Dec 2013

More from around the web [What's this?](#)

[Is a massive rebalancing of the world's economic, political and social power underway?](#) (Merrill Lynch: Wealth Management)

[4 Stupid Investment Mistakes Nearly Everyone Makes](#) (etrade.com)

[Why you no longer want a human financial advisor](#) (Business Insider)

[A billion-dollar daily shot in the arm for the American economy](#) (ExxonMobil Perspectives Blog)

[How the Lords of Finance Caused the Great Depression and the Second World War](#) (BNY Mellon)

HUFFINGTON POST <http://www.huffingtonpost.com/>

Obama Trade Deal Faces Backlash Over New Corporate Political Powers

Posted: 12/08/2013 6:24 pm EST | Updated: 12/08/2013 6:32 pm EST

zach.carter@huffingtonpost.com

ASSOCIATED PRESS

WASHINGTON -- The Obama administration appears to have almost no international support for controversial new trade standards that would grant radical new political powers to corporations, increase the cost of prescription medications and restrict bank regulation, according to two internal memos obtained by The Huffington Post.

The memos, which come from a government involved in the 12-nation Trans-Pacific Partnership free trade negotiations, detail continued disputes in the talks over the deal. They reveal broad disagreement over a host of key positions, and general skepticism that an agreement can be reached by year-end. The Obama administration has urged countries to reach a deal by New Year's Day, though there is no technical deadline.

One memo, which was heavily redacted before being provided to HuffPost, was written ahead of a new round of talks in Singapore this week. Read the full text of what HuffPost received [here](#). (Note: Ellipses indicate redacted text. Text in brackets has been added by a third party.) Another document, a chart outlining different country positions on the text, dates from early November, before the round of negotiations in Salt Lake City, Utah. View the chart [here](#). HuffPost was unable to determine which of the 11 non-U.S. nations involved in the talks was responsible for the memo. The Obama administration was not available for comment Sunday evening. Previously leaked TPP [documents](#) have sparked alarm among global health experts, Internet freedom activists, environmentalists and organized labor, but are adamantly supported by American corporations and the U.S. Chamber of Commerce. The Obama administration has deemed negotiations to be classified information -- banning members of Congress from discussing the American negotiating position with the press or the public. Congressional staffers have been restricted from viewing the documents.

One of the most controversial provisions in the talks includes new corporate empowerment language insisted upon by the U.S. government, which would allow foreign companies to challenge laws or regulations in a privately run international court. Under World Trade Organization treaties, this political power to contest government law is reserved for sovereign nations. The U.S. has endorsed some corporate political powers in prior trade agreements, including the North American Free Trade Agreement, but the scope of what laws can be challenged appears to be much broader in TPP negotiations.

"The United States, as in previous rounds, has shown no flexibility on its proposal, being one of the most significant barriers to closing the chapter, since under the concept of Investment Agreement nearly all significant contracts that can be made between a state and a foreign investor are included," the memo reads. "Only the U.S. and Japan support the proposal."

Under NAFTA, companies including Exxon Mobil, Dow Chemical and Eli Lilly have attempted to overrule Canadian regulations on offshore oil drilling, fracking, pesticides, drug patents and other issues. Companies could challenge an even broader array of rules under the TPP language. New standards concerning access to key medicines appear to be equally problematic for many nations. The Obama administration is insisting on mandating new intellectual property rules in the treaty that would grant pharmaceutical companies long-term monopolies on new medications. As a result, companies can charge high prices without regard to competition from generic providers. The result, public health experts have warned, would be higher prices around the world, and lack of access to life-saving drugs in poor countries. Nearly every intellectual property issue in the November chart is opposed by a broad majority of the 12 nations. The December memo describes 119 "outstanding issues" that remain unresolved between the nations on intellectual property matters.

Also according to the December memo, the U.S. has reintroduced a proposal that would hamper government health services from negotiating lower drug prices with pharmaceutical companies. The proposal appears to have been universally rejected earlier in the talks, according to the memo.

Australia and New Zealand have medical boards -- similar to one established under Obamacare - that allow the government to reject expensive new drugs for the public health system, or negotiate lower prices with drug companies that own patents on them. If a new drug does not offer sufficient benefits over existing generic drugs, the boards can reject spending taxpayer money on the new medicines. They can also refuse to pay high prices for new drugs. The Obama administration has been pushing to ban these activities by national boards, which would lock in big profits for U.S. drug companies. Obamacare, notably, sought to mimic the behavior of these boards to lower domestic health care costs.

The U.S. is also facing major resistance on bank regulation standards. The Obama administration is seeking to curtail the use of "capital controls" by foreign governments. These can include an extremely broad variety of financial tools, from restricting lending in overheated markets to denying mass international outflows of currency during a financial panic. The loss of these tools would dramatically limit the ability of governments to prevent and stem banking crises. "The positions are still paralyzed," the December memo reads, referring to the Financial Services Chapter. "The United States shows zero flexibility."

Congress of the United States

Washington, D.C. 20515

December 9, 2013

The Honorable Barack Obama
President of the United States
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear President Obama:

Knowing of your commitment to improving access to affordable health care in the United States and around the world, we write to ask you to ensure that the ongoing negotiations over the Trans Pacific Partnership (TPP) Agreement do not include provisions that would undermine that goal. We also write to urge that your Administration not make any final trade agreements that affect critical health issues until members of Congress and the public have been given the opportunity to review provisions and provide input on their impact.

Many of us have had the opportunity to raise our concerns about specific proposals with the United States Trade Representative (USTR) and other members of your Administration, specifically proposals relating to patents and pricing of prescription drugs. As a result of those discussions, USTR entered a period of reflection that has now ended. Although TPP negotiations have been conducted in secret, there are numerous reports that many of those very troubling proposals are back on the table.

As reported, the proposals under discussion would have profound and long-lasting consequences. Over the past several decades, much work has been done to balance the intellectual property rights of pharmaceutical companies against the rights of countries to protect the health of their populations. The result has been a series of bipartisan agreements, most recently the Bipartisan Agreement on Trade Policy reached in May 2007, the so-called May 10th agreement. The TPP proposals under consideration would move away from that agreement, benefiting the interests of brand-name pharmaceutical companies by taking away the ability and flexibility of countries – including the United States – to act to protect their public health interests.

The effect of data exclusivity, patent registration and procedure, enforcement and other provisions would be to delay generic competition and increase the price of medicines. We have heard from numerous NGOs working on the ground around the world that this would seriously undermine their efforts, leading to preventable illnesses and deaths. In the United States, we have been contacted by state legislators, health care organizations and consumer advocates concerned that the changes would prevent implementation of existing and new cost-control measures, including ideas that you have included in your annual budget recommendations.

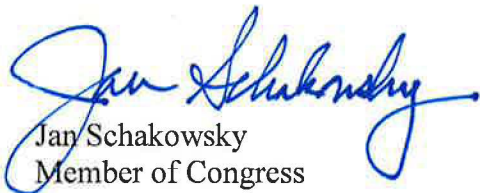
The Honorable Barack Obama
December 9, 2013
Page 2

At a time when we are urging states to expand Medicaid under the Affordable Care Act and looking for ways to reduce the growth of Medicare spending, we believe it makes no sense to take away critical tools to lower spending growth. It is also wrong to jeopardize our Veterans Administration's ability to negotiate lower drug prices as it is stepping up efforts to respond to the needs of our Iraq and Afghanistan veterans.

Again, we want to express our strong opposition to actions that would create new barriers to generic competition or remove pricing and formulary options that would allow the United States and other countries to lower the prices of medicines. Certainly, trade negotiations conducted behind closed doors are not the place to make changes that would have such profound consequences for patients and veterans, as well as state and federal budgets.

We appreciate your attention to these issues and look forward to continuing our work together to improve health care access and affordability, at home and abroad.

Sincerely,



Jan Schakowsky
Member of Congress



Michael H. Michaud
Member of Congress



Rosa DeLauro
Member of Congress



George Miller
Member of Congress



Barbara Lee
Member of Congress



Peter Welch
Member of Congress

Investor-State Dispute Resolution: The Monster Lurking Inside Free Trade Agreements

Politics

by Glyn Moody

Tue, Apr 16th 2013 1:09am

<http://www.techdirt.com/articles/20130411/09574122678/investor-state-dispute-resolution-sleeping-monster-inside-free-trade-agreements-begins-to-stir.shtml>

from the *be-very-afraid* dept

We wrote recently about how multilateral trade agreements have become a convenient way to circumvent democratic decision making. One of the important features of such treaties is the inclusion of an investor-state dispute resolution mechanism, which Techdirt discussed last year. The Huffington Post has a great article about how this measure is almost certain to be part of the imminent TAFTA negotiations, as it already is for TPP, and why that is deeply problematic:

Investor-state resolution has been a common component of U.S.-negotiated pacts with individual nations since the North American Free Trade Agreement in 1994. But such resolution is not currently permitted in disputes with the U.S. and EU, which are governed by the WTO. All trade deals feature some kind of international resolution for disputes, but the direct empowerment of corporations to unilaterally bring trade cases against sovereign countries is not part of WTO treaties. Under WTO rules, a company must persuade a sovereign nation that it has been wronged, leaving the decision to bring a trade case before the WTO in the hands of elected governments.

Traditionally, this proposed political empowerment for corporations has been defended as a way to protect companies from arbitrary governments or weakened court systems in developing countries. But the expansion of the practice to first-world relations exposes that rationale as disingenuous. Rule of law in the U.S. and EU is considered strong; the court systems are among the most sophisticated and expert in the world. Most cases brought against the United States under NAFTA have been dismissed or abandoned before an international court issued a ruling.

As this rightly points out, investor-state dispute resolution mechanisms were brought in for agreements with countries where the rule of law could not be depended upon. That makes no sense in the case of the US and EU, both of whose legal systems are highly developed (some might say overly so.) The Huffington Post article quotes Lori Wallach, director of Public Citizen's Global Trade Watch, who explains what she thinks is really going on here: *"The dirty little secret about [the negotiation] is that it is not mainly about trade, but rather would target for elimination the strongest consumer, health, safety, privacy, environmental and*

other public interest policies on either side of the Atlantic," said Lori Wallach, director of Public Citizen's Global Trade Watch. "The starkest evidence ... is the plan for it to include the infamous investor-state system that empowers individual corporations and investors to skirt domestic courts and laws and drag signatory governments to foreign tribunals."

One recent example of the kind of thing that might become increasingly common if investor-state dispute resolution is included in TAFTA and TPP is provided by Eli Lilly and Company. As Techdirt reported earlier this year, the pharma giant is demanding \$100 million as compensation for what it calls "expropriation" by Canada, simply because the latter's courts refused to grant Eli Lilly a drug patent on the grounds that it didn't satisfy the conditions set down in law for doing so.

A new report (pdf) from the UN Conference for Trade and Development (UNCTAD), pointed out to us by IP Watch, reveals just how widespread the use of investor-state dispute resolution mechanisms has already become:

The Issues Note reveals that 62 new cases were initiated in 2012, which constitutes the highest number of known ISDS [investor-state dispute settlement] claims ever filed in one year and confirms that foreign investors are increasingly resorting to investor-State arbitration.

...

By the end of 2012, the total number of known cases reached 518, and the total number of countries that have responded to one or more ISDS claims increased to 95. The overall number of concluded cases reached 244. Out of these, approximately 42 per cent were decided in favour of the State and 31 per cent in favour of the investor. Approximately 27 per cent of the cases were settled.

Although that suggests that states are winning more often than investors, the cost of doing so is a drain on public finances, and ignores cases that never come to arbitration because governments simply give in. And when states lose, the fines can be enormous: the report notes that 2012 saw the highest monetary award in the history of investor-state dispute resolution: \$1.77 billion to Occidental, in a dispute with Ecuador.

As an accompanying press release from UNCTAD points out, this growing recourse to international arbitration

amplif[ies] the need for public debate about the efficacy of the investor-State dispute settlement (ISDS) mechanism and ways to reform it

Unfortunately, against a background of almost total lack of awareness by the public that supra-national structures are being put in place that allow their governments to be overruled, and their laws to be ignored, it is highly unlikely we will get that debate.

Follow me @glynmoody on Twitter or identi.ca, and on Google+

KEI analysis of Wikileaks leak of TPP IPR text, from August 30, 2013

<http://keionline.org/node/1825>

Submitted by James Love on 13. November 2013 - 4:32

KEI Comments on the August 30, 2013 version of the TPP IP Chapter

For more information, contact James Love, <mailto:james.love@keionline.org>, mobile +1.202.361.3040. Knowledge Ecology International (KEI) has obtained from Wikileaks a complete copy of the consolidated negotiating text for the IP Chapter of the Trans-Pacific Partnership (TPP). (Copy [here](#), and on the Wikileaks site here: <https://wikileaks.org/tpp/>) The leaked text was distributed among the Chief Negotiators by the USTR after the 19th Round of Negotiations at Bandar Seri Begawan, Brunei, in August 27th, 2013.

There have been two rounds since Brunei, and the latest version of the text, from October, will be discussed in Salt Lake City next week.

The text released by Wikileaks is 95 pages long, with 296 footnotes and 941 brackets in the text, and includes details on the positions taken by individual countries.

The document confirms fears that the negotiating parties are prepared to expand the reach of intellectual property rights, and shrink consumer rights and safeguards.

Compared to existing multilateral agreements, the TPP IPR chapter proposes the granting of more patents, the creation of intellectual property rights on data, the extension of the terms of protection for patents and copyrights, expansions of right holder privileges, and increases in the penalties for infringement. The TPP text shrinks the space for exceptions in all types of intellectual property rights. Negotiated in secret, the proposed text is bad for access to knowledge, bad for access to medicine, and profoundly bad for innovation.

The text reveals that the most anti-consumer and anti-freedom country in the negotiations is the United States, taking the most extreme and hard-line positions on most issues. But the text also reveals that several other countries in the negotiation are willing to compromise the public's rights, in a quest for a new trade deal with the United States.

The United States and other countries have defended the secrecy of the negotiations in part on the grounds that the government negotiators receive all the advice they need from 700 corporate advisors cleared to see the text. The U.S. negotiators claim that the proposals need not be subject to public scrutiny because they are merely promoting U.S. legal traditions. Other governments claim that they will resist corporate right holder lobbying pressures. But the version released by Wikileaks reminds us why government officials supervised only by well-connected corporate advisors can't be trusted.

An enduring mystery is the appalling acceptance of the secrecy by the working news media.

With an agreement this complex, the decision to negotiate in secret has all sorts of risks. There is the risk that the negotiations will become hijacked by corporate insiders, but also the risk that negotiators will make unwitting mistakes. There is also the risk that opportunities to do something useful for the public will

be overlooked or abandoned, because the parties are not hearing from the less well-connected members of the public.

The U.S. proposals are sometimes more restrictive than U.S. laws, and when consistent, are designed to lock-in the most anti-consumer features. On top of everything else, the U.S. proposals would create new global legal norms that would allow foreign governments and private investors to bring legal actions and win huge damages, if TPP member countries does not embrace anti-consumer practices.

General provisions, and dispute resolution

The existing multilateral copyright and trade treaties, negotiated in the light of day, generally provide better balance between right holders and users. The WTO TRIPS Agreement is the only multilateral agreement with impressive enforcement mechanisms. The TRIPS agreement is defined not only by the specific provisions setting out rights and exceptions, but general provisions, such as Articles 1, 6, 7,8, 40 and 44, that provide a variety of safeguards and protections for users and the public interest. The US is proposing that the new TPP IPR provisions be implemented with few if any of the safeguards found in the TRIPS, or weaker versions of them.

The dispute resolution provisions in the TPP permit both governments and private investors to bring actions and obtain monetary damages if arbitrators find that the implementation of the agreement is not favorable enough to right holders. This effectively gives right holders three bites at the apple -- one at the WTO and two at the TPP. They can lobby governments to advance their positions before a WTO panel, and/or, the separate dispute mechanisms available to governments and investors in the TPP. There are no opportunities for consumers to bring such disputes.

The addition of the investor state dispute resolution provisions in the TPP greatly increases the risks that certain issues will be tested in the TPP, particularly when the TPP provisions are modified to be more favorable to right holders, or lack the moderating influence of the TRIPS type safeguards which the US is blocking in the TPP.

Access to Medicines

The trade agreement includes proposals for more than a dozen measures that would limit competition and raise prices in markets for drugs. These include (but are not limited to) provisions that would lower global standards for obtaining patents, make it easier to file patents in developing countries, extend the term of patents beyond 20 years, and create exclusive rights to rely upon test data as evidence that drugs are safe and effective. Most of these issues have brackets in the text, and one of the most contentious has yet to be tabled -- the term of the monopoly in the test data used to register biologic drugs. The United States is consistently backing the measures that will make drugs more expensive, and less accessible.

Some of the issues are fairly obvious, such as those requiring the granting of more patents with longer effective terms, or monopolies in test data. Others are more technical or subtle in nature, such as the unbracketed wording of Article QQ.A.5, which is designed to narrow the application of a 2001 WTO Doha Agreement TRIPS and Public Health, and its obligations to provide for "access to medicine for all." By changing the language, the TPP makes it seem as if the provision is primarily about "HIV/AIDS,

tuberculosis, malaria, [US oppose: chagas] and other epidemics as well as circumstances of extreme urgency or national emergency," instead of all medicines and all diseases, including cancer.

Patents on Surgical Methods

An interesting example of how the US seeks to change national and global norms are the provisions in the TPP over patents on surgical methods. The WTO permits countries to exclude "diagnostic, therapeutic and surgical methods for the treatment of humans or animals." The US wants to flip this provision, so that "may also exclude from patentability" becomes "shall make patents available." However, when a version of the IP Chapter was leaked in 2011, the US trade negotiators were criticized for ignoring the provisions in 28 USC 287 that eliminated remedies for infringement involving the "medical activity" of a "medical practitioner." The exception in US law covered "the performance of a medical or surgical procedure on a body." The US trade negotiators then proposed adding language that would permit an exception for surgery, but only "if they cover a method of using a machine, manufacture, or composition of matter." The US proposal, crafted in consultation with the medical devices lobby, but secret from the general public, was similar, but different from the U.S. statute, which narrowed the exception in cases involving "the use of a patented machine, manufacture, or composition of matter in violation of such patent." How different? As Public Citizen's Burcu Kilic puts it, under the US proposal in the TPP, the exception would only apply to "surgical methods you can perform with your bare hands."

Why is the United States putting so much effort into narrowing if not eliminating the flexibility in the WTO agreement to provide exceptions for patents on "diagnostic, therapeutic, and surgical methods for the treatment of humans or animals"? It did not hurt that AdvaMed, the trade association for the medical device manufacturers, hired Ralph F. Ives as Executive Vice President for Global Strategy & Analysis. Before becoming a lobbyist for the medical device industry, Ives was the head of pharmaceutical policy for USTR. And Ives is just one of an army of lobbyists (including former Senator Evan Bayh) representing the medical devices industry. ITAC3, the USTR advisory board for Chemicals, Pharmaceuticals, Health/Science Products And Services, includes not only Ralph Ives, but also representatives from Medtronic, Abbott, Johnson and Johnson, DemeTech, North Coast Medical and Airmed Biotech -- all companies involved in the medical device business. All are considered "cleared advisors" to USTR and have access to the TPP text.

Uncertainty over compulsory licenses on patents

At present, exceptions to exclusive rights of patents may be implemented under a general exceptions clause (Article 30 of the TRIPS), a rules based system (Article 31), or under other provisions, including limitations to remedies, the first sale doctrine, or the control of anticompetitive practices. The option to use the TRIPS Article 31 mechanisms has been proposed by New Zealand, Canada, Singapore, Chile and Malaysia, but is not currently supported by the US, Japan or other countries. This presents significant uncertainty over the freedom to use compulsory licenses. If QQ.E5quater is not accepted, the rules based WTO approach will not be possible, and governments will have to satisfy a restrictive three step test, and run the risk of litigation under investor state dispute resolution provisions of the TPP.

Article QQ.E.5quater: {Other Use Without Authorisation of the Right Holder}

[NZ/CA/SG/CL/MY propose: Nothing in this Chapter shall limit a Party's rights and obligations under Article 31 of the TRIPS Agreement or any amendment thereto.]

Copyright

There is little reason for any language on copyright in the TPP. All of the TPP member countries are already members of the WTO, which has its own extensive obligations as regards copyright, including obligations to implement Articles 1 through 21 of the Berne Convention. The TRIPS has already expanded copyright coverage to software, and provides extensive protections to performers, producers of phonograms (sound recordings) and broadcasting organizations. Moreover, the United States and Australia have proposed that all TPP member countries “ratify or accede” to two 1996 treaties (the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty), as well as the 1974 Brussels Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite. Despite this, the TPP provides its own nuanced and often detailed lists of obligations. Collectively, the copyright provisions are designed to extend copyright terms beyond the life plus 50 years found in the Berne Convention, create new exclusive rights, and provide fairly specific instructions as to how copyright is to be managed in the digital environment.

Copyright terms

There are significant differences in the positions of the parties on the term of protection. Some countries are opposing any expansion of the term found in the Berne Convention, the TRIPS or the WCT, which is generally life plus 50 years, or 50 years for corporate owned works.

For the TPP copyright terms, the basics are as follows. The US, Australia, Peru, Singapore and Chile propose a term of life plus 70 years for natural persons. For corporate owned works, the US proposes 95 years exclusive rights, while Australia, Peru, Singapore and Chile propose 70 years for corporate owned works. Mexico wants life plus 100 years for natural persons and 75 years for corporate owned works. For unpublished works, the US wants a term of 120 years.

While the US negotiators are indeed promoting US legal norms, they are promoting norms that most experts and consumers see as a mistake, that should be corrected. There is no justification for 95 year copyright terms for corporations, or 70 years of protection after an author is dead, or 120 years for unpublished works.

3-Step Test

One set of technically complex but profoundly important provisions are those that define the overall space that governments have to create exceptions to exclusive rights. The Berne Convention established a system combining “particular” exceptions for the most common and important topics such as quotations, news of the day, public affairs, speeches, uses of musical compensations, and education, and a general purpose exception to the reproduction right that could be implemented in any other case not covered by the particular exception. Any exception not spelled out as a particular exception was subject to a very restrictive three step test. When the WTO incorporated the bulk of the Berne Convention articles, it retained this system, and added additional areas of flexibility, including very broad freedom to apply the first sale doctrine (Article 6 of the TRIPS), to control anti-competitive practices (Articles 8 and 40), and to implement a liability rule approach through Article 44.2 of the TRIPS.

In recent years, the publisher lobby has sought to elevate the 3-step test to a high level filter to limit all copyright exceptions, including the so called "particular" Berne exceptions, as well as anything else that limits exclusive rights. In the TPP, the copyright lobby has succeeded in obtaining a formulation based in part upon the 1996 WIPO WCT treaty, which can be read to provide some recognition of the Berne particular exceptions, but (unlike the 2012 Beijing treaty) does not specifically reference the important agreed upon statements in the 1996 WCT, which support more robust exceptions.

In its current form, the TPP space for exceptions is less robust than the space provided in the 2012 WIPO Beijing treaty or the 2013 WIPO Marrakesh treaty, and far worse than the TRIPS Agreement. While this involves complex legal issues, the policy ramifications are fairly straightforward. Should governments have a restrictive standard to judge the space available to fashion exceptions for education, quotations, public affairs, news of the day and the several other "particular" exceptions in the Berne Convention, and more generally, why would any government want to give up its general authority to consider fashioning new exceptions, or to control abuses by right holders?

Formalities

The TPP goes beyond the TRIPS agreement in terms of prohibiting the use of formalities for copyright. While the issue of formalities may seem like a settled issue, there is a fair amount of flexibility that will be eliminated by the TPP. At present, it is possible to have requirements for formalities for domestically owned works, and to impose formalities on many types of related rights, including those protected under the Rome Convention. In recent years, copyright policy makers and scholars have begun to reconsider the benefits of the registration of works and other formalities, particularly in light of the extended terms of copyright and the massive orphan works problems.

In April 2013 a major workshop on this topic took place in Berkeley, titled: "Reform(aliz)ing Copyright for the Internet Age?" (<http://www.law.berkeley.edu/formalities.htm>), where the benefits and challenges of reintroducing formalities was discussed.

On the issue of formalities, the TPP language is an unnecessary and unwelcome barrier to introducing reforms.

TPM/DRM

The copyright section also includes extensive language on technical protection measures, and in particular, the creation of a separate cause of action for breaking technical protection measures. The US wants this separate cause of action to extend even to cases where there is no copyrighted works, such as in cases of public domain materials, or data not protected by copyright. It is worth noting that the restrictions on breaking technical protection measures include several exceptions, including, for example: "lawfully authorized activities carried out by government employees, agents, or contractors for the purpose of law enforcement, intelligence, essential security, or similar governmental purposes"

In the United States the problem of TPMs and the complicated rulemaking process for exceptions and limitations to anticircumvention measures was part of a recent controversy when the Librarian of Congress refused to renew an exemption to allow the unlocking of cell-phones. After a petition by over 100,000 to the White House, the Obama Administration responded, agreeing that an exemption should exist to permit unlocking of cell-phones. Rep. Zoe Lofgren (D-CA) introduced a bill, co-sponsored with

bipartisan support, called the "Unlocking Technology Act" which would make clear that there is no liability for circumvention of a TPM where circumvention is done to engage in a use that is not an infringement of copyright. Such a bill is potentially threatened by the aggressive proposals on TPMs in the TPP.

The TPP provisions on technological protection measures and copyright and related rights management information are highly contentious and complex, and as a practical matter, impossible to evaluate without access to the negotiating text. Given the enormous public interest in this issue and other issues, it is very unfortunate that governments have insisted on secret negotiations.

Damages

One of the largest disappointments in the ACTA negotiations was the failure to sufficiently moderate the aggressive new norms for damages associated with infringements. The TPP negotiation has been far more secretive than the ACTA negotiation, and what is now clear is that as far as the issue damages is concerned, the TPP text is now much worse than the ACTA text. Particularly objectionable is the unbracketed Article QQ.H.4: 2ter, which reads as follows:

2ter. In determining the amount of damages under paragraph 2, its judicial authorities shall have the authority to consider, inter alia, any legitimate measure of value the right holder submits, which may include lost profits, the value of the infringed goods or services measured by the market price, or the suggested retail price.

Aside from the obvious overreaching of requiring consideration of "the suggested retail price," the US is ignoring all sorts of national laws for copyright, patents and trademarks, and TRIPS rules as regards layout-designs (topographies) of integrated circuits, that set different standards for damages in cases of infringements. The following are just a few examples:

Under the Article 36 of TRIPS, damages for certain infringement are limited, by the WTO, to "a sum equivalent to a reasonable royalty such as would be payable under a freely negotiated licence in respect of such a layout-design."

Under the Affordable Care Act, a company infringing on undisclosed patents for biologic drugs is only liable for a reasonable royalty, or no royalty, depending upon the nature of the disclosure.

The US DOJ and the USPTO recently took the position that certain patents infringements related to standards setting activities, should be limited to a reasonable royalty.

The US proposal in the TPP will also prevent the United States from using limitations on remedies for infringement as part of a larger effort to expand access to orphaned copyright works -- an approach that has been endorsed by the US Copyright Office, and by Senator Patrick Leahy.

For several other examples, see: " Two areas where ACTA is inconsistent with US law, injunctions and damages, [KEI Policy Brief](#), 2011:2, as well as: Access to Orphan Works, and ACTA provisions on damages [KEI Policy Brief 2010: 1](#).

Concluding comments

Although there are some areas of agreed to text, the leaked text from August 30, 2013 also highlights the numerous areas where parties have yet to finalize the agreement. That there are over 900 brackets means that there is still plenty of opportunity for countries to take positions that will promote the public interest and preserve consumer rights. These areas include substantive sections of the most

controversial provisions on patents, medicines, copyright and digital rights where there are often competing proposals. The publication of the text by Wikileaks has created a rare and valuable opportunity to have a public debate on the merits of the agreement, and actions to fix, change or stop the agreement.

<http://infojustice.org/archives/30881>

Will Obama Fast-Track the Trans-Pacific Partnership?

Posted by [Matthew Rimmer](#) on October 7, 2013 [Add comments](#)
Oct 07 2013

This week there has been discussions between leaders from the Pacific Rim over the Trans-Pacific Partnership in Bali, Indonesia at APEC.

President Barack Obama has demanding a 'trade promotion authority' from the United States Congress to fast-track the Pacific Rim treaty, the Trans-Pacific Partnership.^[1]

The fast-track authority plays a pivotal role in determining the extent to which the United States Congress can engage in a critical review of trade agreements.^[2]

The United States Chamber of Commerce has supported a comprehensive Trans-Pacific Partnership, which would enhance the intellectual property rights and investment rights of corporations.^[3] Thomas Donohue, the President and Chief Executive Officer of the Chamber, has vowed: 'We will launch a full-scale lobbying, grassroots, and education campaign to win passage [of the Trans-Pacific Partnership] in Congress.'

However, there has been a growing concern within the United States Congress and in civil society about the impact of the Trans-Pacific Partnership on democracy, jobs, the environment, and public health.

1. **Democracy**

The United States Massachusetts Democrat Senator Elizabeth Warren has been one of the most eloquent critics of the Trans-Pacific Partnership.

Warren has written to the Obama Administration, complaining: 'While I have no doubt that President's commitment to openness to genuine, I am concerned about the Administration's record of transparency regarding the Trans-Pacific Partnership.'^[4] She observed: 'If transparency would lead to widespread public opposition to a trade agreement, then that agreement should not be the policy of the United States.'

Warren opposed the nomination of Michael Froman as the United States Trade Representative because of his failure to prioritize transparency and public debate.^[5] She insisted that ‘the American people have the right to know more about the negotiations that will have dramatic impact on the future of the American economy’ and that ‘will have a dramatic impact on our working men and women, on the environment, on the Internet.’

In a rousing speech, United States Congressional Democrat Senator Elizabeth Warren warned of the dangers of the Trans-Pacific Partnership:

‘For big corporations, trade agreement time is like Christmas morning. They can get special gifts they could never pass through Congress out in public. Because it’s a trade deal, the negotiations are secret and the big corporations can do their work behind closed doors. We’ve seen what happens here at home when our trading partners around the world are allowed to ignore workers’ rights, wages, and environmental rules. From what I hear, Wall Street, pharmaceuticals, telecom, big polluters, and outsourcers are all salivating at the chance to rig the upcoming trade deals in their favor’.^[6]

She commented: ‘I believe that if people would be opposed to a particular trade agreement, then that trade agreement should not happen.’

Lori Wallach of Public Citizen has expressed similar concerns about the secrecy of the Trans-Pacific Partnership. She has warned on Democracy Now! that the trade agreement is a ‘Trojan Horse’ for transnational corporations:

‘Well, one of the most important things to understand is it’s not really mainly about trade. I guess the way to think about it is as a corporate Trojan horse. The agreement has 29 chapters, and only five of them have to do with trade. The other 24 chapters either handcuff our domestic governments, limiting food safety, environmental standards, financial regulation, energy and climate policy, or establishing new powers for corporations’.^[7]

She is concerned: ‘While the text of the treaty has been largely negotiated behind closed doors, more than 600 corporate advisers reportedly have access to the measure, including employees of Halliburton and Monsanto.’

2. Workers’ Rights

Will the Trans-Pacific Partnership undermine jobs and working conditions in the Pacific Rim?

James Hoffa, the General President of the International Brotherhood of Teamsters, co-authored a paper with Michael Brune from Sierra Club on fair trade.^[8] The pair lamented that ‘free trade agreements like NAFTA have only led to the outsourcing of American jobs, downsizing of our wages and loss of environmental protections’. Hoffa and Brune maintained that ‘It’s time to stop letting big corporations ship our jobs overseas and dump our wages, benefits and protections overboard along the way’. The pair insisted: ‘We don’t need any more free trade agreements; we need fair trade agreements.’

Celeste Drake, a trade specialist at the American Federation Labor and Congress of Industrial Organizations, has been concerned that the Trans-Pacific Partnership will undermine workers’ rights.^[9] She warned that ‘global firms that use the United States as a flag of convenience are once again substituting their interests for the national interest in the Trans-Pacific Partnership negotiations.’

Drake emphasized ‘that, for a trade agreement to benefit workers here and abroad, it must prioritize fundamental labor rights, the creation of high wage, high benefit jobs, and balanced and sustainable trade flows’. She insisted: ‘When workers can exercise their fundamental rights, as well as have a secure and hopeful future and sufficient incomes, their demand will help businesses and the global economy grow in a sustainable way.’

There has been concern amongst a number of United States Congressmen and women that the Trans-Pacific Partnership would significantly limit Buy American procurement policies and as a result adversely impact American jobs, workers, and manufacturers.^[10]

3. The Environment and Climate Change

Will the Trans-Pacific Partnership transform the Pacific Rim into a Gasland?

Allison Chin, the President of the Sierra Club said: ‘The Trans-Pacific Partnership (TPP) trade pact could subject environmental and public interest laws and safeguards to attack by foreign corporations, threaten our air and water with toxic pollution, and lead to more American jobs being shipped overseas’.^[11] She is troubled that ‘the Trans-Pacific Partnership is shaping up to be a stealth affront to the principles of our democracy.’

There has been particular disquiet about the use of state-investor clauses to challenge environmental regulations, such as Lone Pine’s challenge against Quebec’s moratorium on fracking.^[12] Ilana Solomon of the Sierra Club maintained:

'It's time that governments stop signing trade and investment pacts that put the rights of corporations above the rights of communities and the environment. My right to clean water, clean air, and a healthy planet for my family and community has to come before Lone Pine's right to mine and profit'.[\[13\]](#)

There has been alarm that the Trans-Pacific Partnership will be used to promote the export of natural gas, particularly to Japan.[\[14\]](#)

There are also tensions between Barack Obama's promises for action on climate change, and his trade agenda. Ilana Solomon of the Sierra Club has warned: 'Our current model of free trade is once again interfering with sound climate policy.'[\[15\]](#)

There has been outrage amongst environmental and climate activists that the United States Trade Representative been promoting tar sands, the Keystone XL Pipeline, and the export of fossil fuels in trade negotiations.[\[16\]](#)

Oregon Senator Ron Wyden and other environmentally-minded senators have written to the Obama Administration about the Trans-Pacific Partnership and the environment.[\[17\]](#) The Senators have argued for a strong environment chapter in the agreement: 'We think a "21st century trade agreement" must have an environment chapter that guarantees ongoing sustainable trade and creates jobs, and that this is what American businesses and consumers want and expect also.' The Senators have maintained that 'it is important that other provisions in the agreement, including those in the investment chapter, do not undermine efforts to protect the environment, protect the legal trade in natural resources, and address the challenges of sustainable conservation.'

4. Public Health

Will the Trans-Pacific Partnership undermine public health initiatives – such as tobacco control measures like graphic health warnings and the plain packaging of tobacco products?

There has been disquiet amongst public health advocates over the Obama administration backsliding on promises to protect tobacco control measures in the Trans-Pacific Partnership.

The recent New York Mayor Mike Bloomberg warned: 'If the Obama administration's policy reversal is allowed to stand, not only will cigarettes be cheaper for the 800 million people in the countries affected by the trade pact, but multinational tobacco corporations will be able to challenge those governments — including America's — for implementing lifesaving public health policies.'[\[18\]](#) He feared that the Trans-Pacific Partnership 'would not only put

our tobacco-control regulations in peril, but also create a chilling effect that would prevent further action, which is desperately needed.'

The San Francisco Board of Supervisors led by Eric Mar have 'unanimously passed Resolution 297-10 urging our trade leaders to change course to protect our health by excluding tobacco and tobacco products from the Trans-Pacific Partnership Agreement and from all future trade agreements.'[\[19\]](#)

Senator Sherrod Brown, a Democrat from Ohio, has written to the Obama Administration: 'We are not demonstrating global public-health leadership by putting forward a proposal that allows tobacco companies a back door to undermine anti-tobacco safeguards'.[\[20\]](#)

Conclusion

The battle over the Trans-Pacific Partnership is not just a matter of international trade debate between the participating countries. There is an intense debate between the Obama Administration and the United States Congress over the treaty-making process, and suitable protections in the Trans-Pacific Partnership for labor rights, the environment, and public health. A number of Democrats have balked a 'fast-track' authority for the Pacific Rim Trade Deal. Representative Rosa DeLauro, a Connecticut Democrat, has commented: 'We are not just here to rubber stamp what gets done' by trade representatives.[\[21\]](#) There is a need for the United States Congress to submit any Pacific Rim Treaty to rigorous scrutiny.

html
THE SACRAMENTO BEE sacbee.com

Viewpoints: Legislation could hurt California's crusade to reduce toxic chemicals

Special to The Bee

Published Thursday, Oct. 17, 2013

Federal oversight of the more than 80,000 chemicals used in the United States is essentially nonexistent. The 34-year-old law meant to regulate chemicals – the Toxic Substances Control Act, or TSCA – makes it nearly impossible to pull harmful chemicals off the market. It also doesn't require companies to understand the environmental and health consequences of a chemical before it is marketed. The Environmental Protection Agency has managed to ban only five chemicals of those covered by the act.

With the federal government asleep at the wheel, several states are taking action. California just unveiled a far-reaching program to eliminate or reduce hazardous chemicals in hundreds of everyday products. The Green Chemistry Initiative is the most comprehensive effort in the nation to identify toxic chemicals in cosmetics, household cleaners, food packaging and other consumer goods and require manufacturers to look for safer substitutes.

In recent years Maine, Minnesota and Washington state also have launched programs designed to replace chemical-by-chemical regulation with across-the-board policies that address the big picture. Meanwhile, in the last decade more than a third of the states have enacted bans or restrictions on individual chemicals as a growing body of science has linked them to diseases like breast cancer, birth defects and reproductive harm and hundreds of these chemicals have been found in breast milk, our bodies and even newborn babies.

These states are filling the breach left by the utter failure of the nation's outdated federal toxics law to protect Americans from the health threats hidden on retailers' shelves. But their pioneering efforts could be swept aside by the outcome of trade negotiations with Europe and by legislation pending in Congress that could roll back state regulation of toxic chemicals.

Reform of a badly broken U.S. chemical law and promotion of free trade might sound like worthy goals. But both initiatives may contain provisions that would roll back the advances California and other places have made in chemical safety, while undermining the strong European regulations that have inspired state-level reforms in the U.S. As currently crafted, the initiatives are linked by an insidious strategy: The chemicals industry is pushing a bill in Congress that would gut state regulation, providing a fig leaf of reform that will in turn facilitate a NAFTA-like trade deal that undercuts Europe's program – the gold standard of global chemical regulations.

In the trade negotiations, the Obama administration wants to weaken the EU's chemical regulatory system, known as REACH.

REACH is a common-sense embrace of the precautionary principle – better safe than sorry. It requires manufacturers to disclose detailed health and safety information for all chemicals in commerce, and puts the burden of proof on the manufacturer to show that chemicals are safe. But REACH doesn't line up with the administration's vision for a laissez-faire transatlantic economy. The goal is to deregulate economies on both sides of the Atlantic, on the theory that growth will result if government gets out of the way – even if that means undercutting sensible safeguards to protect human health and the environment.

The threat to the states' public health leadership is even more direct from the TSCA "reforms" being considered in the U.S. Senate. The Chemical Safety Improvement Act, introduced by Sen. David Vitter, R-La., is a step backward from an already bad law.

The Vitter bill would still set too high a burden of proof for the Environmental Protection Agency to restrict harmful chemicals, and the standard set for chemical safety would be far too easy for manufacturers to meet. It would effectively give chemical companies immunity from lawsuits in state courts over death or disability caused by chemicals deemed safe. Most worrisome for California and other states, the Vitter bill would pre-empt state law, allowing dangerous chemicals onto the market despite legislators' attempts to ban them. If the pre-emption clause were removed and stronger protections added for vulnerable populations and communities, the Vitter bill could mean progress, but as is, it would be a public health and environmental disaster.

The Obama administration's agenda in trade negotiations and Vitter's phony reform bill share a common goal: to roll back safeguards in Europe and California that regulate the release of dangerous chemicals into the marketplace and the environment – and ultimately into our bodies and those of our children. We deserve better.

Erich Pica is president of Friends of the Earth U.S.

- [Read more articles by Erich Pica](#)

 [Order Reprint](#)

Friends of the Earth, U.S. Blog

Stop fast track authority for Trans Pacific trade deal

Posted Oct. 17, 2013 / Posted by: Bill Waren

In collaboration with Republicans in Congress, the Obama administration is expected to soon seek so-called [Fast Track or Trade Promotion Authority legislation](#) in order to facilitate ratification in 2014 of a Trans Pacific Partnership trade deal that would gut environmental and climate protections. If you have a chance to talk to your member of Congress, consider asking for a [“NO” vote on the Fast Track bill](#) and drive home two points: (1) [Fast Track](#) guts congressional authority; and (2) Fast Track will allow the U.S. Trade Representative and the House Republicans to ram the disastrous TPP trade agreement through Congress.

Gutting the constitutional authority of Congress. Presidential [fast track authority](#) for negotiating trade agreements and its process for congressional approval [eviscerates Congress’ constitutional authority and political influence](#) over trade agreements, delegating them improperly to Michael Froman, the U.S. Trade Representative. Fast track hands over to the executive branch powers that [the founders](#) of our [constitution intended for Congress to exercise](#), including:

- The power to determine which countries join trade negotiations with the U.S., regardless of whether they are repeat violators of environmental and human rights standards;
- The power to finalize the legal text of trade agreements before Congress votes;
- The power to write domestic legislation implementing a trade deal by rolling back environmental safeguards and other public interest measures;
- The power to circumvent ordinary congressional committee review and submit the legislation directly for a mandatory and expedited floor votes in the House and Senate;
- The power to override House and Senate control of their schedules for floor votes;
- The power to ban any amendments to a trade agreement; and
- The power to override other normal congressional voting procedures, including the Senate’s super-majority (60 vote) requirement to end a filibuster (extended debate).

Ramming the TPP trade deal through Congress. The United States is pushing for a Trans Pacific Partnership trade deal that not only integrates the trade policies of Pacific nations, but also [deregulates their economies in many areas](#). Currently, Singapore, Malaysia, Chile, New Zealand, Brunei, Australia, Peru, Vietnam, Canada, Mexico, Japan and the United States are participating in the talks. South Korea and others may seek to “dock onto” the agreement in the very near future. The U.S. negotiating agenda will subordinate the role of governments in environmental protection to corporate profits. U.S. Trade Representative’s agenda for the TPP must be rejected. Friends of the Earth has a long list of concerns and demands. Here are just a few:

- *End the secrecy:* TPP talks are being held [behind closed doors](#) and civil society has been excluded from the most recent negotiations. The TPP [negotiating text is kept secret](#) from the public and press, although a few chapters have been leaked.
- *No cave on the environment chapter.* [The environment chapter must include enforceable obligations](#) to implement domestic environmental laws and abide by global environmental

agreements. On that point, the U.S. delegation agrees with environmentalists because Democrats in Congress insist on it, but other negotiating parties strongly resist. There is a growing possibility that U.S. negotiators will cave on the one item on their negotiating agenda that could be good for the environment.

- *No [private investment court](#) for rich corporations & investors.* Leaked text of the TPP investment chapter shows that it would authorize [foreign investors to seek awards of money damages from business-friendly tribunals](#) in compensation for lost future profits and the cost of complying with environmental and other public interest regulations. Damage awards can run to [millions or billions of dollars](#). 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. [Mining, oil drilling](#) and infrastructure construction are the most frequent topics of litigation under international investment agreements. Restrictions on construction of tar sands oil pipelines or on coal, oil or [liquefied natural gas](#) export terminals might also give rise to TPP investment suits. Challenges to water pollution measures are a frequent issue in international investment litigation. Land use regulations and smart growth policies similarly are at risk.
- *No patents on plants, animals, other life forms.* Leaked text indicates that TPP provisions on intellectual property would protect corporate patents on plants, animals and other life forms, thus facilitating the theft of traditional knowledge from native peoples and expanding the commoditization of the commons.
- *No corporate-friendly cost-benefit analysis.* Exclude the regulatory coherence chapter, proposed by the United States, that could facilitate business-friendly, cost-benefit analysis to hamstringing environmental or other public interest regulations. When used in a reductionist manner as contemplated in the TPP, such cost-benefit analysis amounts to an attempt to measure the immeasurable, such as the risks of synthetic biology, and prevents regulators from implementing the "precautionary principle" in environmental policymaking.
- *No constraints on green criteria in government purchasing.* The TPP government procurement chapter raises concern because governments are beginning to build environmental and other social criteria into their purchasing decisions that might run afoul of international trade rules. International rules on government procurement often seek to confine public purchasing decisions to economic and engineering criteria such as price and performance, thus constraining green purchasing policies by government.
- *No constraints on environmental labeling.* Friends of the Earth has no confirmation that TPP provisions on technical barriers to trade will not mimic or exceed World Trade Organization standards that have been used to [successfully challenge U.S. dolphin-safe tuna labeling law](#) and other product labeling measures.
- *No constraints on food safety.* The TPP chapter on sanitary measures might be used to challenge food safety laws based on the precautionary principle such as regulation of pesticide residue, chemical additives or genetic modification.
- *No constraints on clean air regulation.* Friends of the Earth has no assurance that clean air regulations will not be threatened by the TPP. To the contrary, [the U.S. - Korea trade agreement](#), for example, [requires that auto emissions standards be relaxed](#) for U.S. auto exports to [South Korea](#).
- *No green light for deforestation, palm oil plantations or destructive corporate farming.* Agriculture and investment provisions of the TPP would likely encourage deforestation to make way for massive palm oil plantations and other forms of corporate farming.

The root problem is that the bulk of the TPP text has far less to do with trade policy per se and much more to do with limiting the role of government as it regulates corporate polluters. **This is not the time to fast track the TPP!**

- We need your help in educating Congress on Fast Track & the TPP. PLEASE Contact: Bill Waren, trade policy analyst, Friends of the Earth, U.S., wwaren@foe.org,
- [Click here](#) to watch Friends of the Earth's video on the Trans Pacific Partnership trade agreement.

Categories: [Advocacy](#), [Blog](#), [Economics for the Earth](#) / Tags: [Bill waren](#)

- See more at: <http://www.foe.org/news/blog/2013-10-stop-fast-track-authority-for-trans-pacific-trade-de#sthash.x6U6YjN8.dpuf>



Seattle to Brussels
Network



A transatlantic
CORPORATE
bill of rights

Investor privileges in EU-US trade deal threaten public interest and democracy

The EU negotiating mandate for a far-reaching free trade agreement with the US reveals the European Commission's plans to ascribe more powers for corporations in the deal. The proposal follows a persistent campaign by industry lobby groups and law firms to empower large companies to challenge regulations both at home and abroad if they affect their profits. As a result, EU member states could soon find domestic laws to protect the public interest challenged in secretive, offshore tribunals where national laws have no weight and politicians no powers to intervene.

The Commission's proposal for investor-state dispute settlement under the Transatlantic Trade and Investment Partnership (TTIP) would enable US companies investing in Europe to skirt European courts and directly challenge EU governments at international tribunals, whenever they find that laws in the area of public health, environmental or social protection interfere with their profits. EU companies investing abroad would have the same privilege in the US.

Across the world, big business has already used investor-state dispute settlement provisions in trade and investment agreements to claim dizzying sums in compensation against democratically made laws to protect the public interest (see Box 1). Sometimes the mere threat of a claim or its submission have been enough for legislation to be abandoned or watered down. In other cases tribunals – ad hoc three-member panels hired from a small club of private lawyers riddled with conflicts of interest² – have granted billions of Euros to companies, paid out of taxpayers' pockets.

Box 1

Some emblematic investor-state disputes

Corporations versus public health – Philip Morris v. Uruguay and Australia: Through bilateral investment treaties, US tobacco giant Philip Morris is suing Uruguay and Australia over their anti-smoking laws. The company argues that warning labels on cigarette packs and plain packaging prevent it from effectively displaying its trademark, causing a substantial loss of market share.³

Corporations versus environmental protection – Vattenfall v. Germany: In 2012, Swedish energy giant Vattenfall launched an investor-state lawsuit against Germany, seeking €3.7 billion in compensation for lost profits related to two of its nuclear power plants. The case followed the German government’s decision to phaseout nuclear energy after the Fukushima nuclear disaster.⁴

Corporations versus government action against financial crises – challenging Argentina & Greece: When Argentina froze utility rates (energy, water, etc.) and devalued its currency in response to its 2001-2002 financial crisis, it was hit by over 40 lawsuits from companies like CMS Energy (US) and Suez and Vivendi (France). By the end of 2008, awards against the country had totalled US\$1.15 billion.⁵ In May 2013, Slovak and Cypriot investors sued Greece for the 2012 debt swap which Athens had to negotiate with its creditors to get bailout money from the EU and the International Monetary Fund (IMF).⁶ Both, the UN and the IMF have warned that investment agreements can severely curb states’ abilities to fight financial and economic crises.⁷

Corporations versus environmental protection – Lone Pine v. Canada: On the basis of the North American Free Trade Agreement (NAFTA) between the US, Canada and Mexico, US company Lone Pine Resources Inc. is demanding US\$250 million in compensation from Canada. The ‘crime’: The Canadian province of Quebec had put a moratorium on ‘fracking’, addressing concerns about the environmental risks of this new technology to extract oil and gas from rocks.⁸

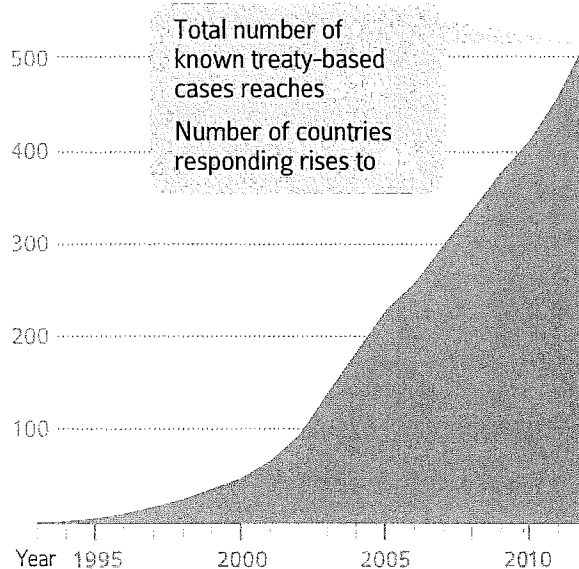
Corporations versus public health – Achmea v. the Slovak Republic: At the end of 2012, Dutch insurer Achmea (formerly Eureko) was awarded €22 million in compensation from Slovakia. In 2006, the Slovak government had reversed the health privatisation policies of the previous administration and required health insurers to operate on a not-for-profit basis.⁹

As the main users of existing international investment treaties, US and European companies have driven the investor-state litigation boom of the past two decades. By far the largest number of the 514 known disputes initiated by the end of 2012 were launched by US investors. They have filed 24% (123) of all cases. Next in line are investors from the Netherlands (50 cases), the UK (30) and Germany (27). Together, investors from EU member states have filed 40% of all known cases.¹⁰

EU and US companies have used these lawsuits to challenge green energy and medicine policies, anti-smoking legislation, bans on harmful chemicals, environmental restrictions on mining, health insurance policies, measures to improve the economic situation of minorities and many more. Now they are enthused about the prospect of an investment chapter in the EU-US free trade deal (TTIP), the biggest investment deal ever negotiated.

Deluge of disputes

Cumulative number of cases. Source: UNCTAD, Down to Earth



Lobbying for the corporate 'gold standard'

Investor-state dispute settlement under TTIP would empower EU and US-based corporations to engage in litigious wars of attrition to limit the power of governments on both sides of the Atlantic. The tremendous volume of transatlantic investment – both partners make up for more than half of foreign direct investment in each others' economies – hints at the sheer scale of the risk of such litigation wars. Additionally, thousands of EU and US companies have affiliates across the Atlantic; under TTIP they could make investor-state claims via these affiliates in order to compel their own governments to refrain from regulations they dislike.

Unsurprisingly, then, corporate lobby groups in both the EU and the US have pressured for the inclusion of investor-state arbitration in TTIP. The European employers' federation BusinessEurope, the US Chamber of Commerce, AmCham EU, the Transatlantic Business Council and other corporate lobby heavyweights all advocate such privileges for foreign investors. This is also part of a hope that an EU-US deal would set a global 'gold standard', a model for investment protection for other agreements around the world.¹¹ More and more countries are questioning and even abandoning investor-state arbitration globally precisely because of negative impacts against the public interest;¹² in response, business is demanding a "signal to the world of our willingness to commit" to their gold standard of investment protection.¹³

The investment chapter of the TTIP should eventually serve as the 'gold standard' for other investment agreements.

US Chamber of Commerce to US negotiators¹⁴

Ever since December 2009, when the EU got the power to negotiate investment protection issues through the Lisbon Treaty, industry associations have mobilised against any opportunity this might afford to institute a fairer balance of private and public interests.¹⁵ This is because the Treaty opened a window of opportunity for the EU to learn from the experience of existing investment agreements, address their flaws and develop a new generation of treaties – without investor-state dispute settlement, with investor obligations and more precise and restrictive language regarding their rights. Trade unions, public interest groups and academics from across the world called for such a U-turn.

Industry will oppose any deal in which investment protection is traded off against public policy objectives, including human and labour rights.

Pascal Kerneis, European Services Forum (ESF)

In numerous letters, seminars, breakfast debates and behind-closed-doors meetings with MEPs and the European Commission, corporate lobby groups such as BusinessEurope and national industry bodies such as the German industry federation BDI lobbied against that U-turn. They made clear that industry would oppose any deal in which investment protection was "traded off against public policy objectives, including human and labour rights", as Pascal Kerneis of the European Services Forum (ESF), a lobby outlet for global service players such as Deutsche Bank, IBM and Vodafone, told Commission officials during a meeting on transatlantic investment.¹⁶

While some argue that investor-state dispute settlement need not be part of the TTIP given the demonstrated US and EU commitment to the rule of law, the Chamber insists that the United States and the EU must include these provisions.

US Chamber of Commerce to US negotiators¹⁷

Expanding investor rights

If big business has its way, TTIP's investment protection provisions will be even more slanted in favour of corporations than current EU and US practice. While the European Parliament has repeatedly stressed governments' right to regulate in order to protect the environment, public health, workers and consumers, Peter Chase – a former US government official now with the US Chamber of Commerce in Brussels – has encouraged US negotiators to explain "the dangers of the unneeded social, environmental and 'right to regulate' provisions the European Parliament seeks".¹⁸

US energy giant Chevron, too, is lobbying for an investment chapter which goes beyond the current US model treaty. Having been sued several times by Canadian companies under NAFTA, the US has twice revised its template for international investment treaties to better protect its policy-space. Chevron wants a revival of some of these excessive

Box 2

Risky business: how vulnerable are US and EU governments?¹⁹

- Globally, **514** investor-state disputes were known by the end of 2012.
- **58** claims were launched in 2012 alone, the highest number of known disputes filed in one year.
- US and EU investors have initiated at least **329 (64%)** of all known disputes.
- The US has faced over **20** investment claims under NAFTA's investment chapter.
- **15** EU member states are known to have faced one or more investor-state challenges.²⁰
- The Czech Republic is the **fifth** most sued country in the world.
- **More than half** of foreign direct investment in the EU comes from the US; likewise over half the foreign direct investment in the US comes from the EU.
- Only **8** EU member states, all Eastern European, already have a bilateral investment treaty with the US²¹; TTIP would contain one of the **first** EU-wide investment protection chapters.
- Around **42%** of the known concluded investor-state cases were decided in favour of the state, **31%** in favour of the investor and **27%** of the cases were settled (many of the latter likely to involve payments or other concessions for the investor).
- The highest damages to date, **US\$1.77 billion**, were awarded to US oil company Occidental Petroleum against Ecuador.
- Legal costs in investor-state disputes average over **US\$8 million**, exceeding **US\$30 million** in some cases; they are not always awarded to the winning party.

investor rights such as the 'umbrella clause' in TTIP, which would considerably expand a state's obligations (see annex for more details). Chevron has also proposed that investments protected under TTIP should include "both existing and future investments".²² When an investor-state dispute mechanism is combined with such open-ended clauses, risks for costly legal proceedings grow considerably.

The US-side should clearly explain the dangers of the unneeded social, environmental, and 'right to regulate' provisions the European Parliament seeks.

Peter Chase, US Chamber of Commerce

Paving the way for dirty gas

Chevron is currently engaged in a controversial legal battle with Ecuador. The company initiated arbitration to avoid paying US\$18 billion to clean up oil-drilling-related

contamination in the Amazonian rainforest, as ordered by Ecuadorian courts. The case has been lambasted as "egregious misuse" of investment arbitration to evade justice.²³ No wonder Chevron dedicated its complete contribution to the US government's TTIP consultation to investment protection, "one of our most important issues globally" as they put it.²⁴

Chevron views investment protection as one of our most important issues globally.

Chevron to US trade negotiators

In Europe, Chevron wants the "the strongest possible protection" from government measures to "mitigate the risks associated with large-scale, capital intensive, and long term projects [...] such as developing shale gas". Because of its health and environmental impacts, several EU governments have decided to put a break on shale gas development ('fracking'). TTIP's proposed investment protection chapter would empower energy companies like Chevron to

challenge such precautionary measures because it would oblige governments “to refrain from undermining legitimate investment-backed expectations”, as Chevron demands (see Box 1 for a legal precedent under NAFTA). The mere threat of a million-Euro investor-state lawsuit could be enough to scare governments into submission and weaken or prevent fracking bans and strict regulation. In Chevron’s words: “Access to arbitration [...] increases the likelihood that investors and host states are able to resolve disagreements and negotiations in a successful and equitable manner.”²⁵

I've seen the letters from the New York and DC law firms coming up to the Canadian government on virtually every new environmental regulation [...]. Virtually all of the initiatives were targeted and most of them never saw the day of light.

Former Canadian government official, 5 years after NAFTA’s investor-state provisions came into force²⁶

Law firms lobbying for vested interests

Whenever policy-makers in the EU and the US have set out to change international investment treaties in recent years, law firms and investment arbitrators together with industry associations have mounted fierce lobbying campaigns to counter reforms to better balance public and private interests.²⁷ This is not surprising – investment arbitration is big business for them. The tabs racked up by elite law firms can be US\$1,000 per hour, per lawyer in investment treaty cases, with whole teams handling them. The private lawyers who decide these disputes, the arbitrators, also line their pockets, earning daily fees of US\$3,000 and more.²⁸ The more investment treaties and trade agreements with investor-state dispute settlement provisions exist, the more business for these lawyers.

EU and US lawyers dominate the field, seeking out every opportunity to sue countries. Nineteen of the top-20 law firms representing claimants and/or defendants in such disputes are headquartered in Europe or the US, the large majority of them (14) US firms. Out of the 15 arbitrators who have decided 55% of the total investor-state disputes known today, ten are from the EU or the US.²⁹

Since the entry into force of the Lisbon Treaty in Europe in 2009, law firms like Hogan Lovells and Herbert Smith Freehills have been keen to influence the debate, inviting

the European Commission, member state officials and MEPs to “informal but informed” roundtable discussions and webinars with their clients – including several who have sued countries under existing investment treaties such as Deutsche Bank, Shell and energy giant GDF Suez. Their message: there was a need for high standards of investor protection and in particular investor-state arbitration; and investment protection should not be linked to labour or environmental standards.³⁰

One of the main concerns put forward by lawyers was the politicisation of investment policy as a result of the Lisbon Treaty. The involvement of the European Parliament was a particular thorn in their side. At a conference in December 2009, Daniel Price, an ex-US trade negotiator and former co-chair of the Transatlantic Economic Council³¹ who now mainly works as lobbyist, investment lawyer and arbitrator, warned of the potential “steady deterioration” of investment treaties which he had witnessed in the US. The involvement of Congress had led to controversy and later to a review of the US investment policy which Price considered “unhelpful”. This review tried to better balance investor and state rights through more precise legal language. In January 2010, shortly after Price had walked through the revolving door from the Bush administration, he wrote to the Commission official responsible for the investment files and offered “to assist you in thinking through these issues.” He added: “As you know, my group has advised both outbound investors and governments on investment policy issues”.³²

A pure power grab

Some of Price’s arbitrator colleagues have already come out defending TTIP investor-state dispute settlement provisions against more cautious voices warning of litigation risks and questioning the need for extra-judicial enforcement in two sophisticated legal systems such as the US and the EU. Simon Lester, for example, policy analyst of the libertarian Cato Institute and usually a proponent of investor-state arbitration, has warned of the unprecedented litigation risks that such a dispute settlement system would create in the context of the enormous transatlantic investment flows.³³

With the amount of investment that would be covered in a US-EU agreement, US and EU leaders might have to start contemplating the impact of investor-state losses.

Simon Lester, Trade Policy Analyst, Cato Institute³⁴

One of the usual arguments for investor-state arbitration – the need to grant legal security to attract foreign investors to countries with weak court systems – turns to dust in the context of TTIP. If US and EU investors already make up for more than half of foreign direct investment in each others' economies, then it is clear that investors seem to be happy enough with the rule of law on both sides of the Atlantic. This is confirmed by an internal European Commission report from 2011 stating that "it is arguable that an investment protection agreement with the US would be needed with regard to the rule of law."³⁵

What possibly could be the explanation for why you would need extra-judicial enforcement and additional property rights with respect to an agreement with the European Union? Is it the US position that Europe's courts are crappy and that their property laws are scandalous? They are not. Investor-state in TTIP is a pure power grab from corporations.

Lori Wallach, Director Global Trade Watch at Public Citizen³⁶

Growing public outcry

Citizens and organised civil society, on the other hand, oppose investor-state dispute settlement. According to a statement by the Transatlantic Consumer Dialogue, supported by consumer groups from the EU and the US, TTIP "should not include investor-state dispute resolution. Investors should not be empowered to sue governments to enforce the agreement in secretive private tribunals, and to skirt the well-functioning domestic court systems and robust property rights protections in the United States and European Union."³⁷ The federation of US trade unions, AFL-CIO, similarly argues that "given the advanced judicial systems of both the US and EU", investor-state dispute settlement "is an unwarranted risk to domestic policy-making at the local, state and federal levels."³⁸ Digital rights activists, environmentalists and health groups have also come out against the threat of a corporate assault on democracy.

The US National Conference of State Legislators, which represents all 50 US state parliamentary bodies, has also

announced that it "will not support any [trade agreement] that provides for investor-state dispute resolution" because it interferes with their "capacity and responsibility as state legislators to enact and enforce fair, nondiscriminatory rules that protect the public health, safety and welfare, assure worker health and safety, and protect the environment."³⁹ MEPs from the Greens, Socialists and the Left Group in the European Parliament seem equally concerned.

It doesn't make any sense to apply this system in relations between the EU and the United States. Any claim should go through ordinary judicial system.

MEP David Martin, Socialists & Democrats⁴⁰

When US-Congressman Alan Grayson alerted the public that TTIP would include an investor-state system allowing consumer protection, environmental safeguards and labour laws to be "struck down by international tribunals", this generated nearly 10,000 angry comments from citizens in little more than 24 hours.⁴¹

Why are our representatives thinking about handing over our sovereign rights to huge corporations who care nothing about us?

One of many concerned citizens in her contribution to public TTIP consultation in US⁴²

Beware of the EU agenda

Some EU member states also seem to question the need for investment protection clauses between two legal systems which are as sophisticated as in the EU and the US. Some fear a flood of claims from the US with its more aggressive legal culture. There are concerns that the US financial sector could attack policies to tackle Europe's economic crisis such as bail-outs and debt restructuring. On the other hand, member states such as Germany and the Netherlands, which support far-reaching investor rights, rather want to avoid pro-public interest legal language which is more common in the US and which, in their view, would 'dilute' investment protections.

But the US government and the European Commission seem to be determined to use TTIP to empower foreign investors to bypass local courts and sue states directly at international tribunals when democratic decisions impede their expected profits. In its negotiation mandate, the Commission made detailed suggestions for a "state-of-the-art investor-to-state dispute settlement mechanism" and investor rights which mirror the proposals from business lobby groups.⁴³ The proposal will put many policies at risk and most likely create a chilling effect on governments looking to pass new rules to protect the environment and society (see annex).

It is high time that governments and parliaments on both sides of the Atlantic grasp the political and financial risks of investor-state dispute settlement and axe the plans for this looming transatlantic corporate bill of rights. The European Parliament in particular should put a leash on the Commission which is obviously disregarding MEPs' call for "major changes"⁴⁴ in the international investment regime (see annex).

Why on earth should legislators grant business such a powerful tool to rein in democracy and curb sound policies made in the interest of the public?

ANNEX:

The devil is in the (TTIP) detail

Trade speak: what the EU wants to negotiate⁴⁵

Translation: what it means in practice⁴⁶

The investment protection chapter “should cover a broad range of investors and their investments [...] whether the investment is made before or after the entry into force of the Agreement”.

Definitions of “investor” and “investments” are key because they determine who/what is covered by the chapter. A broad definition not only covers actual enterprises in the host state, but a vast universe ranging from holiday homes to sovereign debt instruments, exposing states to unpredictable legal risk. Broad definitions also open the door to mailbox companies abusing the treaty via “treaty shopping”, allowing, for example, a US firm to sue the US via a Dutch mailbox company.

Intellectual property rights (IPR) should be included in the definition of ‘investments’ to be protected by TTIP.

The investor-state disputes of tobacco company Philip Morris against Uruguay and Australia show the risks of this proposal (Box 1). In another IPR-based claim, US drug giant Eli Lilly is attacking patent laws in Canada whereby a medicine’s patentability must be demonstrated when filing a patent⁴⁷. Public health lawyers have lambasted TTIP-like deals a “booby trap for access to medicines”.⁴⁸

Investors should be treated in a “fair and equitable” (FET) way, “including a prohibition of unreasonable, arbitrary or discriminatory measures”.

A catch-all provision most relied on by investors when suing states. In 74% of the cases where US investors won, tribunals found an FET violation. In *Tecmed v. Mexico*, for example, the tribunal found that Mexico had not acted “free from ambiguity and totally transparently”. Due to environmental concerns, a local government had not relicensed an operating waste treatment plant.⁴⁹ The EU is likely to propose a broad version of the clause, even protecting what investors consider their ‘legitimate’ expectations from ‘unpredictable’ policy change. A ban on a chemical found to be harmful to public health could be considered a violation of this provision. Investors will also be enabled to challenge scientific justifications of a policy and ‘arbitrary’ or ‘unreasonable’ relationships between a policy and its objective.

Investors should be protected “against direct and indirect expropriation”, including the right to compensation.

From a certain, investor-friendly view, almost any law or regulatory measure can be considered an ‘indirect expropriation’ when it has the effect of lowering future expected profits. Several tribunals have interpreted legitimate environmental and other public policies in such a way.

The agreement should also include an “umbrella clause”.

This would bring all obligations a state assumed with regards to an investment under the TTIP ‘umbrella’ (like a contract with one investor), multiplying the risk of costly lawsuits.

The agreement should guarantee the “free transfer of funds of capital and payments by investors”.

This provision would allow the investor to always withdraw all investment-related monies, reducing the ability of countries to deal with sudden and massive out- and inflows of capital, balance of payment and other macroeconomic crises.

Investment protection “should be without prejudice to the right of the EU and the Member States to adopt and enforce [...] measures necessary to pursue legitimate public policy objectives such as social, environmental, security, stability of the financial system, public health and safety in a non-discriminatory manner”.

This paragraph provides false comfort. It links public policy to a necessity test, placing a big burden of proof on governments to justify their actions. Is Australia’s plain packaging law for cigarette packs necessary to protect public health? Was Germany’s exit from nuclear energy necessary? Might there not have been other, more effective measures? It would be up to an offshore tribunal of private lawyers with lack of accountability to decide.

<p>The arbitrators who decide investor-state claims should be independent.</p>	<p>This responds to widespread concerns about conflicts of interest among the 3-lawyer panels which ultimately decide investor-state disputes. Unlike judges, they have no flat salary but earn more the more claims they rule on. Existing codes of conduct have not prevented a small club of arbitrators from deciding on the majority of investor-state disputes, paving the way for more business in the future with expansive, investor-friendly interpretations of the law. Whether the EU will tackle the conflicts of interest of these 'entrepreneurial arbitrators' remains to be seen. Just claiming that they are independent clearly won't be enough.</p>
<p>There should be a "possibility of binding interpretation of the Agreement by the Parties".</p>	<p>This should allow governments to monitor and control how the law that they created is interpreted. Following a wave of investor claims under NAFTA, the US, Canada and Mexico have issued such joint clarifications of vaguely formulated investor rights. In practice, arbitrators have proven that they are willing to ignore these 'binding' interpretations.⁵⁰</p>
<p>Investors should be able to use "as wide a range of arbitration fora as is currently available under the Member States' bilateral investment agreements".</p>	<p>The institution that administers an investor-state dispute matters: for example, when it appoints arbitrators or resolves conflict of interest claims against them. A "wide range" of fora could include purely business-orientated organisations such as the Paris-based International Chamber of Commerce (ICC), one of the world's most influential corporate lobby groups. Can such a business site really be considered an independent forum for an investor-state dispute?</p>
<p>"The investor-to-state dispute settlement mechanism should contain safeguards against manifestly unjustified or frivolous claims".</p>	<p>Another paragraph providing false comfort. None of the controversial attacks on sound public policies mentioned in Box 1 would be dismissed under such a mechanism – because they are based on allegations of real violations of investment treaties as these tend to be so broad. Claims are only considered frivolous when there is a complete lack of legal merit. Under existing rules, states can already ask arbitrators to swiftly dispose of frivolous claims, but not a single such case is known.⁵¹</p>
<p>"Consideration should be given to the possibility of creating an appellate mechanism applicable to investor-to-state dispute settlement under the Agreement".</p>	<p>Unlike in proper court systems, decisions by investor-state arbitration panels are non-reviewable (except for annulment proceedings that address a narrow range of procedural errors and are not heard by judges but by another arbitration tribunal). An appeal mechanism could contribute to more coherent decisions, but as things currently stand, this is a long way from becoming a reality.</p>

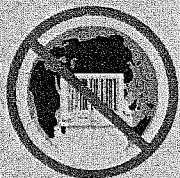
Endnotes

- 1 The leaked EU negotiation mandate, dated 17 June 2013, can be found on the website of the S2B network, http://www.s2bnetwork.org/fil:afirmo/date/en/downloads/1_U-TTIP-Mandate-from-bimv-June17-2013.pdf [18-09-2013].
- 2 For the conflicts of interest, see chapter 4 of Corporate Europe Observatory/ Transnational Institute (2012) *Profiting from Injustice*, <http://corporateeurope.org/publications/profitting-from-injustice/who-guards-guardians> [15-05-2013].
- 3 Porterfield, Matthew C. and Byrnes, Christopher R. (2011) Philip Morris v. Uruguay. Will investor-State arbitration send restrictions on tobacco marketing up in smoke? *Investment Treaty News*, <http://www.iisd.org/itn/2011/07/14/philip-morris-v-uruguay-will-investor-state-arbitration-send-restrictions-on-tobacco-marketing-up-in-smoke/> [15-05-2013].
- 4 Bernasconi-Osterwalder, Nathalie/ Hoffmann, Rhea Tamara (2012) The German Nuclear Phase-Out Put to Test in International Investment Arbitration? Background to the new dispute *Vattenfall v. Germany (II)*, <http://www.iisd.org/publications/pub.aspx?id=1613> [23-05-2013].
- 5 Phillips, Tony (2008) Argentina Versus the World Bank: Fair Play or Fixed Fight?, Center for International Policy (CIP), <http://www.cipamericas.org/archives/1434> [15-05-2012]. Peterson, Luke Erik (2008) Round-Up: Where things stand with Argentina and its many investment treaty arbitrations, *Investment Arbitration Reporter*, 17 December.
- 6 Perry, Sebastian (2013) Bondholders pursue Greece over debt haircut, *Global Arbitration Review*, 7 May.
- 7 UNCTAD (2011) Sovereign Debt Restructuring and International Investment Agreements, Issues Note No 2, July, unctad.org/en/Docs/webdiaepcb2011d3_en.pdf [15-05-2013]; International Monetary Fund (2012) *The Liberalization and Management of Capital Flows: An Institutional View*, www.imf.org/external/np/pp/eng/2012/111412.pdf [15-05-2013].
- 8 Corporate Europe Observatory/ Council of Canadians/ Transnational Institute (2013) The right to say no. EU-Canada trade agreement threatens fracking bans, <http://corporateeurope.org/publications/right-say-no-eu-canada-trade-agreement-threatens-fracking-bans> [15-05-2013].
- 9 Hall, David (2010) Challenges to Slovakia and Poland health policy decisions: use of investment treaties to claim compensation for reversal of privation/liberalisation policies, January, <http://www.psira.org/reports/2010-02-11-tradelaw.doc> [23-05-2013]; Peterson, Luke Eric (2012) Investor Announces Victory in Intra-EU BIT Arbitration with Slovakia Arising out of Health Insurance Policy Changes, *Investment Arbitration Reporter*, 10 December.
- 10 UNCTAD (2013) Recent Developments in Investor-State Dispute Settlement (ISDS), No 1, Revised, May, p. 4, http://unctad.org/en/PublicationsLibrary/webdiaepcb2013d3_en.pdf [15-05-2013], with additional research in the UNCTAD database of investor-state disputes, <http://unctad.org/en/pages/DIAL/International%20Investment%20Agreements%20%28IIA%29/IIA-Tools.aspx> [26-05-2013].
- 11 See, for example, the joint letter of AmChamEU, BusinessEurope, the Transatlantic Business Dialogue, the U.S. Chamber of Commerce and others on the EU-US Investment Dialogue, dated 16 November 2011, <http://www.amcham.eu/Portals/0/2011/Documents/JointAsent11Co-chairsInvestmentLetter20111115.pdf> [15-05-2013]. In their contributions to the 2012 and 2013 consultations on TTIP in the EU and the US, all these lobby groups have advocated investor-state dispute settlement.
- 12 In spring 2011, the Australian government announced that it would no longer include investor-state dispute settlement provisions in its trade agreements. Bolivia, Ecuador and Venezuela have terminated several bilateral investment treaties and have withdrawn from the World Bank facility for settling such disputes, the International Centre for Settlement of Investment Disputes (ICSID). South Africa and India are reviewing their treaties.
- 13 Statement of the U.S. Chamber of Commerce on the Transatlantic Trade & Investment Partnership to the Office of the U.S. Trade Representative, May 10, 2013, <http://www.regulations.gov/#documentDetail;D=USSTR-2013-0019-0241> [23-05-2013].
- 14 Ibid.
- 15 See, for example, Corporate Europe Observatory (2011) *Investment rights stifle democracy*, <http://corporateeurope.org/publications/investment-rights-stifle-democracy> [23-05-2012].
- 16 Internal European Commission report of a meeting on EU investment policy and the EU-US investment dialogue, organised by AmCham EU on 8 July 2011. Obtained through access to documents requested under the information disclosure regulation. On file with CEO.
- 17 Statement of the U.S. Chamber of Commerce on the Transatlantic Trade & Investment Partnership to the Office of the U.S. Trade Representative, see endnote 13.
- 18 Chase, Peter H. (2011) *The United States, European Union and International Investment*, GMF policy brief, July, p.8, <http://www.gmfus.org/archives/the-united-states-european-union-and-international-investment/> [15-05-2013].
- 19 UNCTAD (2013), see endnote 10; Akhtar, Shayerah Ilias/ Weiss, Martin A. (2013) U.S. International Investment Agreements. Issues for Congress. Congressional Research Service, April 29, www.jcs.org/servlets/mw/R13092.pdf [23-05-2-13].
- 20 Czech Republic (20 claims), Poland (14), Slovak Republic (11), Hungary (10), Romania (9), Lithuania (5), Estonia, Germany, Latvia (all 3 claims), Slovenia and Spain (2 claims), Belgium, France, Italy and Portugal (all one claim).
- 21 Bulgaria, Czech Republic, Estonia, Latvia, Lithuania, Poland, Romania and Slovakia.
- 22 Chevron Corporation: Comments on Proposed Transatlantic Trade and Investment Partnership, May 7, 2013, <http://www.regulations.gov/#documentDetail;D=USSTR-2013-0019-0054> [23-05-2013].
- 23 See the website <http://chevron-texco.com/>. For Chevron's version of the story, see <http://www.theearm.org/post.com/>.
- 24 Chevron Corporation, see endnote 22.
- 25 Ibid.
- 26 Greider, William (2001) The Right and US Trade Law. Invalidating the 20th Century, *The Nation*, <http://www.thenation.com/article/right-and-us-trade-law-invalidating-20th-century#> [15-05-2013].
- 27 See: Corporate Europe Observatory (2011), see endnote 15; Corporate Europe Observatory/ Transnational Institute (2012) *Profiting from Injustice*, chapters 3 and 4, <http://corporateeurope.org/publications/profitting-from-injustice> [15-05-2013].
- 28 OECD (2012) *Investor-State Dispute Settlement. Public Consultation: 16 May – 23 July 2012*, p. 20. International Center for Settlement of Investment Disputes (2008) *Schedule of Fees (Effective January 1, 2012)*, p.1.

- 29 Corporate Europe Observatory/ Transnational Institute (2012) Profiting from Injustice, see endnote 27.
- 30 Background material for the foreign investment roundtable organised by Hogan Lovells in Frankfurt on 7 June 2010 and the internal Commission report on the EU foreign direct investment roundtable organised by Hogan Lovells in Brussels on 7 December 2010, dated 21 December 2010, TRADE F.2 CB/MAL/ba. Obtained through access to documents requested under the information disclosure regulation. On file with CEO.
- 31 The Transatlantic Economic Council (TEC) brings together European Commission and US government officials. It was set up by Commission President Barroso, German Chancellor Merkel and US President Bush in 2007 to advance the transatlantic economic integration.
- 32 European Commission (2009): Mission Report. 50 years of Bilateral Investment Treaties Conference – Frankfurt 1-3 December 2009; email from Daniel Price to Jean-François Brakeland, head of the services and investment unit in the Commission's trade department, dated 5 January 2010. Both obtained through access to documents requested under the information disclosure regulation. On file with CEO.
- 33 See the blog exchange between Simon Lester, trade policy analyst at the Cato Institute, and arbitrator Mark Kantor, <http://worldtradelaw.typepad.com/felpblog/2013/02/trans-atlantic-trade-and-investor-state.html> [15-05-2013].
- 34 Ibid.
- 35 Internal European Commission report of a meeting on EU investment policy and the EU-US investment dialogue, organised by AmCham EU on 8 July 2011 with the European Services Forum, 13 December 2011, dated 17 December 2011. Obtained through access to documents requested under the information disclosure regulation. On file with CEO.
- 36 Interview with Lori Wallach, Director Global Trade Watch at Public Citizen, 6 May 2013.
- 37 Transatlantic Consumer Dialogue (2013) EU and US consumer groups' initial reaction to the announcement of a Transatlantic Trade and Investment Partnership, 5 March, http://www.tcd.org/index2.php?option=com_content&task=detail&view=full&Itemid=40 [15-05-2013].
- 38 AFL-CIO (2013) U.S.-EU Free Trade Agreement, <http://www.aflcio.org/issues/Trade/US-EU-Free-Trade-Agreement> [15-04-2013].
- 39 An Open Letter From U.S. State Legislators to Negotiators of the Trans-Pacific Partnership Urging the Rejection of Investor-State Dispute Settlement, July 2012.
- 40 S&Ds raise concerns about investor-state arbitration mechanism, 23 May 2012, http://www.socialistsanddemocrats.org/guest/public/detail.htm?id=138256§ion=NLR&category=NEWS&startpos=81&opicid=8&request_locale=en [26-05-2013].
- 41 <http://alagraysonevents.tumblr.com/post/50533132308/trade-sell-out-out-of-the-mouths-of-citizens> [24-05-2013].
- 42 <http://www.regulations.gov/#/documentDetail?D=US-TR-2013-0019-0256> [24-05-2013].
- 43 See endnote 1.
- 44 European Parliament resolution of 6 April 2011 on the future European international investment policy (2010/2203(INI), 6 April 2011.
- 45 See endnote 1.
- 46 UNCTAD's World Investment Report 2012 gives a good overview of the risks of certain investment protection provisions and how they could be addressed.
- 47 Council of Canadians (2013) Eli Lilly's NAFTA lawsuit should prompt rethink of investor "rights" deals, <http://canadians.org/blog/eli-lilly%20%20-nafta-lawsuit-should-prompt-rethink-investor-rights-deals> [18.09.2013].
- 48 Baker, Book K. (2013) Corporate Power Unbound. Investor-State Arbitration of IP Monopolies on Medicines – Eli Lilly and the TPP, PIJIP Research Paper Series, Paper 36, <http://digitalcommons.wcl.american.edu/research/36> [26-05-2013].
- 49 Public Citizen (2012) Memorandum. "Fair and Equitable Treatment" and Investors' Reasonable Expectations: Rulings in U.S. FTAs & BITs Demonstrate FET Definition Must be Narrowed, www.citizen.org/documents/AS1-Memo.pdf [26-05-2013].
- 50 Porterfield, Matthew C. (2013) A Distinction Without a Difference? The Interpretation of Fair and Equitable Treatment Under Customary International Law by Investment Tribunals, Investment Treaty News, 22 March, <http://www.iisd.org/itn/2013/03/22/a-distinction-without-a-difference-the-interpretation-of-fair-and-equitable-treatment-under-customary-international-law-by-investment-tribunals/> [26-05-2013].
- 51 Inside US Trade (2013) Revised EU Mandate Seeks To Prevent 'Frivolous' Investor-State Claims, 23 May.

“ Why are our representatives thinking about handing over our sovereign rights to huge corporations who care nothing about us? ”

One of many concerned citizens' contribution to the public TTIP consultation in the US



**Seattle to Brussels
Network**

The Seattle to Brussels Network (S2B) includes development, environmental, human rights, women and farmers organisations, trade unions and social movements working together for a truly sustainable, just and democratic trade policy in Europe.

www.s2bnetwork.org



Corporate Europe Observatory (CEO) is a research and campaign group working to expose and challenge the privileged access and influence enjoyed by corporations and their lobby groups in EU policy making. CEO works in close alliance with public interest groups and social movements in and outside Europe to develop alternatives to the dominance of corporate power.

www.corporateeurope.org



The Transnational Institute was founded in 1974. It is an international network of activist-scholars committed to critical analyses of the global problems of today and tomorrow.

TNI seeks to provide intellectual support to those movements concerned to steer the world in a democratic, equitable and environmentally sustainable direction.

www.tni.org

November 8, 2013

The President
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear Mr. President:

The organizations below are, like you, dedicated to ensuring the sustainability of public programs that provide access to affordable health care. But we write today to express our deep concern that provisions being advanced by the United States Trade Representative (USTR) for the Trans-Pacific Partnership (TPP) Agreement will undermine this goal by limiting the ability of states and the federal government to moderate escalating prescription drug, biologic drug and medical device costs in public programs. We are also concerned that the final trade agreement will bind the U.S. to a 12-year market exclusivity period for brand-name biologic drugs, contrary to the Administration's proposal in its most recent and previous budgets to reduce the exclusivity period.

With respect to policies used by public programs to manage spending on prescription drugs and medical devices, the following are examples of existing laws or proposals that could be subject to challenge by manufacturers under the Korea free trade agreement and the reported TPP proposals made by the USTR:

- The Affordable Care Act's discounts for prescription drugs under Medicare Part D;
- The Administration's proposal to save \$134 billion over 10 years through rebates under the Medicare program for low-income beneficiaries;
- Section 340B of the Public Health Services Act which includes a formula that the Department of Health and Human Services uses to set reduced prices for medicines supplied for outpatient care through nonprofit clinics, community health centers and safety net hospitals;
- Use of preferred drug lists and other mechanisms that state Medicaid programs have implemented to control costs;
- Application of comparative research funded by the Affordable Care Act, which will allow payers to make reimbursement decisions based on clinical comparisons of treatments; and
- Decisions by state Medicaid programs to remove drugs from their formularies, because they do not prove to be efficacious or because they have significant health risks.

While the free trade agreement with Korea included a footnote that excluded Medicaid from the pharmaceutical and medical device provisions in that agreement, there is at least one press report that New Zealand, one of the TPP countries, has told the United States that the reimbursement proposal is completely unacceptable unless the United States were to apply it to all U.S. federal or state-level drug pricing and reimbursement programs, including Medicaid.ⁱ

We are also concerned that the reported U.S. proposal requires a lopsided appeals process that affords rights only to manufacturers and not to other stakeholders. Like the agreement reached with Korea, the reported U.S. proposal for TPP sets a standard for reimbursement amounts that is based on “competitive market-derived prices” or amounts that “appropriately recognize the value of the patented” products. Preferred drug lists, statutorily specified discounts or rebates would violate these standards, as would reimbursement policies that discourage the use of costlier new drugs or treatments that are not more effective than existing drugs or treatments.

Lastly, we urge the Administration to make the negotiating process transparent. While USTR proposals are developed in close and formal consultation with the pharmaceutical and medical device industries through the Industry Trade Advisory Committee, this process excludes health care advocates and the broader public. While the USTR may have a position that its TPP proposals will not affect existing U.S. laws or limit choices available to future lawmakers, the ultimate arbiter of these provisions will not be the USTR, but will be international arbitration forums. That makes it critical that negotiators have access to a full range of views and analysis through an open and public process.

We appreciate that international trade has the potential to raise the standard of living and quality of life for people in the United States and around the world. However, the proposals that have been advanced by the USTR related to the pharmaceutical, biologic and medical device industries could do the opposite by undermining access to affordable health care for millions in the United States and around the world. As trade negotiations move forward, we urge you to ensure that the TPP agreement and future trade agreements do not limit the tools available to states or the federal government to manage pharmaceutical and medical device costs in public programs and that agreements do not bind the U.S. to a 12-year exclusivity period for brand-name biologic drugs. We further urge that the process be made transparent to allow public input.

Thank you for considering our concerns.

Sincerely,

AARP
Alliance for Retired Americans
Alliance for a Just Society
American Federation of State, County and Municipal Employees
Center for Medicare Advocacy
Coalition on Human Needs
Community Catalyst
Consumers Union
Families USA
Health Care for America Now

Medicare Rights Center
National Association of Counties
National Committee to Preserve Social Security and Medicare
National Senior Citizens Law Center
National Women's Law Center

cc: The Honorable Kathleen Sebelius, Secretary, Department of Health and Human Services
Sylvia Mathews Burwell, Director, Office of Management and Budget
Ambassador Michael B.G. Froman, U.S. Trade Representative
Marilyn B. Tavenner, Administrator, Centers for Medicare and Medicaid Services
Cindy Mann, Director, Center for Medicaid and CHIP Services
Elizabeth Richter, Acting Director, Center for Medicare

¹ *Inside U.S. Trade*, November 4, 2011.

This site uses cookies. By continuing to browse the site you are agreeing to our use of cookies. [Find out more here](#)

the guardian

This transatlantic trade deal is a full-frontal assault on democracy

Brussels has kept quiet about a treaty that would let rapacious companies subvert our laws, rights and national sovereignty

• [Ken Clarke responds to this article](#)

follow George Monbiot by email

BETA



George Monbiot

The Guardian, Monday 4 November 2013 15.31 EST



David Cameron with Barack Obama at a state dinner in Cameron's honour in 2012 at the White House. Photograph: Mandel Ngan/AFP/Getty Images

Remember that referendum about whether we should create a single market with the United States? You know, the one that asked whether corporations should have the power to strike down our laws? No, I don't either. Mind you, I spent 10 minutes looking

for my watch the other day before I realised I was wearing it. Forgetting about the referendum is another sign of ageing. Because there must have been one, mustn't there? After all that agonising over whether or not we should stay in the European Union, the government wouldn't cede our sovereignty to some shadowy, undemocratic body without consulting us. Would it?

The purpose of the Transatlantic Trade and Investment Partnership is to remove the regulatory differences between the US and European nations. I mentioned it a couple of weeks ago. But I left out the most important issue: the remarkable ability it would grant big business to sue the living daylights out of governments which try to defend their citizens. It would allow a secretive panel of corporate lawyers to overrule the will of parliament and destroy our legal protections. Yet the defenders of our sovereignty say nothing.

The mechanism through which this is achieved is known as investor-state dispute settlement. It's already being used in many parts of the world to kill regulations protecting people and the living planet.

The Australian government, after massive debates in and out of parliament, decided that cigarettes should be sold in plain packets, marked only with shocking health warnings. The decision was validated by the Australian supreme court. But, using a trade agreement Australia struck with Hong Kong, the tobacco company Philip Morris has asked an offshore tribunal to award it a vast sum in compensation for the loss of what it calls its intellectual property.

During its financial crisis, and in response to public anger over rocketing charges, Argentina imposed a freeze on people's energy and water bills (does this sound familiar?). It was sued by the international utility companies whose vast bills had prompted the government to act. For this and other such crimes, it has been forced to pay out over a billion dollars in compensation. In El Salvador, local communities managed at great cost (three campaigners were murdered) to persuade the government to refuse permission for a vast gold mine which threatened to contaminate their water supplies. A victory for democracy? Not for long, perhaps. The Canadian company which sought to dig the mine is now suing El Salvador for \$315m – for the loss of its anticipated future profits.

In Canada, the courts revoked two patents owned by the American drugs firm Eli Lilly, on the grounds that the company had not produced enough evidence that they had the beneficial effects it claimed. Eli Lilly is now suing the Canadian government for \$500m, and demanding that Canada's patent laws are changed.

These companies (along with hundreds of others) are using the investor-state dispute rules embedded in trade treaties signed by the countries they are suing. The rules are enforced by panels which have none of the safeguards we expect in our own courts. The hearings are held in secret. The judges are corporate lawyers, many of whom work for companies of the kind whose cases they hear. Citizens and communities affected by their decisions have no legal standing. There is no right of appeal on the merits of the case. Yet they can overthrow the sovereignty of parliaments and the rulings of supreme courts.

You don't believe it? Here's what one of the judges on these tribunals says about his work. "When I wake up at night and think about arbitration, it never ceases to amaze me that sovereign states have agreed to investment arbitration at all ... Three private individuals are entrusted with the power to review, without any restriction or appeal procedure, all actions of the government, all decisions of the courts, and all laws and regulations emanating from parliament."

There are no corresponding rights for citizens. We can't use these tribunals to demand better protections from corporate greed. As the [Democracy Centre](#) says, this is "a privatised justice system for global corporations".

Even if these suits don't succeed, they can exert a powerful chilling effect on legislation. One Canadian government official, speaking about the rules introduced by the North American Free Trade Agreement, remarked: "I've seen the letters from the New York and DC law firms coming up to the Canadian government on virtually every new environmental regulation and proposition in the last five years. They involved dry-cleaning chemicals, pharmaceuticals, pesticides, patent law. Virtually all of the new initiatives were targeted and most of them never saw the light of day." Democracy, as a meaningful proposition, is impossible under these circumstances.

This is the system to which we will be subject if the transatlantic treaty goes ahead. The US and the European commission, both of which have been captured by the corporations they are supposed to regulate, are pressing for investor-state dispute resolution to be included in the agreement.

The commission justifies this policy by claiming that domestic courts don't offer corporations sufficient protection because they "might be biased or lack independence". Which courts is it talking about? Those of the US? Its own member states? It doesn't say. In fact it fails to produce a single concrete example demonstrating the need for a new, extrajudicial system. It is precisely because our courts are generally not biased or lacking independence that the corporations want to bypass them. The EC seeks to replace open, accountable, sovereign courts with a closed, corrupt system riddled with

conflicts of interest and arbitrary powers.

Investor-state rules could be used to smash any attempt to save the NHS from corporate control, to re-regulate the banks, to curb the greed of the energy companies, to renationalise the railways, to leave fossil fuels in the ground. These rules shut down democratic alternatives. They outlaw leftwing politics.

This is why there has been no attempt by the UK government to inform us about this monstrous assault on democracy, let alone consult us. This is why the Conservatives who huff and puff about sovereignty are silent. Wake up, people we're being shafted.

Twitter: @georgemonbiot. A fully referenced version of this article can be found at monbiot.com

More from the Guardian [What's this?](#)

[A size 16 mannequin with a flat stomach? Excuse me if I don't rejoice, Debenhams](#) 07 Nov 2013

[Pope Francis kisses a disfigured man – and shows politicians the lost virtue of humility](#) 08 Nov 2013

[Alcohol without the hangover? It's closer than you think](#) 11 Nov 2013

[The world's oddest jobs – in pictures](#) 11 Nov 2013

[The 10 most shocking performance artworks ever](#) 11 Nov 2013

More from around the [What's this?](#)

web

[You Snooze, You Lose? Wrong. Russell Foster on the Science of Sleep](#) (The Financialist)

[Is a massive rebalancing of the world's economic, political and social power underway?](#) (Merrill Lynch: Wealth Management)

[8 Things Amazon Sellers Should Avoid](#) (Thinking Forward)

[Frequent Business Flyers Travel with Comfort & Class Using These Items](#) (Futuro)

[You Can Move to America's 5 Most Saintly Cities](#) (Mainstreet)

© 2013 Guardian News and Media Limited or its affiliated companies. All rights reserved.

;

This EU-US trade deal is no 'assault on democracy'

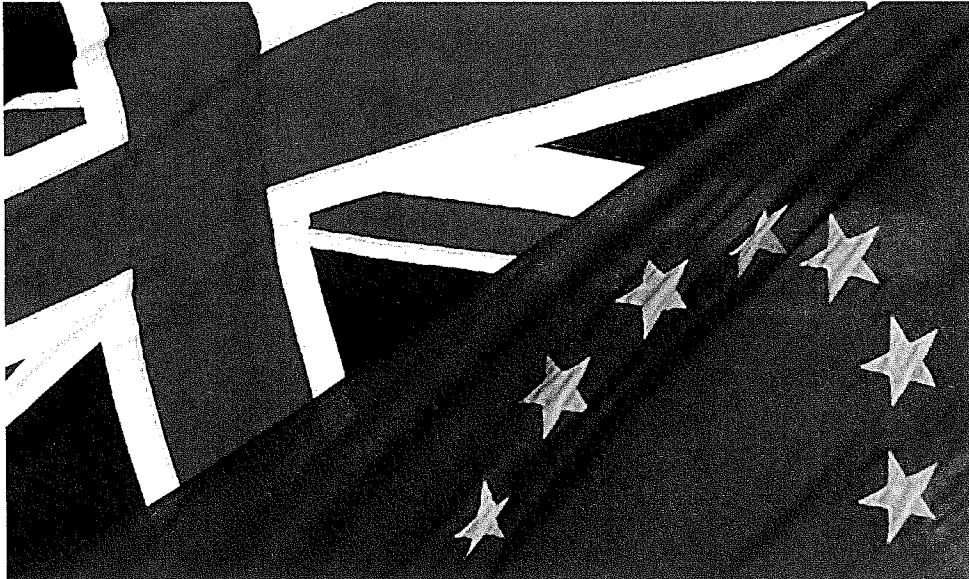
Ignore George Monbiot's polemic – the Transatlantic Trade and Investment Partnership is an astonishingly good deal for the UK economy

• George Monbiot: [This transatlantic trade deal is a full-frontal assault on democracy](#)



Ken Clarke

theguardian.com, Monday 11 November 2013 08.01 EST



The Transatlantic Trade and Investment Partnership would see the UK economy grow by an extra £10bn per annum'. Photograph: Stefan Wermuth/Reuters

On Monday, [EU and US negotiators are meeting in Brussels](#) for the second round of negotiations over what has become known as the [Transatlantic Trade and Investment Partnership \(TTIP\)](#).

Despite its byzantine name, the TTIP is in fact a trade deal between the EU and the US:

an astonishingly bold project which aims to create a free market encompassing the 800 million peoples of Europe and America, potentially boosting our collective GDP by £180bn.

Not that you would know that if you read [George Monbiot's contribution on these pages a week ago](#). In one of the more conspiracy theorising polemics I have read in some while, he described this wealth-creating, free-trading, economic stimulus simply as "a monstrous assault on democracy" by institutions, "which have been captured by the corporations they are supposed to regulate". Monbiot is entitled to his view, but even on a highly selective reading of the facts, I cannot see how his argument stands up.

Take the effect we hope that the TTIP will have on the UK economy alone. According to the best estimates available, an ambitious deal would see our economy grow by an extra £10bn per annum. It could see a rise in the number of jobs in the UK car industry of 7%. British companies – of all sizes – currently pay £1bn to get their goods into the US – this cost could be removed altogether. Perhaps most importantly in the long-term, such a deal would safeguard the liberal trading rules which we British depend on – but which the growing economies of the east are less keen on – or generations to come.

I have never had Monbiot down as an ungenerous character, but to ignore all of this in favour of blowing up a controversy around one small part of the negotiations, known as investor protection, seems to me positively Scrooge-like. Investor protection is a standard part of free-trade agreements – it was designed to support businesses investing in countries where the rule of law is unpredictable, to say the least. Clearly the US falls in a somewhat different category and those clauses will need to be negotiated carefully to avoid any pitfalls – but to dismiss the whole deal because of one comparatively minor element of it would be lunacy.

This talk of shadowy corporations is all the more misleading given that, in my view, the deal's advantages will prove to be far more noticeable for smaller enterprises than for larger corporations. This is because the most important task for the regulators will be to establish that where a car part or a cake or a beauty product has been tested as safe in the EU, the US will allow its import without requiring a whole new series of similar-but-slightly different tests – and vice versa. This is not about reducing safety levels. It is simply common sense. Would any of us on holiday in the US decline to hire that all-American SUV, or say no to that unfeasibly enormous vat of fizzy pop on the grounds that the regulations "are not the same as the EU's"?

And while it is of course true to say that these changes will help big business, it is also true to say that big business often has a vested interest in overly complex regulation.

They can afford armies of staff to satisfy reams of regulation, but their smaller rivals cannot and so are squeezed out. So while leftwing radicals can attempt to skew the facts, it's my view that the TTIP is much more a deal for the small widget maker from the West Midlands than it is for the multinational corporate giant.

There is, of course, a long way to go if we are to make this a reality. Governments on both sides of the pond hope we will reach a conclusion on most aspects of a deal before 2014 is out. Meeting that target would be a major economic achievement. It would also be a serious political victory for Britain in Europe, demonstrating not only the enormously increased clout the UK enjoys on the world stage as part of the EU, but also that other EU leaders are heeding his calls for the institution to reform and focus on the vital issues of trade and competitiveness.

Far from carping from the sidelines, as advised by Monbiot, we British have a major part to play in what could be one almighty success story. We should knuckle down and get to it.

More from the Guardian [What's this?](#)

[Students expelled from schools for being gay? It's not OK](#) 11 Nov 2013

[Don't vilify Russell Brand – he's right to demand the impossible](#) 06 Nov 2013

[A size 16 mannequin with a flat stomach? Excuse me if I don't rejoice, Debenhams](#) 07 Nov 2013

[Helping protect payments from overseas customers](#) 08 Nov 2013

[Developing countries are right to resist restrictive trade agreements](#) 08 Nov 2013

More from around the [What's this?](#)

web

[You Can Move to America's 5 Most Saintly Cities](#) (Mainstreet)

[Is the stock market ripe for correction?](#) (FOX Business)

[14 Movies that Capture What it Means to Be American](#) (Fandor)

[How to Prep for Negotiations](#) (The Huffington Post)

[Harry Potter Revisited: We Bet You Won't Recognize A Few Of These Kids](#) (Refinery29)

November 12, 2013

General Keith Alexander
Director
National Security Agency
9800 Savage Rd.
Fort Meade, MD 20755

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

Dear General Alexander and Ambassador Froman,

The New York Times reports on November 3 that wide-reaching efforts by the National Security Agency to collect data are driven in part by the agency's "customers" -- a range of other government agencies that includes the Office of the U.S. Trade Representative.

In light of this and other disclosures, we are writing to ask if the NSA, or other national security agencies, have surveilled any U.S. organizations or individuals advocating on U.S. trade policy. We ask you to disclose any such surveillance, whether or not it occurred at the request of USTR; whether or not it involved communications with foreign nationals; and whether or not it occurred within U.S. borders.

Core American principles ranging from the right to privacy to the right to petition our government are at stake. Simply put, we believe that our organizations -- as well as all others advocating on trade policy matters -- have right to an assurance that their operations are not under surveillance by U.S. government agencies. We trust you agree.

We look forward to your reply.

Access (AccessNow.org)
American Medical Student Association
Center for Digital Democracy
Center for Effective Government
Center for Financial Privacy and Human Rights
Center for Food Safety
Center for International and Environmental Law
Center for Media and Democracy
Center for Rights
Citizens for Ethics and Responsibility in
Washington (CREW)
Citizens Trade Campaign
Coalition for Sensible Safeguards
Communications Workers of America
Consumer Action
Consumer Federation of America
Consumer Watchdog
Defending Dissent Foundation
Electronic Frontier Foundation
Fight for the Future

Food & Water Watch
Friends of the Earth, U.S.
Friends of Privacy USA
Government Accountability Project
Greenpeace
Health GAP
Institute for Agriculture and Trade Policy
Just Foreign Policy
Knowledge Ecology International
National Legislative Association on Prescription
Drug Prices
Openthegovernment.org
Organic Consumers Association
Privacy Times
Project On Government Oversight (POGO)
Public Citizen
Public Knowledge
Sunlight Foundation
U.S. PIRG
World Privacy Forum

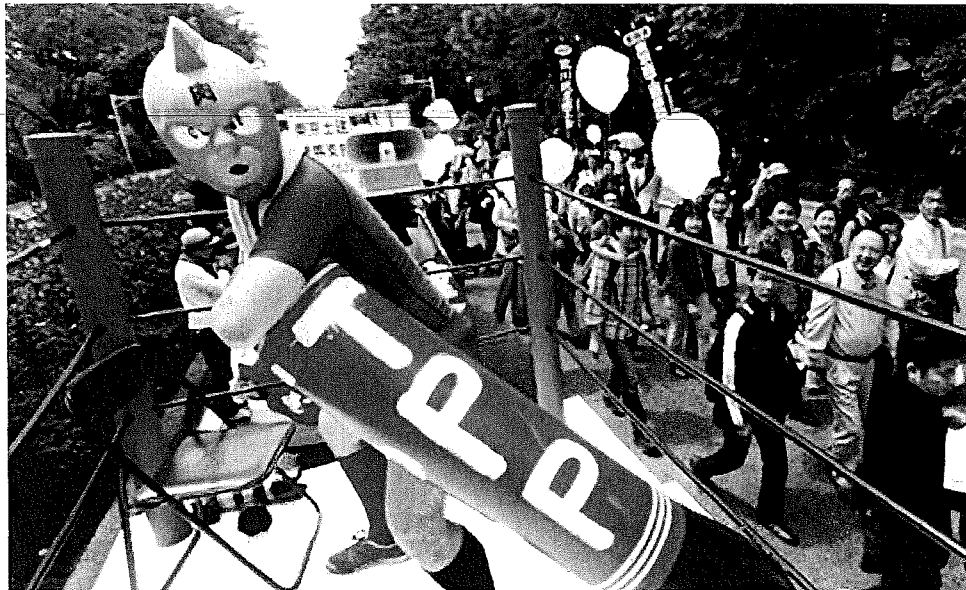
theguardian

WikiLeaks publishes secret draft chapter of Trans-Pacific Partnership

Treaty negotiated in secret between 12 nations 'would trample over individual rights and free expression', says Julian Assange

Alex Hern and Dominic Rushe

theguardian.com, Wednesday 13 November 2013 13.12 EST



Demonstrators protest against the Trans-Pacific Partnership (TPP) after the May Day rally in Tokyo, Japan. Photograph: EPA/Kimimasa Mayama

WikiLeaks has released the draft text of a chapter of the Trans-Pacific Partnership (TPP) agreement, a multilateral free-trade treaty currently being negotiated in secret by 12 Pacific Rim nations.

The full agreement covers a number of areas, but the chapter published by WikiLeaks focuses on intellectual property rights, an area of law which has effects in areas as diverse as pharmaceuticals and civil liberties.

Negotiations for the TPP have included representatives from the United States, Canada, Australia, New Zealand, Japan, Mexico, Malaysia, Chile, Singapore, Peru, Vietnam, and Brunei, but have been conducted behind closed doors. Even members of the US

Congress were only allowed to view selected portions of the documents under supervision.

"We're really worried about a process which is so difficult for those who take an interest in these agreements to deal with. We rely on leaks like these to know what people are talking about," says Peter Bradwell, policy director of the London-based Open Rights Group.

"Lots of people in civil society have stressed that being more transparent, and talking about the text on the table, is crucial to give treaties like this any legitimacy. We shouldn't have to rely on leaks to start a debate about what's in them."

The 30,000 word intellectual property chapter contains proposals to increase the term of patents, including medical patents, beyond 20 years, and lower global standards for patentability. It also pushes for aggressive measures to prevent hackers breaking copyright protection, although that comes with some exceptions: protection can be broken in the course of "lawfully authorised activities carried out by government employees, agents, or contractors for the purpose of law enforcement, intelligence, essential security, or similar governmental purposes".

WikiLeaks claims that the text shows America attempting to enforce its highly restrictive vision of intellectual property on the world – and on itself. "The US administration is aggressively pushing the TPP through the US legislative process on the sly," says Julian Assange, the founder and editor-in-chief of WikiLeaks, who is living in the Ecuadorean embassy in London following an extradition dispute with Sweden, where he faces allegations of rape.

"If instituted," Assange continues, "the TPP's intellectual property regime would trample over individual rights and free expression, as well as ride roughshod over the intellectual and creative commons. If you read, write, publish, think, listen, dance, sing or invent; if you farm or consume food; if you're ill now or might one day be ill, the TPP has you in its crosshairs."

Just Foreign Policy, a group dedicated to reforming US foreign policy, managed to crowdfund a \$70,000 (£43,700) bounty for Wikileaks if the organisation managed to leak the TPP text. "Our pledge, as individuals, is to donate this money to WikiLeaks should it leak the document we seek." The conditions the group set have not yet been met, however, because it required the full text, not individual chapters.

Related to the TPP is a second secret trade agreement, the Transatlantic Trade and Investment Partnership (TTIP), which ties together regulatory practices in the US and

EU. George Monbiot, [writing in this paper](#), referred to the treaty as a "monstrous assault on democracy". Ken Clarke, the minister without portfolio, [replied](#) that it "would see our economy grow by an extra £10bn per annum".

Campaign group Fight for the Future has already collected over 100,000 signatures in an [online petition](#) against what it calls the "extreme Internet censorship plan: contained in the TPP.

Evan Greer, campaign manager for Fight for the Future, said: "The documents revealed by WikiLeaks make it clear why the US government has worked so hard to keep the TPP negotiations secret. While claiming to champion an open Internet, the Obama administration is quietly pushing for extreme, SOPA-like copyright policies that benefit Hollywood and giant pharmaceutical companies at the expense of our most basic rights to freedom of expression online."



Sign up for the Media briefing email ✕

An indispensable summary of what the papers are saying about media on your desktop before 9am.

[Sign up for the Media briefing email](#)

More from the Guardian [What's this?](#)

[Jennifer Lawrence is striking a blow for healthy, sweaty women](#) 12 Nov 2013

['If you can't prevent rape, you enjoy it,' says India's top police official](#) 13 Nov 2013

[Hunger Games stars tell Jennifer Lawrence to return Oscar for forgetting lines](#) 11 Nov 2013

[Today's media stories from the papers](#) 12 Nov 2013

[Sri Lankan editors criticise UK press reforms](#) 11 Nov 2013

More from around the [What's this?](#)

web

[Meet the 7 Best Indoor Gadgets of 2013](#)
(Departures.com)

[Stunning Photos Of Leonardo DiCaprio's For Sale Home](#) (Lonny)

[15 Good Looking Celebrities Who Destroyed Themselves with Plastic Surgery](#) (She Budgets)

[Why Did A Promising Young CEO Change His Mind Regarding Monsanto?](#) (The New Yorker)

[Paul McCartney Urges Putin to Free Jailed Greenpeace Activists](#) (Bloomberg)

The New York Times

November 12, 2013

House Stalls Trade Pact Momentum

By ANNIE LOWREY

WASHINGTON — The Obama administration is rushing to reach a new deal intended to lower barriers to trade with a dozen Pacific Rim nations, including Japan and Canada, before the end of the year.

But the White House is now facing new hurdles closer to home, with nearly half of the members of the House signing letters or otherwise signaling their opposition to granting so-called fast-track authority that would make any agreement immune to a Senate filibuster and not subject to amendment. No major trade pact has been approved by Congress in recent decades without such authority.

Two new House letters with about 170 signatories in total — the latest and strongest iteration of long-simmering opposition to fast-track authority and to the trade deal more broadly — have been disclosed just a week before international negotiators are to meet in Salt Lake City for another round of talks.

“Some of us have opposed past trade deals and some have supported them, but when it comes to fast track, members of Congress from across the political spectrum are united,” said Representative Walter B. Jones Jr. of North Carolina, who circulated the Republican letter.

Without fast-track authority, however, the other countries in the negotiations might balk at American requests since they wouldn't be sure the final deal would remain unchanged. And getting both houses of Congress to agree to the final deal might be close to impossible without the fast-track authority, which the Obama administration has requested and which is being pursued in the Senate by Max Baucus, Democrat of Montana and the chairman of the Senate Finance Committee, along with the top Republican on the committee, Orrin G. Hatch of Utah.

“This could be the end of T.P.P.,” said Lori Wallach of Public Citizen, a watchdog group that has opposed the deal, formally called the Trans-Pacific Partnership. “All these other countries are like, ‘Wait, you have no trade authority and nothing you've promised us means anything? Why would we give you our best deal? Why would you be making concessions to the emperor who has no clothes?’”

Michael B. Froman, the United States trade representative, said that he continued to work with Congress on fast-track authority, also known as trade promotion authority.

“We believe that Congress should have a strong role in determining U.S. trade policy — and one of the best ways they can do that is to pass a law codifying their direction to the administration for negotiating trade agreements,” Mr. Froman said. “We will continue to consult with Congress on the importance of T.P.A. as a longstanding tool for shaping U.S. trade policy on behalf of the American people.”

The Obama administration has conducted a behind-the-scenes campaign to win over congressional offices and key members — in particular, key committee members — informed.

“Everything we do with trade policy is done hand-in-glove with Congress,” Mr. Froman said in recent remarks, where he also emphasized that there was no trade agreement yet, and that the administration continued to get feedback from Congress about what to include in the deal.

But coming to an agreement at home might be as much of a hurdle as doing so internationally. Senate aides said that the overloaded congressional calendar posed a challenge to passing fast-track authority by the end of the year, but that they thought it still had enough bipartisan support to win passage in the Senate.

“The legislative window is closing,” said Sean Neary, a spokesman for Senator Baucus. “This is a priority.”

The greater challenge lies in the House, where opposition to the fast-track authority comes from both policy and process concerns, and from a range of liberals, conservatives and moderates.

Many members have had a longstanding opposition to certain elements of the deal, arguing it might hurt American workers and disadvantage some American businesses. Those concerns are diverse, including worries about food safety, intellectual property, privacy and the health of the domestic auto industry.

Others say that they are upset that the Obama administration has, in their view, kept Congress in the dark about the negotiations, by not allowing congressional aides to observe the negotiations and declining to make certain full texts available.

“We remain deeply troubled by the continued lack of adequate congressional consultation in many areas of the proposed pact that deeply implicate Congress’ constitutional and domestic

policy authorities,” said the House Democrats’ letter, circulated by Representative Rosa DeLauro of Connecticut and George Miller of California.

The House Democratic letter has about 151 signatories. On the Republican side, 22 lawmakers signed a similar letter. Other members have signaled their opposition independently, meaning that roughly 40 percent to 50 percent of House members have signaled that they have concerns about, or oppose, the use of fast-track authority.

The T.P.P. as outlined is aimed at reducing barriers, cutting red tape and harmonizing international regulations, though it is also expected to include numerous provisions protecting a wide variety of interests, both at home and abroad, from increased competition.

This article has been revised to reflect the following correction:

Correction: November 13, 2013

An earlier version of this article referred incorrectly to the position of roughly 40 to 50 percent of House members on a pending issue involving a trade agreement with Pacific Rim nations.

They have signaled that they have concerns about, or oppose, the use of fast-track authority to push through such an accord, not that they do not support the pact itself.

<http://infojustice.org/archives/30881>

Will Obama Fast-Track the Trans-Pacific Partnership?

Posted by [Matthew Rimmer](#) on October 7, 2013 [Add comments](#)
Oct 07 2013

This week there has been discussions between leaders from the Pacific Rim over the Trans-Pacific Partnership in Bali, Indonesia at APEC.

President Barack Obama has demanding a 'trade promotion authority' from the United States Congress to fast-track the Pacific Rim treaty, the Trans-Pacific Partnership.^[1]

The fast-track authority plays a pivotal role in determining the extent to which the United States Congress can engage in a critical review of trade agreements.^[2]

The United States Chamber of Commerce has supported a comprehensive Trans-Pacific Partnership, which would enhance the intellectual property rights and investment rights of corporations.^[3] Thomas Donohue, the President and Chief Executive Officer of the Chamber, has vowed: 'We will launch a full-scale lobbying, grassroots, and education campaign to win passage [of the Trans-Pacific Partnership] in Congress.'

However, there has been a growing concern within the United States Congress and in civil society about the impact of the Trans-Pacific Partnership on democracy, jobs, the environment, and public health.

1. **Democracy**

The United States Massachusetts Democrat Senator Elizabeth Warren has been one of the most eloquent critics of the Trans-Pacific Partnership.

Warren has written to the Obama Administration, complaining: 'While I have no doubt that President's commitment to openness to genuine, I am concerned about the Administration's record of transparency regarding the Trans-Pacific Partnership.'^[4] She observed: 'If transparency would lead to widespread public opposition to a trade agreement, then that agreement should not be the policy of the United States.'

Warren opposed the nomination of Michael Froman as the United States Trade Representative because of his failure to prioritize transparency and public debate.^[5] She insisted that ‘the American people have the right to know more about the negotiations that will have dramatic impact on the future of the American economy’ and that ‘will have a dramatic impact on our working men and women, on the environment, on the Internet.’

In a rousing speech, United States Congressional Democrat Senator Elizabeth Warren warned of the dangers of the Trans-Pacific Partnership:

‘For big corporations, trade agreement time is like Christmas morning. They can get special gifts they could never pass through Congress out in public. Because it’s a trade deal, the negotiations are secret and the big corporations can do their work behind closed doors. We’ve seen what happens here at home when our trading partners around the world are allowed to ignore workers’ rights, wages, and environmental rules. From what I hear, Wall Street, pharmaceuticals, telecom, big polluters, and outsourcers are all salivating at the chance to rig the upcoming trade deals in their favor’.^[6]

She commented: ‘I believe that if people would be opposed to a particular trade agreement, then that trade agreement should not happen.’

Lori Wallach of Public Citizen has expressed similar concerns about the secrecy of the Trans-Pacific Partnership. She has warned on Democracy Now! that the trade agreement is a ‘Trojan Horse’ for transnational corporations:

‘Well, one of the most important things to understand is it’s not really mainly about trade. I guess the way to think about it is as a corporate Trojan horse. The agreement has 29 chapters, and only five of them have to do with trade. The other 24 chapters either handcuff our domestic governments, limiting food safety, environmental standards, financial regulation, energy and climate policy, or establishing new powers for corporations’.^[7]

She is concerned: ‘While the text of the treaty has been largely negotiated behind closed doors, more than 600 corporate advisers reportedly have access to the measure, including employees of Halliburton and Monsanto.’

2. Workers’ Rights

Will the Trans-Pacific Partnership undermine jobs and working conditions in the Pacific Rim?

James Hoffa, the General President of the International Brotherhood of Teamsters, co-authored a paper with Michael Brune from Sierra Club on fair trade.^[8] The pair lamented that 'free trade agreements like NAFTA have only led to the outsourcing of American jobs, downsizing of our wages and loss of environmental protections'. Hoffa and Brune maintained that 'It's time to stop letting big corporations ship our jobs overseas and dump our wages, benefits and protections overboard along the way'. The pair insisted: 'We don't need any more free trade agreements; we need fair trade agreements.'

Celeste Drake, a trade specialist at the American Federation Labor and Congress of Industrial Organizations, has been concerned that the Trans-Pacific Partnership will undermine workers' rights.^[9] She warned that 'global firms that use the United States as a flag of convenience are once again substituting their interests for the national interest in the Trans-Pacific Partnership negotiations.'

Drake emphasized 'that, for a trade agreement to benefit workers here and abroad, it must prioritize fundamental labor rights, the creation of high wage, high benefit jobs, and balanced and sustainable trade flows'. She insisted: 'When workers can exercise their fundamental rights, as well as have a secure and hopeful future and sufficient incomes, their demand will help businesses and the global economy grow in a sustainable way.'

There has been concern amongst a number of United States Congressmen and women that the Trans-Pacific Partnership would significantly limit Buy American procurement policies and as a result adversely impact American jobs, workers, and manufacturers.^[10]

3. The Environment and Climate Change

Will the Trans-Pacific Partnership transform the Pacific Rim into a Gasland?

Allison Chin, the President of the Sierra Club said: 'The Trans-Pacific Partnership (TPP) trade pact could subject environmental and public interest laws and safeguards to attack by foreign corporations, threaten our air and water with toxic pollution, and lead to more American jobs being shipped overseas'.^[11] She is troubled that 'the Trans-Pacific Partnership is shaping up to be a stealth affront to the principles of our democracy.'

There has been particular disquiet about the use of state-investor clauses to challenge environmental regulations, such as Lone Pine's challenge against Quebec's moratorium on fracking.^[12] Ilana Solomon of the Sierra Club maintained:

'It's time that governments stop signing trade and investment pacts that put the rights of corporations above the rights of communities and the environment. My right to clean water, clean air, and a healthy planet for my family and community has to come before Lone Pine's right to mine and profit'.[\[13\]](#)

There has been alarm that the Trans-Pacific Partnership will be used to promote the export of natural gas, particularly to Japan.[\[14\]](#)

There are also tensions between Barack Obama's promises for action on climate change, and his trade agenda. Ilana Solomon of the Sierra Club has warned: 'Our current model of free trade is once again interfering with sound climate policy.'[\[15\]](#)

There has been outrage amongst environmental and climate activists that the United States Trade Representative been promoting tar sands, the Keystone XL Pipeline, and the export of fossil fuels in trade negotiations.[\[16\]](#)

Oregon Senator Ron Wyden and other environmentally-minded senators have written to the Obama Administration about the Trans-Pacific Partnership and the environment.[\[17\]](#) The Senators have argued for a strong environment chapter in the agreement: 'We think a "21st century trade agreement" must have an environment chapter that guarantees ongoing sustainable trade and creates jobs, and that this is what American businesses and consumers want and expect also.' The Senators have maintained that 'it is important that other provisions in the agreement, including those in the investment chapter, do not undermine efforts to protect the environment, protect the legal trade in natural resources, and address the challenges of sustainable conservation.'

4. Public Health

Will the Trans-Pacific Partnership undermine public health initiatives – such as tobacco control measures like graphic health warnings and the plain packaging of tobacco products?

There has been disquiet amongst public health advocates over the Obama administration backsliding on promises to protect tobacco control measures in the Trans-Pacific Partnership.

The recent New York Mayor Mike Bloomberg warned: 'If the Obama administration's policy reversal is allowed to stand, not only will cigarettes be cheaper for the 800 million people in the countries affected by the trade pact, but multinational tobacco corporations will be able to challenge those governments — including America's — for implementing lifesaving public health policies.'[\[18\]](#) He feared that the Trans-Pacific Partnership 'would not only put

our tobacco-control regulations in peril, but also create a chilling effect that would prevent further action, which is desperately needed.'

The San Francisco Board of Supervisors led by Eric Mar have 'unanimously passed Resolution 297-10 urging our trade leaders to change course to protect our health by excluding tobacco and tobacco products from the Trans-Pacific Partnership Agreement and from all future trade agreements.'[\[19\]](#)

Senator Sherrod Brown, a Democrat from Ohio, has written to the Obama Administration: 'We are not demonstrating global public-health leadership by putting forward a proposal that allows tobacco companies a back door to undermine anti-tobacco safeguards'.[\[20\]](#)

Conclusion

The battle over the Trans-Pacific Partnership is not just a matter of international trade debate between the participating countries. There is an intense debate between the Obama Administration and the United States Congress over the treaty-making process, and suitable protections in the Trans-Pacific Partnership for labor rights, the environment, and public health. A number of Democrats have balked a 'fast-track' authority for the Pacific Rim Trade Deal. Representative Rosa DeLauro, a Connecticut Democrat, has commented: 'We are not just here to rubber stamp what gets done' by trade representatives.[\[21\]](#) There is a need for the United States Congress to submit any Pacific Rim Treaty to rigorous scrutiny.

html
THE SACRAMENTO BEE sacbee.com

Viewpoints: Legislation could hurt California's crusade to reduce toxic chemicals

Special to The Bee

Published Thursday, Oct. 17, 2013

Federal oversight of the more than 80,000 chemicals used in the United States is essentially nonexistent. The 34-year-old law meant to regulate chemicals – the Toxic Substances Control Act, or TSCA – makes it nearly impossible to pull harmful chemicals off the market. It also doesn't require companies to understand the environmental and health consequences of a chemical before it is marketed. The Environmental Protection Agency has managed to ban only five chemicals of those covered by the act.

With the federal government asleep at the wheel, several states are taking action. California just unveiled a far-reaching program to eliminate or reduce hazardous chemicals in hundreds of everyday products. The Green Chemistry Initiative is the most comprehensive effort in the nation to identify toxic chemicals in cosmetics, household cleaners, food packaging and other consumer goods and require manufacturers to look for safer substitutes.

In recent years Maine, Minnesota and Washington state also have launched programs designed to replace chemical-by-chemical regulation with across-the-board policies that address the big picture. Meanwhile, in the last decade more than a third of the states have enacted bans or restrictions on individual chemicals as a growing body of science has linked them to diseases like breast cancer, birth defects and reproductive harm and hundreds of these chemicals have been found in breast milk, our bodies and even newborn babies.

These states are filling the breach left by the utter failure of the nation's outdated federal toxics law to protect Americans from the health threats hidden on retailers' shelves. But their pioneering efforts could be swept aside by the outcome of trade negotiations with Europe and by legislation pending in Congress that could roll back state regulation of toxic chemicals.

Reform of a badly broken U.S. chemical law and promotion of free trade might sound like worthy goals. But both initiatives may contain provisions that would roll back the advances California and other places have made in chemical safety, while undermining the strong European regulations that have inspired state-level reforms in the U.S. As currently crafted, the initiatives are linked by an insidious strategy: The chemicals industry is pushing a bill in Congress that would gut state regulation, providing a fig leaf of reform that will in turn facilitate a NAFTA-like trade deal that undercuts Europe's program – the gold standard of global chemical regulations.

In the trade negotiations, the Obama administration wants to weaken the EU's chemical regulatory system, known as REACH.

REACH is a common-sense embrace of the precautionary principle – better safe than sorry. It requires manufacturers to disclose detailed health and safety information for all chemicals in commerce, and puts the burden of proof on the manufacturer to show that chemicals are safe. But REACH doesn't line up with the administration's vision for a laissez-faire transatlantic economy. The goal is to deregulate economies on both sides of the Atlantic, on the theory that growth will result if government gets out of the way – even if that means undercutting sensible safeguards to protect human health and the environment.

The threat to the states' public health leadership is even more direct from the TSCA "reforms" being considered in the U.S. Senate. The Chemical Safety Improvement Act, introduced by Sen. David Vitter, R-La., is a step backward from an already bad law.

The Vitter bill would still set too high a burden of proof for the Environmental Protection Agency to restrict harmful chemicals, and the standard set for chemical safety would be far too easy for manufacturers to meet. It would effectively give chemical companies immunity from lawsuits in state courts over death or disability caused by chemicals deemed safe. Most worrisome for California and other states, the Vitter bill would pre-empt state law, allowing dangerous chemicals onto the market despite legislators' attempts to ban them. If the pre-emption clause were removed and stronger protections added for vulnerable populations and communities, the Vitter bill could mean progress, but as is, it would be a public health and environmental disaster.

The Obama administration's agenda in trade negotiations and Vitter's phony reform bill share a common goal: to roll back safeguards in Europe and California that regulate the release of dangerous chemicals into the marketplace and the environment – and ultimately into our bodies and those of our children. We deserve better.

Erich Pica is president of Friends of the Earth U.S.

- [Read more articles by Erich Pica](#)

 [Order Reprint](#)

Friends of the Earth, U.S. Blog

Stop fast track authority for Trans Pacific trade deal

Posted Oct. 17, 2013 / Posted by: Bill Waren

In collaboration with Republicans in Congress, the Obama administration is expected to soon seek so-called [Fast Track or Trade Promotion Authority legislation](#) in order to facilitate ratification in 2014 of a Trans Pacific Partnership trade deal that would gut environmental and climate protections. If you have a chance to talk to your member of Congress, consider asking for a [“NO” vote on the Fast Track bill](#) and drive home two points: (1) [Fast Track](#) guts congressional authority; and (2) Fast Track will allow the U.S. Trade Representative and the House Republicans to ram the disastrous TPP trade agreement through Congress.

Gutting the constitutional authority of Congress. Presidential [fast track authority](#) for negotiating trade agreements and its process for congressional approval [eviscerates Congress’ constitutional authority and political influence](#) over trade agreements, delegating them improperly to Michael Froman, the U.S. Trade Representative. Fast track hands over to the executive branch powers that [the founders](#) of our [constitution intended for Congress to exercise](#), including:

- The power to determine which countries join trade negotiations with the U.S., regardless of whether they are repeat violators of environmental and human rights standards;
- The power to finalize the legal text of trade agreements before Congress votes;
- The power to write domestic legislation implementing a trade deal by rolling back environmental safeguards and other public interest measures;
- The power to circumvent ordinary congressional committee review and submit the legislation directly for a mandatory and expedited floor votes in the House and Senate;
- The power to override House and Senate control of their schedules for floor votes;
- The power to ban any amendments to a trade agreement; and
- The power to override other normal congressional voting procedures, including the Senate’s super-majority (60 vote) requirement to end a filibuster (extended debate).

Ramming the TPP trade deal through Congress. The United States is pushing for a Trans Pacific Partnership trade deal that not only integrates the trade policies of Pacific nations, but also [deregulates their economies in many areas](#). Currently, Singapore, Malaysia, Chile, New Zealand, Brunei, Australia, Peru, Vietnam, Canada, Mexico, Japan and the United States are participating in the talks. South Korea and others may seek to “dock onto” the agreement in the very near future. The U.S. negotiating agenda will subordinate the role of governments in environmental protection to corporate profits. U.S. Trade Representative’s agenda for the TPP must be rejected. Friends of the Earth has a long list of concerns and demands. Here are just a few:

- *End the secrecy:* TPP talks are being held [behind closed doors](#) and civil society has been excluded from the most recent negotiations. The TPP [negotiating text is kept secret](#) from the public and press, although a few chapters have been leaked.
- *No cave on the environment chapter.* [The environment chapter must include enforceable obligations](#) to implement domestic environmental laws and abide by global environmental

agreements. On that point, the U.S. delegation agrees with environmentalists because Democrats in Congress insist on it, but other negotiating parties strongly resist. There is a growing possibility that U.S. negotiators will cave on the one item on their negotiating agenda that could be good for the environment.

- *No [private investment court](#) for rich corporations & investors.* Leaked text of the TPP investment chapter shows that it would authorize [foreign investors to seek awards of money damages from business-friendly tribunals](#) in compensation for lost future profits and the cost of complying with environmental and other public interest regulations. Damage awards can run to [millions or billions of dollars](#). 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. [Mining, oil drilling](#) and infrastructure construction are the most frequent topics of litigation under international investment agreements. Restrictions on construction of tar sands oil pipelines or on coal, oil or [liquefied natural gas](#) export terminals might also give rise to TPP investment suits. Challenges to water pollution measures are a frequent issue in international investment litigation. Land use regulations and smart growth policies similarly are at risk.
- *No patents on plants, animals, other life forms.* Leaked text indicates that TPP provisions on intellectual property would protect corporate patents on plants, animals and other life forms, thus facilitating the theft of traditional knowledge from native peoples and expanding the commoditization of the commons.
- *No corporate-friendly cost-benefit analysis.* Exclude the regulatory coherence chapter, proposed by the United States, that could facilitate business-friendly, cost-benefit analysis to hamstringing environmental or other public interest regulations. When used in a reductionist manner as contemplated in the TPP, such cost-benefit analysis amounts to an attempt to measure the immeasurable, such as the risks of synthetic biology, and prevents regulators from implementing the "precautionary principle" in environmental policymaking.
- *No constraints on green criteria in government purchasing.* The TPP government procurement chapter raises concern because governments are beginning to build environmental and other social criteria into their purchasing decisions that might run afoul of international trade rules. International rules on government procurement often seek to confine public purchasing decisions to economic and engineering criteria such as price and performance, thus constraining green purchasing policies by government.
- *No constraints on environmental labeling.* Friends of the Earth has no confirmation that TPP provisions on technical barriers to trade will not mimic or exceed World Trade Organization standards that have been used to [successfully challenge U.S. dolphin-safe tuna labeling law](#) and other product labeling measures.
- *No constraints on food safety.* The TPP chapter on sanitary measures might be used to challenge food safety laws based on the precautionary principle such as regulation of pesticide residue, chemical additives or genetic modification.
- *No constraints on clean air regulation.* Friends of the Earth has no assurance that clean air regulations will not be threatened by the TPP. To the contrary, [the U.S. - Korea trade agreement](#), for example, [requires that auto emissions standards be relaxed](#) for U.S. auto exports to [South Korea](#).
- *No green light for deforestation, palm oil plantations or destructive corporate farming.* Agriculture and investment provisions of the TPP would likely encourage deforestation to make way for massive palm oil plantations and other forms of corporate farming.

The root problem is that the bulk of the TPP text has far less to do with trade policy per se and much more to do with limiting the role of government as it regulates corporate polluters. **This is not the time to fast track the TPP!**

- We need your help in educating Congress on Fast Track & the TPP. PLEASE Contact: Bill Waren, trade policy analyst, Friends of the Earth, U.S., wwaren@foe.org,
- [Click here](#) to watch Friends of the Earth's video on the Trans Pacific Partnership trade agreement.

Categories: [Advocacy](#), [Blog](#), [Economics for the Earth](#) / Tags: [Bill waren](#)

- See more at: <http://www.foe.org/news/blog/2013-10-stop-fast-track-authority-for-trans-pacific-trade-de#sthash.x6U6YjN8.dpuf>

Inside U.S. Trade: Daily News

Chemical Safety Bill Could Smooth U.S.-EU Efforts, But Faces Tough Road

Posted: Sep. 20, 2013

Legislation pending before a Senate panel to reform the decades-old U.S. regime for ensuring the safety of chemicals could help facilitate the kind of trans-Atlantic regulatory cooperation efforts being envisioned in U.S.-EU free trade talks, but the bill faces a host of serious challenges to passage, according to a U.S. chemical industry official.

The pending Chemical Safety Improvement Act (CSIA) – if passed – could help pave the way for some of the incremental cooperative efforts being advocated by U.S. and European Union chemical manufacturers in the Transatlantic Trade and Investment Partnership (TTIP), according to Mike Walls, vice president of regulatory and technical affairs of the American Chemistry Council (ACC).

These proposed efforts are broadly focused on making the vastly different U.S. and EU regulatory regimes more efficient and less burdensome for companies operating on either side of the Atlantic, including by having regulators cooperate in evaluating the safety of chemicals and sharing relevant data.

In addition, the ACC has proposed improved transparency in cooperative activity and developing a common scientific basis for regulatory decisions. Because the two regulatory systems are based on different fundamental principles in terms of chemical safety, both the U.S. and EU industries as well as the European Commission have made clear they are not seeking full harmonization of chemical regulations through the TTIP.

The key change that would be brought about by the CSIA that would help make the current U.S. regime more interoperable with the EU system is a new mandate for the U.S. Environmental Protection Agency (EPA) to review all chemicals in commerce and identify those that are potentially dangerous and of "high priority" for further scrutiny. This screening process is something that EPA has undertaken at its own discretion under current law since the early days of the Obama administration, Walls said in a Sept. 10 interview. But the CSIA, which would overhaul the 1976 Toxic Substances Control Act (TSCA), would make the process mandatory, he noted.

Codifying this process and creating a list of high-priority chemicals could establish a new basis for cooperating with regulators in the EU, which under its REACH law, also must review substances and establish a list of "substances of very high concern," Walls said.

If there are overlaps in their lists, regulators in the U.S. and EU could avoid duplicating their efforts by dividing them up and sharing the results of their analysis, Walls argued. "This is one of the things we're pursuing in the TTIP negotiations: Are there opportunities to leverage our respective prioritization processes and potentially even share the burden?" he said.

The goal of these lists -- both in the EU and the U.S. -- is to conduct further analysis and determine what control measures, if any, are needed to allow the listed chemicals to be used safely.

Walls said the important caveat is that U.S. and EU regulators, in the ACC's view, would not be bound by the determinations that their respective counterparts make regarding controls on chemicals. These determinations may be different since the U.S. and EU have different approaches and even different "tolerances for risk," he said.

But cooperating on assessments would still allow regulators in either jurisdiction to operate more efficiently without necessarily forcing the same outcome, he said. This, in turn, would also create a chance for regulators in the U.S. and EU to discuss and better understand their assessment processes. "Those are the types of opportunities that the TTIP creates, and that the CSIA helps, in part, to drive," Walls said.

He added that because the CSIA, in the ACC's view, improves the credibility of the U.S. oversight system for chemicals in general, it would also enhance trust in the EU that "that we have in fact a process for the systematic evaluation of all chemicals in commerce."

However, Walls acknowledged that the CSIA faces several significant roadblocks, partially related to the fact that it would preempt state and local regulations on chemicals. Committee Chairwoman Barbara Boxer (D-CA) has expressed strong reservations about the bill, partially for that reason, and has introduced competing legislation.

CSIA was introduced as S. 1009 in May by the late Sen. Frank Lautenberg (D-NJ) and Sen. David Vitter (R-LA), ranking member on the Environment and Public Works Committee. The bill has 24 other cosponsors from both parties, but only five other members of the Senate Environment Committee. Two of these members are Democrats.

The preemption issue is particularly relevant for Boxer's home state of California, which has been more aggressive than others in regulating hazardous chemicals and is wary of the potential for federal law to tie its hands.

"Preempting states in the absence of any enforceable federal rule -- as S. 1009 would do -- creates a regulatory vacuum that endangers health and safety," Michael Tronsoco, senior counsel to the Attorney General of California, wrote in testimony submitted to Boxer's panel for a July 31 hearing.

"While some argue that states can always obtain a waiver from preemption, the bill's waiver provision is illusory," he warned. "It does not allow the states to adopt a stricter standard than the federal government, and it requires a showing of a 'compelling local interest' that most state chemical laws today could not meet."

The level of support for CSIA legislation in the House is also an open question. A subcommittee on the Energy and Commerce Committee, which has jurisdiction, has held several hearings on TSCA reform -- including one that took place this week that focused on the topic of preemption.

But Walls said that at this stage, lawmakers and their staffs still appear to be just trying to come up to speed on the relevant issues. He noted that with TSCA having been enacted in 1976, much of the institutional expertise that existed within the committee has long since gone with turnover in members and staff.

"I think it's reasonable to interpret the House hearings as an indication of an interest in the issue," Walls said, adding that it is not clear that the subcommittee will come forward with companion legislation. But he said he is "encouraged" that the panel is looking at some of the key issues and thinking about how to address them.

As for the Senate leadership, Walls said it was "premature" to assess what its position might be, and that for now ACC is focused on steering the CSIA out of committee and working around the myriad challenges.

"I'm hopeful that those issues can be successfully addressed in the coming weeks and that we would see the committee proceed to a vote," he said.

For Immediate Release
September 25, 2013

Contact: [Kevin Kelley](#) (Collins) 202-224-2523
[Crystal Canney](#) (King) 207-615-5968

Senators Collins, King Sign Letter Concerning Foreign Currency Manipulation in Trans-Pacific Partnership

WASHINGTON, D.C. – U.S. Senators Susan Collins and Angus King joined a large, bipartisan group of their Senate colleagues in signing a letter to Treasury Secretary Jack Lew and U.S. Trade Representative Michael Froman urging them to address foreign currency manipulation during negotiations over the Trans-Pacific Partnership (TPP). The letter directs Secretary Lew and Ambassador Froman to ensure any future free trade agreements contain “strong and enforceable foreign currency manipulation disciplines” to protect American workers and companies.

“Maine employees have a well-earned reputation as some of the most conscientious and diligent workers in the world,” **said Senators Collins and King in a joint statement.** “When allowed to compete within the framework of a fair trade partnership, Maine companies are able to excel in the global marketplace. Currency manipulation creates an uneven playing field for companies and needs to be addressed as we negotiate the TPP in order to protect Maine jobs.”

The text of the letter is included below:

Dear Secretary Lew and Ambassador Froman:

We agree with the Administration's stated goal that the Trans-Pacific Partnership (TPP) has “high standards worthy of a 21st century trade agreement.” To achieve this, however, we think it is necessary to address one of the 21st century's most serious trade problems: foreign currency manipulation.

Currency is the medium through which trade occurs and exchange rates determine its comparative value. It is as important to trade outcomes as is the quality of the goods or services traded. Currency manipulation can negate or greatly reduce the benefits of a free trade agreement and may have a devastating impact on American companies and workers.

A study by the Peterson Institute for International Economics found that foreign currency manipulation has already cost between one and five million American jobs. A free trade agreement purporting to increase trade, but failing to address

foreign currency manipulation, could lead to a permanent unfair trade relationship that further harms the United States economy.

As the United States negotiates TPP and all future free trade agreements, we ask that you include strong and enforceable foreign currency manipulation disciplines to ensure these agreements meet the "high standard s" our country, America's companies, and America's workers deserve.

Financial Times

US business groups warn against compromises in Pacific Rim trade talks

<http://www.ft.com/intl/cms/s/0/343f20c2-2662-11e3-8ef6-00144feab7de.html#axzz2g12Xh000>

By Shawn Donnan in Washington

US business is urging the Obama administration not to compromise on key intellectual property and investment provisions as leaders of 12 countries intent on reaching a Pacific Rim trade deal prepare to meet in Indonesia next week for what are billed as crucial talks.

The US has said it would like to conclude negotiations towards a Trans-Pacific Partnership by the end of this year. President Barack Obama, Shinzo Abe, Japanese prime minister, and other leaders and trade ministers attending next week's Asia-Pacific Economic Co-operation summit in Bali are expected to make another push to wrap up the discussions and try to break the deadlock on a number of sticking points.

The TPP, which includes countries now involved in a third of the world's trade and is at the heart of the Obama administration's second term agenda, has been billed as a 21st century trade deal aimed at setting new high standards for future agreements.

While business groups are backers of Mr Obama's trade focus and are keen for timely conclusions to the TPP and the country's separate negotiations with the EU, there are concerns. In an interview with the Financial Times, Tom Donohue, the head of the US Chamber of Commerce, said he was concerned that in the rush to get a deal done before the end of the year the US might give up too much ground on key provisions.

"We've worked [to back the TPP] harder than anybody," Mr Donohue said ahead of a trip to Asia that will include a stop in Bali to meet Apec leaders. "But we're at the same time saying this is going to be a great deal when it gets done. Let's just not rush it."

"Speed is important but not without content. We're willing to slow it down a month, or two or three to get the content right," he said. "A massive percentage of the world's [future] explosion in growth and trade is going to happen in the Pacific Rim. We're concerned that in the excitement to get that deal people may compromise a bit too much."

The business criticism drew a response on Thursday from Michael Froman, the US trade representative, who said the US remained committed to the "ambitious" goal of concluding negotiations by the end of this year.

"The TPP negotiations have been going on for almost three years. We've had 19 rounds of negotiations, we have had dozens and dozens of intersessionals between negotiating rounds. I don't think we are rushing this," Mr Froman said.

"I think anybody who has been involved in trade negotiations knows that often times the bulk of the work gets done at the very last minute. So it's hard to judge from the outside whether there is too much work to be done. There's a lot of momentum and we've made some very significant progress."

The intervention by the head of the largest business group in the US followed one last week by the chamber and eight other groups in which they called on the TPP countries to live up to the original ambition of the agreement.

“The US business community is concerned that the TPP as negotiated to date has yet to achieve the level of ambition pledged by the governments,” the groups wrote in the September 18 letter to chief negotiators. “We urge you to redouble your efforts toward the goal of a comprehensive, high-standard and commercially meaningful agreement that removes barriers to trade and investment, and addresses 21st century challenges in all sectors.”

A massive percentage of the world’s explosion in growth and trade is going to happen in the Pacific Rim. We’re concerned that in the excitement to get that deal people may compromise too much
- Tom Donohue, head of the US Chamber of Commerce

Among his key concerns, Mr Donohue said, were that the US would soften its push for strong intellectual property rules, which some activists fear would make it harder to sell generic drugs in developing countries. US business is also pushing for strong rules to allow the free flow of data across borders and efforts to address what some see as the potential for unfair competition from state-owned enterprises in some TPP economies.

Mr Donohue said a proposed investor-state dispute settlement mechanism was also crucial, as it would allow multinational companies to see their disputes with TPP countries adjudicated by a third party.

As they try to close a deal after 19 rounds of talks, negotiators from TPP countries have intensified their meetings in recent months. Last week senior negotiators gathered in Washington for four days of discussions ahead of the Apec summit.

United States and Japan Streamline Organic Trade Across the Pacific

USTR newsletter; 9/26/13

Baltimore, Maryland— The United States and Japan today announced that beginning January 1, 2014, organic products certified in Japan or in the United States may be sold as organic in either country.

This partnership between two significant organic markets will streamline U.S. farmers' and processors' access to the growing Japanese organic market, benefiting the rapidly growing organic industry and supporting job creation and business growth on a global scale.

“Today’s agreement will streamline access to the growing Japanese organic market for U.S. farmers and processors and eliminate significant barriers for small and medium organic producers, benefiting America’s thriving organic industry,” said United States Trade Representative Michael Froman. **“This represents another key step in strengthening our economic relationship with Japan by boosting agriculture trade between Japan and the United States, leading to more jobs and economic benefits for American farmers and businesses in this important sector.”**

“This partnership reflects the strength of the USDA organic standards, allowing American organic farmers, ranchers, and businesses to access Asia’s largest organic market,” said U.S. Agriculture Secretary Vilsack. **“It is a win for the American economy and sets the foundation for additional organic agricultural trade agreements in Asia. This partnership provides economic opportunities for farmers and small businesses, resulting in good jobs for Americans across the organic supply chain.”**

The organics sector in the United States and Japan is valued at more than \$36 billion combined, and rising every year.

Formal letters creating this partnership were finalized on September 26, 2013 in Baltimore, Maryland. Signatures to the partnership are Anne L. Alonzo, USDA Agricultural Marketing Service Administrator; Ambassador Islam Siddiqui, U.S. Trade Representative Chief Agricultural Negotiator; and Hiroyuki Kobayashi, Director General, Food Safety and Consumer Affairs Bureau. The announcement took place at Natural Products Expo East, one of the largest trade shows for organic products in the United States.

Without an equivalency arrangement in place, organic farmers and businesses wanting to sell products in either country had to obtain separate certifications to meet each country’s organic standards. This typically has meant two sets of fees, inspections, and paperwork. Similar to previous U.S. equivalency arrangements with Canada and the European Union, this trade partnership with Japan eliminates significant barriers, especially for small and medium-sized organic producers.

Leading up to today's historic announcement, U.S. and Japanese technical experts conducted thorough on-site audits to ensure that their programs' regulations, quality control measures, certification requirements, and labeling practices were compatible.

The U.S. and Japan organic standards cover the lifecycle of the product, including allowed and prohibited substances and natural resources conservation requirements. Both parties individually determined that their programs were “equivalent” with no restrictions for organic plant and plant products. This means that—for the first time—certified organic farmers and businesses in the U.S. don't have to prove that they didn't use a specific substance or production method to gain access to the Japanese organic market.

This partnership streamlines the export certificate process, which also reduces the paperwork burden for farmers and businesses. It also helps provide American consumers with year-round access to a diverse array of organic products.

Both parties are committed to ensuring that all traded organic products meet the terms of the partnership, retaining their organic integrity from farm to market. Japan's Ministry of Agriculture, Forestry, and Fisheries and the U.S. Department of Agriculture's (USDA) National Organic Program—which oversee organic products in their respective countries—will both take on key oversight roles.

The United States and Japan will continue to have regular discussions and will review each other's programs periodically to verify that the terms of the partnership are being met.

This agreement only covers products exported from and certified in the United States or Japan. For additional details on this agreement, please visit: <http://www.ams.usda.gov/NOPTTradeJapan>.

Readout of this week's Trans-Pacific Partnership discussions in Washington, DC

USTR Newsletter 9/26/13

September 23 - On Saturday, September 21, 2013, chief negotiators for the 12 Trans-Pacific Partnership countries - Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States, and Vietnam - concluded four days of meetings in Washington, DC, having worked this week toward solutions and next steps on a range of issues under negotiation in the trade agreement talks.

In some TPP chapters -- including customs, telecommunications, sanitary and phytosanitary issues, technical barriers to trade, cross border services, and labor - progress toward conclusion was made on many issues and the 12 countries discussed how best to resolve other issues. Chief negotiators also discussed approaches for resolving challenges on e-commerce and legal and institutional issues. In addition, they met with the negotiating groups covering market access for goods and government procurement, which also convened this week to advance ambitious packages on goods, including industrial goods, agricultural products, and textiles, as well as government procurement. The U.S. also met with a number of other countries on the issue of state-owned enterprises.

Ambassador Froman Highlights TPP and TPA, Participates in President's Export Council Meeting at White House

USTR Newsletter; 9/26/13

Ambassador Froman speaks to the President's Export Council

September 20 - During the President's Export Council (PEC) meeting today, Ambassador Froman echoed President Obama's focus on making trade a fundamental driver of America's continuing economic recovery. Ambassador Froman joined private sector advisors, Members of Congress, and Secretary of Commerce Penny Pritzker at the White House for the meeting. The PEC is the principal national advisory committee on international trade and advises the President on government policies and programs that affect U.S. trade performance. It also promotes export expansion and provides a forum for resolving various trade-related problems in the business, industrial, agricultural, labor, and government sectors.

Ambassador Froman also reiterated the President's call for Trade Promotion Authority, as the U.S. Trade Representative advances the Trans Pacific Partnership (TPP), Transatlantic Trade and Investment Partnership (TTIP), and other important trade agreements. He stated that initiatives to deepen trade partnerships between the U.S. and other major centers of economic activity, such as the TPP and TTIP, will be an essential pillar for future growth, jobs and economic stability. The TPP is the foundation of the Obama Administration's economic policy in the Asia-Pacific region. Asia-Pacific markets are already key destinations for U.S. manufactured goods, agricultural products, and services suppliers, as well as a major source of global growth. TPP will level the playing field for U.S. workers and businesses and deepen trade and investment with this dynamic region by eliminating barriers, promoting transparent and consistent approaches to regulatory issues, supporting innovation, increasing the role of small and medium-sized businesses in trade, and dealing American firms and workers further into regional supply chains.

Tuesday, October 01, 2013

Inside U.S. Trade Daily News

Froman Calls On EU Regulators To Be More Like Their U.S. Counterparts

Posted: Sep. 30, 2013

U.S. Trade Representative Michael Froman today (Sept. 30) laid out his vision for the regulatory cooperation agenda in free trade talks between the United States and European Union, essentially calling on EU regulators to act more like their U.S. counterparts in developing regulations and standards.

Froman's comments focused heavily how the trade deal could establish cross-sector -- or "horizontal" -- disciplines such as transparency and a stakeholder input in rulemaking, and mentioned only in passing the possibility of working together on sectoral issues related to automobiles and chemicals.

[In a speech](#) to the German Marshall Fund in Brussels, Froman also criticized the strong role that member state governments have in the EU standard setting process. "Our standard-setting bodies include the participation of companies from Europe and the world," he said, "yet the only bodies the EU recognizes as producing international standards are those in which the EU member states cast the bulk of the votes," he said. Such restrictions not only limit the ability to set better standards, Froman argued, but weaken the ability of the EU and U.S. to work collaboratively to combat other countries promoting of national standards over international ones -- something that the U.S. has said is a major problem in China.

"Restricting standards development to nationality-based processes is a tempting way to carve-out market share for national constituencies," Froman said. He added that the costs of doing so, however, "are too high" and cannot be afforded in a time when both the U.S. and EU are struggling to make their economies more competitive.

"[W]hen the US and EU have shared concerns about third countries' use of standards to divide markets, rather than integrate them, TTIP should be an opportunity to set a high standard for global standard-setting," he added, referring to the Transatlantic Trade and Investment Partnership.

One EU member state official earlier this month said the U.S. focus on regulatory cooperation is to make the EU process for developing regulations more like the U.S., and to give more power to the European Commission in setting new standards across the EU.

While characterizing the challenges in trans-Atlantic regulatory cooperation as "mind-blowingly technical," Froman proposed three basic principles that -- if adopted -- could apply across all business sectors and contribute to better cohesiveness between the two economies: transparency, participation and accountability.

Forman's speech puts into sharper contrast what U.S. and EU officials have characterized as a difference in emphasis on the regulatory agenda between the U.S. and EU ([Inside U.S. Trade, Sept. 27](#)). Private-sector sources have speculated that the reason the U.S. is more focused on horizontal disciplines is because they are easier to achieve than tackling specific sectoral regulations.

Following his meeting with Froman in Brussels, EU Trade Commissioner Karel De Gucht said in a Sept. 30 statement that the EU also seeks "horizontal rules" on

regulatory cooperation to guide its quest for mutual recognition of regulations in certain sectors.

"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," De Gucht said.

In light of the U.S. and EU differences, the two sides are still in the preliminary phase in defining the scope of negotiations, including on regulatory cooperation. They are not expected to decide on what sectors to focus until December, which would still leave the decision on exactly what commitments to pursue in the sectoral negotiations.

But De Gucht said the next round of negotiations, starting in Brussels on Oct. 7, and the third round in December "should establish the common foundations for an ambitious and genuinely transformative" trade deal.

"Together with Ambassador Froman, I will encourage negotiators to be creative with the aim to present a commonly agreed outline of the regulatory and rules component of TTIP for political review in January 2014," De Gucht said. "On that basis, the political guidance can be given to try to make a maximum of progress throughout next year."

On transparency, Froman implicitly criticized the European Commission's system of issuing preliminary general papers based in advance of issuing proposed rules, and seeking comments on those papers rather than the detailed rules themselves.

The commission typically does not have a separate comment period once the actual regulation is promulgated. U.S. federal agencies, by contrast, issue proposed rules and then take comments before issuing a final version.

Froman also said that a "broad range" of stakeholders -- including foreign and domestic, public and private -- should be able to weigh in on those proposed rules. Finally, he argued, regulators must be accountable for responding to those comments and provide a "rationale" for their regulatory action, based on scientific evidence. Regulators must also provide an impact assessment with their proposal, he added.

While taking an aggressive stance toward the EU's rulemaking procedure, Froman sought to downplay what he said was an "anachronistic" notion that U.S. and EU regulatory bodies operate on fundamentally different bases. The EU system, he noted, is commonly characterized as basing its decision-making solely on the precautionary principle while U.S. regulators are sometimes criticized as looking only to a cost-benefit analysis in issuing rules.

In reality, Froman argued, regulators on both sides do a little of both. As an example of how the U.S. has taken qualitative factors into account, he cited rules implementing the Americans with Disabilities Act.

"The decision to require accessible bathrooms wasn't simply a matter of cost-benefit analysis," Froman said. "It reflected a sense of equity and dignity as well."

Froman also stressed multiple times that the U.S. and EU are aiming through their bilateral free trade talks to also strengthen the global trading system. When asked about the Obama administration's aims, he stated clearly that the U.S. is not seeking to abandon the World Trade Organization in favor of regional initiatives.

A successful TTIP negotiation "not only enhances our commitment to rules-based trade, but empowers us and enhances our ability to strengthen the rules-based system around the world, including around issues such as localization and the role of state-owned enterprises." The U.S. is also trying to tackle those two issues in the context of the

Trans-Pacific Partnership (TPP) negotiations, which are at a much more advanced stage.

Froman also offered assurances that what the U.S. and EU are trying to do is better link two economies that are already highly regulated, not launch a "deregulatory agenda," as some critics have charged. "Let me be clear: there is nothing we seek to do in TTIP to undermine the determinations that each of our systems have made with regard to the appropriate level of health, safety and environmental protection of our people," he said. De Gucht, in his statement, echoed a similar sentiment, saying he hopes Europe's "past experience and success in tackling [regulatory] issues between our own member states will also reassure critics who claim TTIP will water down Europe's current set of rules and regulations."



American
Public Health
Association

PROTECT, PREVENT, LIVE WELL

800 I STREET, N.W. | WASHINGTON, DC | 20001-3710 | WWW.APHA.ORG

202-777-APHA (2742) | FAX: 202-777-2534 | comments@APHA.org

October 2, 2013

The Honorable Michael Froman
United States Trade Representative
Washington, DC 20508

Dear Ambassador Froman:

On behalf of the American Public Health Association, a diverse community of public health professionals who have championed the health of all people and communities around the world for more than 140 years, I write to urge the administration to ensure that strong tobacco control measures to protect the public's health are preserved in the Trans-Pacific Partnership agreement.

In May 2012, the U.S. Trade Representative announced a proposal that would protect a nation's sovereignty in carrying out tobacco control efforts and would recognize the unique, harmful effects of tobacco. It is disappointing that this proposal has since been abandoned. Instead, the new USTR proposal would leave the administration's commitment to reduce tobacco use and ability to implement the Family Smoking Prevention and Tobacco Control Act vulnerable to international trade challenges. Additionally, the new proposal would undermine the Framework Convention on Tobacco Control, the world's only public health treaty, and threaten the global health effort to reduce tobacco use worldwide.

Malaysia recently offered a proposal for a complete carve-out of tobacco control measures from the trade agreement, which would grant real protection for participating countries to enact and maintain tobacco use reduction efforts. We encourage the USTR to work with Malaysia and others to support a proposal that provides the greatest protection against future acts of subversion.

Tobacco use continues to be the leading cause of preventable death in the U.S. and worldwide, accounting for six million deaths around the world every year. Tobacco use costs our nation \$96 billion in direct medical spending and \$97 billion in lost productivity annually. The TPP agreement provides us with the opportunity to lead the world in reducing the burden of tobacco use-related deaths and diseases here and abroad, and we urge the administration to ensure that the strongest possible public health measures are included in the trade agreement.

I look forward to working with you on this important public health issue.

Sincerely,

A handwritten signature in black ink that reads "Georges C. Benjamin".

Georges C. Benjamin, MD, FACP, FACEP (E)
Executive Director

MASSIVE INTERNATIONAL TRADE AGREEMENT COULD BOOST BUSINESS, SLASH REGULATIONS

HILARY NILES OCT. 2, 2013 10 COMMENTS

New international trade agreements could be a boon to Vermont's import and export businesses, but some legislators worry that regulatory "harmonization" undermines the state's authority and may threaten other sectors.

The Transatlantic Trade and Investment Partnership (TTIP) is regarded as the largest free trade agreement of its kind ever undertaken. Covering all goods, services and investments, TTIP was announced by President Barack Obama and European leaders in June. Negotiations followed in July and will continue through the fall. The agreement aims to lower tariffs and reduce regulatory barriers to trade among all American states and European countries.

British Consul General Susie Kitchens visited Vermont in September to attend the British Invasion car show in Stowe — a regular appearance for all in her post — and to learn more about the politics and economy of her new neighbor to the north. Kitchens, who's based in Boston and serves as the main British diplomatic contact for New England, said promoting a nascent and fast-moving trade agreement between the U.S. and European Union is her office's highest priority.

Viewed together, Europe represents Vermont's third largest export partner, said Susan Murray, director of the U.S. offices for export assistance, commerce and commercial service in Vermont. By far the biggest money is in electronics, a field still dominated in the state by IBM, despite its continued cutbacks.

But even without those high-end electronic components, trade of shippable goods across the pond totaled more than \$217 million in 2012, according to data from the Vermont Global Trade Partnership. That figure grew more than 10 percent from 2011, which itself had increased nearly 20 percent from the year before.

Kitchens said that growth could spike even higher. She listed the food and forestry industries, plus financial services, as potential growth sectors under TTIP. A report from the British Embassy in Washington predicts 42.2 percent total growth in exports, including services, from Vermont to the EU, if TTIP is passed as envisioned. It's unclear, however, the timeframe over which that growth would take place.

And what troubles Sen. Ginny Lyons, as well as the state Attorney General's Office, is that much of the agreement is unclear — especially its impact on the state's regulatory authority. Negotiations of international trade agreements such as TTIP and the Trans-Pacific Partnership Agreement, which is further along in negotiations, are conducted in secret.

“It's pretty horrific, to be honest with you,” Lyons said. “Negotiations that may very well affect state laws, undermine state laws and abrogate state sovereignty are not open to states.”

Lyons said she understands that negotiation of tariffs are best done privately so parties can evaluate various cost-benefit scenarios. But TTIP is largely about minimizing regulatory barriers. Without a seat at the negotiating table, states are left to speculate on the implications of trade agreements — or hope that information will be leaked.

That's what happened a few years ago when the U.S. was negotiating a bilateral trade agreement with Australia. A provision that specified permissible prescription drug lists for Medicaid, for example, got out. Vermont's Legislature felt the state's prescription protocols could be challenged under the provision, so the state passed a resolution objecting to it. Other states followed, and the provision ultimately was peeled out of the agreement.

It's an example also provided by Assistant Attorney General Elliot Burg, who said Attorney General William Sorrell's office has in the past signed onto multi-state letters taking issue with the way that free trade agreements may undermine state laws or regulations.

“These do not say international trade is bad, at all,” Burg emphasized. “But you have to look at the details ... and determine what the impact may be on issues of concern to Vermonters.”

Those issues manifest in state-specific regulations on matters such as environmental protection, government procurement standards, professional licensing and tobacco control.

“Generally, state legislatures are free to make decisions based on local values,” Burg said. But domestic regulation provisions place a burden on states to prove that such laws are necessary to achieve priorities such as quality of service, rather than public good, he said. “If that's true, then many of the laws that state legislatures enact are subject to challenge.”

Burg also mentioned that the dairy industry may suffer under TPPA if a major dairy supplier from New Zealand is given new access to New England markets. But his office

is largely focused on preserving hard-won ground in state regulatory authorities, such as tobacco control.

“We understand the reason why (negotiations) are not conducted completely in public,” Burg said. “But this is a process that really does shut out the states, and shut out public debate even at the congressional level, especially when it’s on a fast track.”

Lyons and Burg both serve on the Commission on International Trade and State Sovereignty — a more active player on the issue than most administrative offices, Lyons said. She underscored that neither she nor the commission are opposed to reduction of trade barriers.

“It’s a delicate balance,” Lyons said. “You have to be careful you’re not overstepping the bounds in one direction or the other.”

For her part, Kitchens is confident that common ground can be found. She said all 50 states and all 27 European countries will never settle on a single regulatory practice for each category of trade, but mechanisms can be built for accommodating unique systems that reflect each member state’s values.

In the meantime, Kitchens said, the member states just need to get to the negotiating table and find a place to start.

Proposed International Treaty Could Hamper State Policy

Vermont Public Radio; 10/2/13

There's concern a proposed international trade agreement could force Vermont to roll back regulations controlling the sale and marketing of tobacco products.

A state commission is looking at ways to influence deliberations over the treaty.

The [Trans-Pacific Partnership Agreement](#) (TPP) would remove trade barriers between the U.S., Canada, Mexico, Japan, Australia, South Korea, Vietnam and five other countries.

Removing trade barriers is often about lifting tariffs on imported goods, but there's another aspect to the proposed treaty that could have a significant impact on states.

Sharon Anglin Treat is a Maine State Representative who also serves on an advisory committee to the U.S. Trade Representative. She says the treaty's non-tariff provisions could give a country or a corporation the ability to challenge state regulations.

"What essentially these treaties, are saying is that there are these non-tariff barriers, regulations that make it hard for our company to compete in your country. So you need to get rid of those regulatory barriers," said Treat.

Control over tobacco policy is a big concern for states watching the treaty negotiations.

Currently [Vermont and other states can restrict](#) how tobacco is marketed and taxed, which tobacco products are available and to whom, and where they can be used.

Chittenden Senator Ginny Lyons who co-chairs the [Vermont Commission on International Trade and State Sovereignty](#) says those policies could be challenged under the treaty.

"A large corporation could come in and challenge those laws, either in our courts or in a free trade tribunal and experience tells us that a small state like Vermont would have a very difficult time paying for that litigation," said Lyons. "All of our public health regulations on tobacco would be at jeopardy."

Lyons said it's not a far fetched notion that a distant government might take note of Vermont regulations.

“The electronic waste law is a perfect example. When I had that bill in committee, China sent me letters telling me that if I should pass it that it would jeopardize their entire technology industry,” she said.

The electronic waste recycling legislation was passed and signed into law in 2010.

In terms of tobacco regulation, Chris Bostic of the advocacy group [Action on Smoking and Health](#) said that Vermont has a lot to show for its efforts to [regulate tobacco and lower smoking rates](#).

“It says to me you have a lot to protect here and you don’t want future negotiations to undermine what you have achieved and what you can still achieve,” Bostic told the commission.

Bostic said at this point the states’ best hope is to convince negotiators to provide a ‘carve out’ that would essentially exempt tobacco from the treaty’s provisions.

Commission members are also concerned that the Trans-Pacific Partnership Agreement could also have an impact on Vermont’s efforts to deliver health care, including agreements to purchase pharmaceuticals at a lower cost.



FOR IMMEDIATE RELEASE

October 3, 2013
5:02 PM

CONTACT: [Food & Water Watch](#)

[Erin Greenfield](#) at (202) 683-2457 or
[news\[at\]fwwatch\[dot\]org](mailto:news[at]fwwatch[dot]org)

Court Grants Four Groups' Right to Defend COOL

Farm, Ranch and Consumer Groups Allowed to Defend Merits of Commonsense Labels

WASHINGTON - October 3 - The United States District Court for the District of Columbia granted R-CALF USA, Food & Water Watch, South Dakota Stockgrowers Association and Western Organization of Resource Councils motion to intervene and defend Country of Origin Labeling (COOL) from a lawsuit filed by the international meatpacking industry.

“As the largest producer-only trade association representing the U.S. cattle industry, we will take this opportunity to aggressively defend COOL for U.S. cattle farmers and ranchers,” said R-CALF USA CEO Bill Bullard. “R-CALF USA fought for more than a decade to implement COOL with these very allies and together we are prepared to fight even harder to defend it.”

The requirement for mandatory COOL was first passed in the 2002 Farm Bill, but its implementation was repeatedly delayed by meatpacker pressure on Congress. A coalition of meatpackers (both domestic and international) and packer-producer trade associations sued USDA to block COOL in July 2013, nearly five years after COOL was included again in the 2008 Farm Bill, and additionally sought a preliminary injunction to halt COOL’s implementation immediately.

“With this decision, western independent cattle producers have an opportunity to defend a valuable program under attack by the NCBA and meatpackers,” said Wilma Tope, a rancher near Aladdin, Wyoming, and WORC spokesperson. “Consumers have a right to know where the meat they buy and eat comes from.”

The meatpackers were dealt a significant setback in September when the District Court rejected their request for a preliminary injunction in a well-crafted ruling that provided a solid understanding of a complex regulatory issue. The meatpackers immediately appealed the ruling on the preliminary injunction, but the underlying challenge to the COOL rule is still pending before the lower court.

“Consumers, farmers and ranchers have tirelessly fought to implement COOL and the Court’s ruling allows them to join together again in defense of a commonsense rule that allows families

to know where their food comes from,” said Food & Water Watch Executive Director Wenonah Hauter.

A key goal of the meatpackers’ suit is to continue using misleading “commingled” labels stating “Product of Mexico, Canada, and the U.S.,” even on meat from animals that never stepped foot in either Canada or Mexico. The 2013 final rule required that COOL labels clearly delineate each production step where the animal was born, raised and slaughtered so consumers can make informed choices and American farmers can distinguish their products in the marketplace.

“We are pleased the Court has granted us permission to defend the opportunity for U.S. cattle producers to have their U.S. beef products properly labeled so they can be chosen by U.S. consumers,” said South Dakota Stockgrowers Association Executive Director Silvia Christen.

Contact:

Bill Bullard, R-CALF USA: 406-252-2516

Anna Ghosh, Food & Water Watch: 510-922-0075

Silvia Christen, South Dakota Stockgrowers Association: 605-342-0429

Kevin Dowling, Western Organization of Resource Councils: 406-252-9672

###

Food & Water Watch is a nonprofit consumer organization that works to ensure clean water and safe food. We challenge the corporate control and abuse of our food and water resources by empowering people to take action and by transforming the public consciousness about what we eat and drink.

Quebec Fracking Ban Lawsuit Shows Perils Of Free Trade Deals: Critics

CP | By Julian Beltrame, The Canadian Press Posted: 10/03/2013 1:25 pm EDT | Updated: 10/03/2013 5:06 pm EDT

OTTAWA - Free trade critics say a \$250-million damage suit being pursued as a result of Quebec's moratorium on fracking is proof Canada needs to be careful in negotiating trade pacts around the world.

The Council of Canadians, the Sierra Club and Quebec-based Eau secours say the suit by Lone Pine Resources Inc. (TSX:LPR) shows that trade deals that include investor protection clauses are a bad idea because they can prevent governments from passing laws to protect the environment.

The groups are asking Lone Pine to drop the suit before a NAFTA panel, but company president Tim Granger says he is going ahead unless Quebec lifts its moratorium on fracking for natural gas under the St. Lawrence River.

"As an organization we, in good faith, purchased leases, we paid rentals and then to just have been stymied, that's not acceptable," he said in an interview.

"What we are asking for is some level of restitution for losses we have incurred and what we could have potentially received if we were allowed to develop those leases."

The statement of claim filed Sept. 6 says the company "expended millions of dollars and considerable time and resources" on the project and that the Quebec government was "arbitrary" and "capricious" in revoking the rights even before an environment study on the fracking process was completed.

The company estimates there are between 1.9 trillion and 3.3 trillion cubic feet of undiscovered natural gas trapped in the shale in the area covered by the suit, the equivalent of about half of Canada's total annual production.

But the groups say the suit has become symbolic for everything that is wrong with investor protection clauses in major trade agreements.

The Canadian case has attracted even greater scrutiny because Quebec has yet to decide whether fracking — a process to inject fluid into the ground at a high pressure in order to fracture shale rocks to release natural gas inside — can be conducted safely under the St. Lawrence.

"If a government is not even allowed to take a time out to study the impact without having to compensate a corporation, it puts a tremendous chill on a governments' ability to regulate in the

public interest," said Ilana Solomon, director of the Sierra Club's trade program in Washington, D.C.

Stuart Trew, a trade campaigner with the Council of Canadians in Ottawa, which has generally been critical of trade deals, says the suit has attracted attention in Europe, Australia and other countries contemplating major trade deals.

Canadians should expect more lawsuits if it completes trade deals with the European Union and in the Trans-Pacific Partnership, he said, since both are likely to include investor protection provisions similar to the one found in NAFTA.

"These investment protections are going to be built into these mega-trade deals and this Lone Pine case has become kind of the poster child for what's wrong with giving corporations the right to sue governments when they don't like certain policies," he said.

"We have no confidence the government is going to be able to limit cases brought by European countries, In fact, (the Canada-EU trade deal) could lead to more cases than have happened under NAFTA."

Even if the lawsuits fail, Trew said such cases serve as a chill to governments that want to regulate in areas of the environment and public safety and that is "entirely intentional."

Another unusual aspect of the case is that Lone Pine is a Calgary-based firm and would not have standing as a foreign entity to sue Canada under NAFTA, but Granger said it can do so because it is registered in Delaware.

Although the suit complains against a Quebec government action, the federal government would be liable to pay any damages if it succeeds since it alleges that obligations under the North American Free Trade Agreement were violated.

In 2010, Ottawa agreed to pay AbitibiBowater \$130 million to settle the company's claim that Newfoundland illegally seized some of its assets, a suit that was also filed under NAFTA.

Prime Minister Stephen Harper said at the time he would in the future seek to "reclaim" money from the provinces if their actions cause Ottawa to lose cases before international trade process.

From: Eyes on Trade <gtwinfo@citizen.org>

Date: October 4, 2013 at 3:06:32 PM EDT

Eyes On Trade: Obama Cancels Trip to Asia Trade Summit as Elected, Labor and Business Leaders Detail TPP Trade Pact Problems (plus 1 more posts)

[Obama Cancels Trip to Asia Trade Summit as Elected, Labor and Business Leaders Detail TPP Trade Pact Problems](#)

Posted: 04 Oct 2013 08:09 AM PDT

President Obama has now announced that due to the government shutdown, he will not be attending the summit next week in Indonesia that his administration had (mis)identified as a deadline for concluding the long-lingering negotiations for the sprawling [Trans-Pacific Partnership \(TPP\)](#) "trade" pact. Long before the shutdown, it became clear that this deadline would be missed given the TPP's [laundry list of unresolved controversies](#), forcing the administration to reframe the summit as a "milestone." Obama's absence next week further downgrades the summit (more of a "speed bump" than a "milestone") and further dashes the administration's attempts to claim that the polemical TPP is in an "end game."

The announcement came just after members of Congress, business leaders, and labor leaders joined together yesterday to detail the critical threats of the TPP to U.S. jobs, food safety and affordable medicines, and to throw a dose of reality onto the administration's claims about a quick fix to the beleaguered TPP negotiations. The subsequent announcement of Obama's no-show next week bolstered their arguments. Here's what they said:

October 3, 2013

As White House Weighs Attending Trade Summit during Government Shutdown, Major Unresolved TPP Issues, Growing Opposition to Fast Track Authority Highlighted

Today, House Democratic Steering and Policy Committee Co-chair Rosa DeLauro, Ways & Means member Jim McDermott, CWA President Larry Cohen and Brian O'Shaughnessy, Chairman of Revere Copper Products warned of severe threats to U.S. jobs, food safety and affordable medicines posed by the Trans-Pacific Partnership (TPP) free trade agreement. With negotiations far from over, Congress should retain its authority to ensure that any final deal benefits most Americans and not pass Fast Track trade authority. Comments were made during a teleconference call moderated by Lori Wallach, Director of Public Citizen's Global Trade Watch.

President Obama is facing the choice of staying in Washington for on-going government shutdown and debt ceiling negotiations or traveling to Bali to attend a summit with the heads of state of the 11 other nations involved in TPP talks on the sidelines of the 21st Asia-Pacific Economic Cooperation (APEC) Economic Leaders' Meeting October 7-8.

At the Summit, President Obama hoped to announce a final TPP deal after four years of contentious negotiations. However, there is no consensus on key TPP terms relating to job offshoring, a ban on Buy American procurement, disciplines against State Owned Enterprises subsidizing their operations or enforceable labor and environmental rules. Most other TPP nations strongly oppose U.S. proposals that could increase medicine prices and undermine financial regulation. Talks on sensitive auto, dairy, textile, and sugar market access issues are still in their early stages. Despite bipartisan demands in recent weeks by 60 U.S. Senators and 230 Representatives that TPP include disciplines against currency manipulation, talks on the subject have not even begun.

Rep. Rosa DeLauro (D-CT) said, “The Trans-Pacific Partnership is an agreement of broad scope and I have been particularly concerned with food safety issues. We would see an influx in seafood products from Vietnam and Malaysia, which have terrible food safety records, with any TPP agreement and I am afraid the food safety dispute resolution process being negotiated may further jeopardize food safety.

“On top of this, I do not believe all Members of Congress are being given a sufficient opportunity to provide input or have a meaningful role in the negotiating process. Twentieth Century ‘Fast Track’ is simply not appropriate for 21st Century agreements like the TPP agreement that is moving toward completion. It must be replaced with trade promotion authority that increases Congress’s role in the process.”

Rep. Jim McDermott (D-WA) said, “Washington State knows the value of a good trade agreement, and our economy depends on robust trade relations. I have voted for some trade agreements and against others, because substance matters. On fast track authority, I voted against it in 2002 because I did not think it included mechanisms to ensure that a President will consult meaningfully with Congress during a trade negotiation. The Obama administration has been better on consultations compared to the Bush administration, but more can be done to improve the process so that there is greater transparency and larger role for Congress.

“On the Trans-Pacific Partnership, I will be watching closely to see what kind of an agreement we get out, particularly related to ensuring access to medicines and provisions related to labor and the environment.”

Larry Cohen, President of the Communications Workers of America said, “If we keep going down the same trade road as we have over the past 40 years, America will soon be the one country on Earth that has not just exported our manufacturing base but also the only one that offshores its service sector jobs like those at call centers. We are going to fight to make sure that doesn’t happen.”

Brian O’Shaughnessy, Chairman, Revere Copper Products and Chief Co-Chair of the Coalition for a Prosperous America said, “Companies like mine are the manufacturing cornerstones that our economic revival is supposed to be built on, but year after year, trade bill after trade bill, I see more and more of our customers moving their operations overseas. The lack of transparency during negotiations leads to numerous loopholes in our Free Trade Agreements other countries use to export unemployment and import full time jobs. Just to name three of them, other countries can still manipulate their currency; change their border adjustable taxes to act like tariffs; and, ignore labor, environmental and human rights.”

Lori Wallach, Director of Public Citizen’s Global Trade Watch said, “At the last TPP Summit in 2011, heads of state announced they had a deal when they did not and since then opposition to the very notion that closed-door “trade” negotiations with 600 official corporate advisors should rewrite wide swaths of 12 countries domestic laws has only grown in the U.S. and in other TPP counties. This TPP we-have-a-deal kabuki theatre is aimed at trying to create a sense of inevitability when in fact the talks are deadlocked in no small part because increasingly people in the countries involved are realizing that TPP is not mainly about trade, but would promote more job offshoring, raise medicine prices and roll back vital food safety, financial and other safeguards we all rely on.”

The diversity of the speakers on today’s call - senior members of Congress and business and labor leaders – reveal how concerns about the TPP are growing as details about the secretive negotiations have begun to emerge. The speakers were united in insisting that the pact’s draft texts must be aired fully before the American people and the Congress and not railroaded through Congress using the extraordinary Nixon-era Fast Track procedure. Fast Track has only been used 16 times among hundreds of U.S. trade agreements. Congress refused to delegate its authority using Fast Track when requested by President George W. Bush in 2007 and by President Bill Clinton in 1995, 1997 and 1998.

[Trans-Pacific Partnership: What End Game? \(No End in Sight...\)](#)

Posted: 03 Oct 2013 07:10 AM PDT

The heads of state of the 12 nations involved in Trans-Pacific Partnership (TPP) negotiations meeting on the sidelines of the Bali APEC Summit are expected to announce *again* that the outlines of a TPP deal have been achieved. But wait, that was the story pitched after a similar meeting at the Hawaii APEC summit in 2011. (USTR Release: On November 12, 2011, the Leaders of the nine Trans-Pacific Partnership countries ... announced the achievement of the broad outlines of an ambitious, 21st-century Trans-Pacific Partnership (TPP) agreement...) Until recently, USTR Michael Froman was declaring that the TPP was in its “end game.” Except:

- There is no text agreed for major swaths of at least three of the pact’s 29 chapters.
- There are multi-year deadlocks on a long list of controversial “behind the borders” issues in a dozen *other* chapters – one chapter has 300 “brackets.” (Brackets mark disputed text.)
- There are no deals on any of the controversial market access issues— from sugar and dairy to textiles/apparel and autos, in part because the most basic question remains contested: how will the TPP relate to the more than 30 bilateral trade pacts already existing between the parties?

And, as details have leaked out about the draft texts that have emerged from three years of extremely secretive negotiations, political opposition is building in several TPP countries among parliamentarians, powerful professional associations, business sectors, unions and the public. Signatory countries would be required to conform all of their domestic laws to the TPP terms. And, only five of the pact’s chapters cover traditional trade matters. The rest would set rules on patents and copyright, medicine pricing policies and health care, financial regulation, food safety, immigration visas, government procurement, land-use, energy policy and more.

CHECK LIST: WERE THESE CONTROVERSIAL TPP ISSUES SUDDENLY RESOLVED*?

Entire patent section of Intellectual Property chapter and text on medicine pricing rules both deadlocked

A U.S. proposal that would deliver on Big Pharma’s demands for extended patents, data exclusivity and other monopoly powers that raise medicine prices has faced unwavering multi-year opposition by most other TPP countries. The entire patent section of the IP text is in brackets. In another chapter, an Annex cynically dubbed “Annex on Transparency and Procedural Fairness for Healthcare Technologies,” is also deadlocked. This text would allow Big Pharma to challenge the decisions of doctors and pharmacologists who determine the cost-saving medicine formularies of countries’ healthcare systems. These issues have become a major political liability in numerous TPP nations.

Deadlock over enforceability of labor rights

The U.S. seeks labor standards that are enforceable on equal terms with the pact’s other provisions. Most TPP countries oppose enforceable labor standards altogether.

Environment chapter at an impasse

The text still has 300 brackets - connoting text that is not agreed, which is most of the text.

Deadlock over the State Owned Enterprises (SOE) text

To start with, there is no agreed definition of SoEs! The U.S. has proposed disciplines on SoEs forbidding the use of government resources to subsidize SoE activities within TPP nations. A sizable bloc of nations opposes the U.S. text absolutely. Recently Australia tabled an alternative text altogether. The result: this text is all brackets and no agreement.

United opposition to the U.S. demand that TPP ban the use of capital controls

With the IMF now endorsing the usage of capital controls as a legitimate policy to avoid floods of speculative capital that cause financial crises, it is not surprising that there is united opposition to the unbending U.S. demand that TPP include a ban on countries' use of various common-sense macro-prudential measures, including capital controls and financial transaction taxes.

Deadlocks over various aspects of controversial "investor-state" private corporate enforcement of TPP

Australia's newly-elected conservative government has reiterated that it will not be bound to the investor-state enforcement system, which elevates individual corporations to equal status with sovereign nations in order to enforce privately a public treaty by demanding compensation from governments before panels of private-sector attorneys for government actions that undermine expected future profits. Japanese Prime Minister Abe's Liberal Democratic Party parliamentary majority has set as a condition for Japan's TPP participation that the deal not include investor-state enforcement. Other TPP nations oppose the U.S. demand that government natural resource concession, private-public-partnership utility management contracts and procurement contracts be subject to such extra-judicial processes. Key text remains in brackets with respect to both the substantive rights which investors would be granted and the enforcement system.

Negotiations on sensitive Market Access issues not even started

Japan's parliament has listed five "sacred" commodities – rice, beef and pork, wheat and barley, sugar and dairy - that it demands be excluded from TPP rules zeroing out tariffs. Other TPP countries insist that no sector can be excluded. The rules of origin – how much of a product's value must come from TPP countries – have not been agreed for sensitive sectors such as apparel/textiles, autos and more, so actual tariff-cutting negotiations have not started on these products. Battles over sugar, dairy and more remain unresolved.

Impasse on Copyright Rules

Hollywood and recording industry-inspired proposals to limit internet freedom and access to educational materials, to force internet providers to act as copyright cops, and to cut off peoples' internet access have triggered public outrage and led to a negotiation stalemate. There is entrenched disagreement about whether copyright should be able to keep works of art and literature out of the public domain 70 years after death of the author, with no resolution in sight.

Negotiations on Currency Disciplines Not Even Started

Despite bipartisan demands in recent weeks by 60 U.S. Senators and 230 Representatives that TPP include disciplines against currency manipulation, talks on the subject have not even begun.

*** And, that's just a sample of the issues that are raising opposition in both the negotiations suits and TPP nations' streets...**

1:00 AM

OUR OPINION: Cheaper imports haven't delivered promised growth

Back in the 1990s, free-trade advocates made two predictions: Manufacturing jobs would move offshore, where labor and other costs were lower, but low prices for imported manufactured goods here would circulate money through the economy that would stimulate the growth of service jobs.

The first part certainly came true -- manufacturing jobs in Maine declined by a third in the eight years after we signed the North American Free Trade Agreement -- but the second has been much more problematic.

Most of the people who lost those manufacturing jobs when the plants moved away were not able to make the transition to a new kind of work. And towns that lost large employers were hollowed out and not replenished with new growth.

Industry and government officials celebrated National Manufacturing Day on Friday, and it is a good occasion to recognize the value that manufacturing jobs create and what was lost when mills and jobs disappeared. It was much greater than what was returned in the form of cheap imports. It is in that light that we should view the new Trans-Pacific Partnership, now under negotiation, which could wipe out a tariff on imported shoes that would effectively erase New Balance, the last domestic athletic shoe manufacturer, and its 900 jobs in Maine.

American policymakers should reflect on what those jobs really mean to towns like Norridgewock and Skowhegan. National and state policy should be focused on building new industries in sectors such as information and clean energy technology, but it also should aim to keep the manufacturing jobs that we already have and are hard to replace.

Manufacturing jobs pay better than most other work. The Maine Department of Labor reports that the average wage in manufacturing is \$75,400 a year. The average wage for all other non-farm jobs is \$36,500. It is hard to imagine a bigger boost to the state's economy than increasing the number of jobs in the manufacturing sector.

There is more than one way to achieve that. Research and development grants are one way to build new companies and new products. Supporting emerging technologies, such as offshore wind, is another. And so is making sure that regional technical schools and community colleges are graduating students with the right skills to fill those jobs.

But holding on to what we have is also important. It's not protectionism to say that companies that choose to keep operations in America should not have to battle offshore competitors that exploit the environment and their workforce to bring down prices.

Not all jobs are created equal. Some bring more value to their communities, and that should not be taken lightly.

Were you interviewed for this story? If so, please fill out our [accuracy form](#)

[Send question/comment to the editors](#)

Recommend

3 people recommend this.

[Tweet](#)

Find this article at:

http://www.kjonline.com/opinion/cheaper-imports-havent-delivered-promised-growth_2013-10-07.html

Check the box to include the list of links referenced in the article.

<http://blogs.ft.com/the-world/2013/10/five-reasons-you-should-care-about-one-very-big-trade-agreement/>

Five reasons you should care about one very big trade agreement

October 8, 2013 5:42 pm [by Shawn Donnan](#)

CTPC Staff Note: *This article originally included a number of charts and graphs which could not be successfully copied for this document. Interested parties are encouraged to go to the website address listed above to view the original charts and graphs in the context of the complete article.*

There's been a lot written [in the FT](#) and elsewhere about the Trans-Pacific Partnership, or TPP. Here are five reasons you should care about this trade pact:

1. This is a big deal.

If, or when, it is finalised the 12-country Pacific Rim deal will cover countries responsible for almost 40 per cent of global GDP and involved in more than a third of global trade.

This chart is taken from a [June 2013 report](#) by the US Congressional Research Service. Some \$18tn in goods is traded around the world each year these days. The countries in the TPP (The current "TPP 12": Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the US, and Vietnam) accounted for 36 per cent of that total in 2011.

More than \$2tn of the trade by TPP countries was with other TPP countries. But those countries did plenty of trade with the rest of the world. Again, from that US CRS report:

2. Some people think the TPP is destined to get even bigger

The origins of the TPP lie in a much smaller deal. But even then it was a small deal with big ambitions.

In June 2005 Brunei, Singapore, New Zealand and Chile announced they had successfully concluded negotiations to form the "Trans-Pacific Strategic Economic Partnership Agreement". For good reason, it is more commonly known as the "Pacific Four", or P4, agreement. Their goal, they announced boldly, was a "high-quality" trade agreement that other "like-minded" countries could accede to if they committed to the goal.

In September 2008, then US Trade Representative Susan Schwab announced the US would seek to join and that changed the game. By November 2011 nine countries had joined the rebadged TPP and over the past two years the scale of it has grown even more with the additions of first Canada and Mexico and then, earlier this year, Japan.

But that, if all goes to plan, is unlikely to be the end of it.

Here's what the leaders of the TPP countries had to say at the end of this week's summit in Bali:

"We see the Trans-Pacific Partnership, with its high ambition and pioneering standards for new trade disciplines, as a model for future trade agreements and a promising pathway to our APEC

goal of building a Free Trade Area of the Asia Pacific. We are encouraged by the growing interest in this important negotiation and are engaging with other Asia-Pacific countries that express interest in the TPP regarding their possible future participation.”

South Korea is often mentioned as the country most likely to join the TPP next. So too is the Philippines. But, as the leaders declared in Bali, that’s not where some people believe it will all end. Analysts at the Washington-based [Peterson Institute for International Economics](#) are among those [who believe](#) that the TPP could indeed one day be one of the component parts of a much bigger Free Trade Area of the Asia Pacific, which the members of the Asia-Pacific Economic Cooperation have set as a goal. This is from a June 2012 Peterson Institute policy paper:

That Asian track they refer to is now underway as well. It refers to the Association of South-East Asian Nations’ [“Regional Comprehensive Economic Partnership”](#), a bid by Asean to bring the bloc’s trade agreements with Australia, China, India, Japan, South Korea, and New Zealand under one big umbrella agreement.

But it wouldn’t have to stop there. The US is now negotiating a trade deal with the European Union that is even bigger potentially than the TPP. And if that agreement was to be joined together with the TPP and other “mega regionals”, as some people call them, then you could eventually have the makings of a truly global trade agreement, albeit one that leaves out some smaller and poorer countries who are still hoping that the 160-member World Trade Organisation will come up with its own deal 12 years after the launching of the Doha Round.

3. It’s all about China and China knows it.

US officials deny it. But it doesn’t take long when you are gossiping with other trade officials and experts to get someone to argue that the whole TPP exercise is really about containing a rising China. And there’s clearly some truth to that. The TPP is arguably the economic backbone of the Obama administration’s “pivot” to Asia, which in itself is all about a strategic response to the rise of China. That explains in large part why everyone was [so agitated](#) when Barack Obama cancelled his trip to Asia because of the US shutdown.

China has said it would be open to joining the TPP some day and there are plenty of people out there who believe it may happen. But it doesn’t take much reading of Chinese academics and the state media to get a sense of how the people in Beijing see the TPP.

This is from a June 2012 CSIS paper by Wen Jin Yuan, who was then a PhD student at the University of Maryland and interviewed a host of China trade scholars as part of her research: *“The rapid movement of the TPP agenda has caused China some disquiet — China is keeping a close eye on the process of the TPP negotiations and anxiously awaits the outcome. China is actively promoting the regional economic integration of East Asia, which depends heavily on external neighboring economies, and **the TPP agenda is considered by many Chinese policy makers and scholars as a centrifugal force arising to rip asunder the regional economic integration of East Asia. Moreover, there is also a strong voice in Chinese academic and policy circles which maintains that the main reason behind the Obama Administration’s support for the TPP agenda is the US’s desire to use the TPP as a tool to economically contain China’s rise.**”*

Here is how Xinhua, the Chinese state news agency, put it in a recent English-language [analysis](#) following the much-watched opening of the Shanghai Free Trade Zone (or FTZ):

The FTZ is also a starting point for China to get involved in the process of writing global trade rules, especially when several new free trade arrangements such as the Trans-Pacific Partnership (TPP), seemed to be bypassing China, the world's second largest economy.

Wang Yong, an expert from Peking University, said China is facing unprecedented challenges in global free trade setups with its absence from the TPP and the Transatlantic Trade and Investment Partnership.

Yves Tiberghien, associate professor of political science and director of the Institute of Asian Research at the University of British Columbia, Canada, recently told Chinese media that the Shanghai FTZ is part of China's overall strategy to counter the TPP led by the [United States](#) as the Chinese model continues to evolve and has the ability to generate further growth.

4. Unless you are in Japan. Then it's all about "Abenomics" and domestic reform...

When Japan joined the TPP talks this summer it changed the whole game. All of a sudden the world's biggest and third-biggest economies were talking free trade. It gave the whole thing scale.

The big question now is whether Shinzo Abe, Japan's prime minister, can deliver. And whether he will be willing to offer the needed opening-up of Japan's politically sensitive agricultural sector that the other 11 nations are clamoring for. Rice farmers in the US and Australia want to be able to compete better in Japan. So do their [pork farmers](#).

Many of those negotiating with Japan [believe](#) that this time around the government in Tokyo may be serious and Akira Amari, Japan's minister for economic revitalisation, told a small group of reporters, including our Ben Bland, that the TPP is the "fourth arrow" of Abenomics, which until now has famously only had three arrows.

The barriers at home are significant, as we have reported in the [FT](#) ([The Economist](#) has, too). There are reasons to think that Mr Abe may be able to weather the political opposition this time. Here are three reasons/charts taken from a very good New Zealand Asia Institute [working paper](#) on Japanese food policy and the TPP:

Japanese farmers are getting older, and fewer and fewer young farmers are joining the cause

The cost of producing Japanese rice is not as out of whack with international markets as it used to be

And domestic rice consumption and production have also been falling over the years – ie rice in theory is not as big a part of Japanese life as it used to be

5. The Obama administration is facing its own fight at home over the TPP and trade.

The US is the de facto leader of the TPP negotiations these days and Obama has made clear he sees the Pacific Rim deal as a key pillar of his second-term trade agenda. If he concludes both the TPP and a trade agreement with the European Union (the Trans-Atlantic Trade and Investment Partnership, or TTIP) Obama will do a lot to bolster his legacy. Not only will he have reformed healthcare but he will have engineered the creation of trade areas covering some 70 per cent of global GDP.

But not everyone is on board and another fight may be brewing. As the US government shutdown has shown, politics on Capitol Hill are volatile these days. In September, 60 US senators [signed a letter](#) calling for the Obama administration to include discussions on currency in the TPP negotiations. They are also manoeuvring to have currency [included in any bill](#) giving the president so-called “fast track” authority to negotiate trade deals, which expired in 2007. What are they on about? Japan and the yen is the simple answer. As this chart shows the yen has weakened by more than 20 per cent over the past year against the dollar and the [US auto industry](#) and other manufacturers are worried that amounts to a competitive advantage for [Japanese industry](#).

Much of that currency opposition comes from the left of the Democratic party and members of Congress from rust belt states. But it’s not only in Congress that Obama is facing criticism over his trade policy. Unions and some other stalwarts of the [anti-trade American left](#) have been mobilising to oppose what they see as another effort to send US jobs overseas. In September activists [clambered onto the scaffolding](#) outside the US Trade Representative’s office near the White House and unfurled this banner.

AFP

All of which means that when it comes time to vote trade deals through Congress and secure the fast-track authority he needs to deliver his second-term trade agenda Obama may soon have to rely on the very Republicans with which he is not engaged in a bitter standoff.

<http://stream.wsj.com/story/latest-headlines/SS-2-63399/SS-2-243529/>

China Hints at Softening on Trade Talks

May 30, 2013

China has suggested it might be willing to join U.S.-led talks to strike an Asia-Pacific free-trade agreement, signaling a possible softening of its stance on the proposal shortly ahead of a key meeting between the U.S. and Chinese leaders.

BEIJING—China has suggested it might be willing to join U.S.-led talks to strike an Asia-Pacific free-trade agreement, signaling a possible softening of its stance on the proposal shortly ahead of a key meeting between the U.S. and Chinese leaders.

China's official press and academics in policy circles have generally been wary of talks to establish what is known as the Trans-Pacific Partnership. The talks include the U.S. and Japan and are focused on reducing trade and investment barriers among the 12 nations involved in the negotiations. Some critics in China say it is partly aimed at containing China's growing economic influence.

But this week a spokesman for China's Ministry of Commerce said that China would analyze the pros and cons as well as the possibility of joining the talks "based on careful research and according to the principles of equality and mutual benefit."

The spokesman, Shen Danyang, said in a statement posted on the ministry's website on Thursday that Beijing was also soliciting the views of other government departments.

On Friday, Foreign Ministry spokesman Hong Lei said "the Chinese side has an open-minded attitude with regard to the TPP... and other initiatives conducive to promoting Asia-Pacific economic integration and common prosperity."

Mr. Hong, speaking to reporters at a regular news briefing, said Beijing was paying close attention to the discussions and that it hopes that "TPP negotiations are able to increase transparency."

It wasn't immediately clear how much of a policy shift this might prove to be, and China would face major hurdles in joining the talks. Talks would most likely include issuing rules covering matters such as state-owned enterprises and currency trading—fixtures of China's unusual brand of state-led capitalism.

But the change in tone was evident. While Chinese officials have been circumspect about the TPP in public comments, state media has been more critical. In February, the People's Daily, the mouthpiece of the Communist Party, said in a commentary that "the U.S. effort to bring in Japan to the TPP is aimed at curbing the influence of China in the Asia-Pacific region."

The remarks from the Chinese ministries came shortly before a meeting between China's president and Communist Party leader Xi Jinping and U.S. President Barack Obama in the U.S.

next week. Mr. Xi is already on his way to the Americas, making stops in Trinidad and Tobago, Costa Rica and Mexico ahead of the meetings with Mr. Obama at an estate in California.

China could offer other moves to assuage the U.S. ahead of the talks. Currency markets in recent weeks have bid up the value of China's currency, the yuan, partly on expectations that China may move to give it greater flexibility in daily trading.

Ma Xiaoping, an economist at HSBC, called the change in tone a gesture, though cautioning against excessively high expectations. "It won't have any substantial impact on China or global trade any time soon. It's more like China's gesture of openness."

Another analyst said that Beijing's position on the trade talks has indeed been changing. "The government comments represent the view that China shouldn't miss any global trade negotiations no matter who is leading them," said Citigroup economist Ding Shuang, adding that there is a growing view that if Beijing wants to have a say in the pact, it needs to participate in the rules making.

"It's a start, but the TPP threshold is high and China is still far away from participating in it substantially," he said.

Japan is joining 11 nations already in talks on the TPP: the U.S., Canada, Mexico, Peru, Chile, Vietnam, Malaysia, Singapore, Brunei, Australia and New Zealand. Members hope to reach a deal by the end of this year. The addition of Japan would boost the proposed agreement to one covering nearly 40% of world economic output.

Some state media and prominent experts in China include the TPP among other signs of what they say see as a policy of containment by the U.S. against China. They point to the recent U.S. military and diplomatic pivot toward Asia, which has included deployment of an early-warning radar system in Japan that U.S. officials say is aimed at North Korea, as well as deployment of U.S. Marines in Australia.

Mr. Xi is a vocal proponent of a rejuvenation effort called the China Dream. Experts say the China Dream includes a prominent military and economic role for China in the Asia-Pacific region.

—Yajun Zhang, Brian Spegele and William Kazer

CQ NEWS – OPINION

May 31, 2013 – 12:56 p.m.

CQ NEWS – OPINION

May 31, 2013 – 12:56 p.m.

Worlds Apart: Making Sure Trade Policies Improve Global Health | Commentary

By Rep. Jim McDermott

As a member of Congress and a physician, I am very proud of the enormous generosity of the American people. Through their engagement, and their tax dollars, Americans help millions of disadvantaged people around the world by providing access to medical care and essential drugs. Unfortunately, we are also currently negotiating sweeping international trade agreements that may curtail our ability to continue helping the poorest of the poor.

Working as a doctor in sub-Saharan Africa during the 1980s, I witnessed the AIDS epidemic devastate entire communities. I saw adults die far too young and watched women pass HIV to their newborns without a cure or a compressive response. Amazingly, assuring an AIDS-free generation is not only within reach today; it is, in fact, an official policy goal of the U.S. government. And while the global progress of HIV/AIDS treatment and prevention is impressive, it is just one of many global disease control efforts that the United States has spearheaded and pursued.

With America's record of global health leadership in mind, I am troubled by what may happen to access to medicines for the poor around the world as a result of our new trade agreements.

The Trans-Pacific Partnership is being negotiated right now. It includes 10 countries of the Pacific Rim, including developing countries such as Peru, Malaysia and Vietnam. If the TPP agreement is done right, it will encourage and support American exports and create needed jobs in the United States. The critical intellectual property provisions of the pact should protect inventors and developers of breakthrough innovations, but they cannot be so restrictive that they cost millions of lives in less developed countries.

At the beginning of TPP negotiations two years ago, for reasons that are unclear, the U.S. asked the other 10 countries to accept new and very rigid intellectual property measures that would greatly limit availability of the affordable generic medicines that the success of U.S.-supported global health programs require. For example, more than 98 percent of HIV/AIDS medicines used to fight AIDS in Africa are generics, mostly made in Asia.

The United States is currently party to many international agreements that include strong intellectual property protections. These agreements protect innovation, including 20-year patents on new drugs, but they also allow enough flexibility for poorer countries to respond to public health needs with accessible, low-cost drugs. We worked hard to get these rules in place and they are working well.

But the U.S.' current TPP proposal on medicines upends the present well-structured balance by extending monopoly protections much further. It would force people in developing countries to wait longer for affordable medicines, if they can access them at all. It would extend patents beyond the current 20-year norm and block national regulators from using existing clinical trial data to approve the production of generic or "bio-similar" drugs.

Alarmingly, the proposal also outlaws "pre-grant opposition" that allows doctors and patients to provide information to their governments about patents they believe do not meet national rules, an important democratic safeguard. The proposal also requires the patenting of new versions of old medicines, even when the new versions offer no additional therapeutic benefits. It even

requires patenting of surgical, therapeutic and diagnostic methods, which not only is unethical but also could increase medical liability and the cost of practice.

Six years ago, my congressional colleagues and I battled similar issues during negotiations on trade pacts with Peru, Colombia and Panama, and we reached bipartisan agreement to protect public health. The “May 10th Agreement,” as it’s called, is working but now some are insisting on abandoning that effective approach.

The TPP may create millions of jobs here in the U.S. It also must facilitate even broader access to lifesaving medicine in our partner nations. The current U.S. proposal is being revisited now; it must be modified to reflect the beneficial balance we established years ago.

Global health, innovation and access to medicines are top priorities for many members of Congress and should be for this administration.

A TPP agreement that exacerbates already-delayed access to generic medicines is unacceptable. TPP has been called a “21st Century Agreement,” but it will be anything but fresh if it makes crucial medicines even scarcer throughout the developing nations of the world.

Rep. Jim McDermott, D-Wash., is co-chairman of the bipartisan Congressional HIV/AIDS Caucus.

Top of Form

Bottom of Form

A version of this article appeared in the [June 3, 2013](#) print issue of *Roll Call*

Source: **CQ News**

Round-the-clock coverage of news from Capitol Hill.

© 2013 CQ Roll Call All Rights Reserved.

[cid:image002.png@01CE601E.FC07FB70]<<http://www.nytimes.com/>>

Obama's Covert Trade Deal

By LORI WALLACH and BEN BEACHY

Published: June 2, 2013

WASHINGTON - THE Obama administration has often stated its commitment to open government. So why is it keeping such tight wraps on the contents of the Trans-Pacific Partnership, the most significant international commercial agreement since the creation of the

The agreement, under negotiation since 2008, would set new rules for everything from food safety and financial markets to medicine prices and Internet freedom. It would include at least 12 of the countries bordering the Pacific and be open for more to join. President Obama has said he wants to sign it by October.

Although Congress has exclusive constitutional authority to set the terms of trade, so far the executive branch has managed to resist repeated requests by members of Congress to see the text of the draft agreement and has denied requests from members to attend negotiations as observers - reversing past practice.

While the agreement could rewrite broad sections of nontrade policies affecting Americans' daily lives, the administration also has rejected demands by outside groups that the nearly complete text be publicly released. Even the George W. Bush administration, hardly a paragon of transparency, published online the draft text of the last similarly sweeping agreement, called the Free Trade Area of the Americas, in 2001.

There is one exception to this wall of secrecy: a group of some 600 trade "advisers," dominated by representatives of big businesses, who enjoy privileged access to draft texts and negotiators.

This covert approach is a major problem because the agreement is more than just a trade deal. Only 5 of its 29 chapters cover traditional trade matters, like tariffs or quotas. The others impose parameters on nontrade policies. Existing and future American laws must be altered to conform with these terms, or trade sanctions can be imposed against American exports.

Remember the debate in January 2012 over the Stop Online Piracy Act, which would have imposed harsh penalties for even the most minor and inadvertent infraction of a company's copyright? The ensuing uproar derailed the proposal. But now, the very corporations behind SOPA are at it again, hoping to reincarnate its terms within the Trans-Pacific Partnership's sweeping proposed copyright provisions.

From another leak, we know the pact would also take aim at policies to control the cost of medicine. Pharmaceutical companies, which are among those enjoying access to negotiators as "advisers," have

long lobbied against government efforts to keep the cost of medicines down. Under the agreement, these companies could challenge such measures by claiming that they undermined their new rights granted by the deal.

And yet another leak revealed that the deal would include even more expansive incentives to relocate domestic manufacturing offshore than were included in Nafta - a deal that drained millions of manufacturing jobs from the American economy.

The agreement would also be a boon for Wall Street and its campaign to water down regulations put in place after the 2008 financial crisis. Among other things, it would practically forbid bans on risky financial products, including the toxic derivatives that helped cause the crisis in the first place.

Of course, the agreement must eventually face a Congressional vote, which means that one day it will become public.

So why keep it a secret? Because Mr. Obama wants the agreement to be given fast-track treatment on Capitol Hill. Under this extraordinary and rarely used procedure, he could sign the agreement before Congress voted on it. And Congress's post-facto vote would be under rules limiting debate, banning all amendments and forcing a quick vote.

Ron Kirk, until recently Mr. Obama's top trade official, was remarkably candid about why he opposed making the text public: doing so, he suggested to Reuters, would raise such opposition that it could make the deal impossible to sign.

Michael Froman, nominated to be Mr. Kirk's replacement, will most likely become the public face of the administration's very private negotiations and the apparent calculation that underlies them. As someone whose professional experience has been during the Internet era, he must know that such extreme secrecy is bound to backfire.

Whatever one thinks about "free trade," the secrecy of the Trans-Pacific Partnership process represents a huge assault on the principles and practice of democratic governance. That is untenable in the age of transparency, especially coming from an administration that is otherwise so quick to trumpet its commitment to open government.

Lori Wallach is the director of Public Citizen's Global Trade Watch, where Ben Beachy is the research director.

Over Two-Thirds of Democratic House Freshmen Tell Party Leadership They Oppose Transferring Their Constitutional Trade Authority to the President

[Citizens Trade Campaign](#) June 11, 2013

Washington, DC — More than two-thirds of Democratic freshmen in the U.S. House of Representatives expressed serious reservations today about the Trans-Pacific Partnership Free Trade Agreement (TPP FTA) negotiations and the prospect of delegating Fast Track “trade promotion authority” to the President. They voiced their concerns in a letter sent to House Democratic Leader Nancy Pelosi and Ranking Ways and Means Member Sander Levin that was spearheaded by Wisconsin Congressman Mark Pocan and signed by 35 other House freshmen.

“The administration has yet to release draft texts after more than three years of negotiations, and the few TPP FTA texts that have leaked reveal serious problems,” the letter reads. “Thus, we are especially concerned about any action that would transfer Congress’s exclusive Constitutional trade authority to the president.”

The TPP is poised to become the largest Free Trade Agreement in U.S. history. The twelve countries currently involved — the United States, Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam — already cover approximately 40% of the global economy, and the TPP also includes a “docking mechanism” that could enable other countries to join over time. The TPP’s seventeenth major round of negotiations concluded in Lima, Peru last month, and negotiators are racing to complete their work by an October deadline set by President Barack Obama and others.

Under Article 1, Section 8 of the U.S. Constitution, Congress possesses exclusive authority to determine the terms of international trade agreements, but the Obama administration wants Congress to transfer that authority to the executive through a new delegation of Fast Track “trade promotion authority.” The President’s nominee for U.S. Trade Representative, Michael Froman, reiterated that request during his Senate confirmation hearing last Thursday.

Fast Track delegates Congress’ constitutional trade authority to the executive branch, allowing negotiators to determine the contents of trade agreement and to sign them before Congress has a vote on the matter. The rarely-used procedure also allows trade agreements to circumvent ordinary Congressional review, with the White House writing lengthy implementing legislation that is not amendable in committee or on the floor and must be voted on within 90 days of submission, leaving Congress with only take-it-or-leave-it approval of a completed package that, in the case of the TPP, is expected to be at least hundreds of pages long and cover some 29 separate chapters, affecting everything from food safety standards and medicine patents to energy regulations and public procurement decisions.

“It’s encouraging that so many new Members of Congress recognize the problems inherent with Fast Track, and are demanding a more meaningful role in trade policymaking for themselves and their constituents,” said Arthur Stamoulis, executive director of Citizens Trade Campaign. “Congressman Pocan and these other freshmen have demonstrated a real commitment to creating fair trade agreements that promote job creation and economic prosperity. That type of leadership is desperately needed if we’re going to stop letting big corporations ship our jobs overseas and dump our wages and benefits overboard along the way.”

A copy of the letter and its signatories follows:

The Honorable Sander M. Levin
Ranking Member
Ways and Means Committee
1106 Longworth House Office Building
Washington, D.C. 20515

Cc: The Honorable Nancy Pelosi

Dear Ranking Member Levin:

We look forward to working with you to establish United States trade policies that promote the creation of American jobs and support our national economic interests while safeguarding Congress’s prerogatives to determine what domestic policies best promote the public interest.

As the economy continues to recover from the greatest financial crisis since the Great Depression, we can all agree that we cannot afford to have American production and American jobs sent offshore because of unfair trade agreements that undermine our economic growth. When jobs and production factories are offshored, American wages are lost, American-made products decline, and our international interests are compromised.

Job offshoring was a major issue in the previous election that unites our constituents – Democrats, Republicans and Independents alike. Polling consistently shows that Americans oppose our past model of “trade” agreements that facilitate offshoring, undermine Buy American policies, and subject American laws to review by foreign tribunals empowered to order payment of unlimited U.S. tax dollars to foreign firms that seek to avoid playing by the same rules as U.S. firms.

Thus, we write with serious concerns about both the Trans-Pacific Partnership Free Trade Agreement (TPP FTA) now being negotiated by the Obama administration and the prospect of Congress delegating wide swaths of its Constitutional authority to

regulate trade (Article 1, Section 8) to the president through “Fast Track” or any other open-ended delegation of “trade promotion” authority.

In the last Congress, two-thirds of House Democrats joined together on a letter to President Obama demanding access to the draft TPP FTA texts and raising concerns about how the pact could internationally preempt Congress’s domestic policymaking prerogatives. They wrote:

“Since the United States will be obliged to bring existing and future U.S. policies into compliance with the norms established in the TPP FTA, the negotiations USTR is pursuing will create binding policies on future Congresses in numerous areas. These could include those related to labor, patent and copyright, land use, food, agriculture and product standards, natural resources, the environment, professional licensing, state-owned enterprises and government procurement policies, as well as financial, healthcare, energy, telecommunications and other service sector regulations.”

Unfortunately, today TPP FTA talks continue in extreme secrecy. The administration has yet to release draft texts after more than three years of negotiations, and the few TPP FTA texts that have leaked reveal serious problems. Thus, we are especially concerned about any action that would transfer Congress’s exclusive constitutional trade authority to the president.

Congress needs to work together to get American trade policy back on track – not give away its authority to do so. Reducing our authority to ensure our trade agreements serve the public interest will undermine our efforts to create American jobs and to reform a misguided trade policy that has devastated our manufacturing base through the offshoring of American production and American jobs.

Indeed, given the vast scope of today’s “trade” agreements, we do not believe that a broad delegation of Congress’s constitutional trade authority is generally appropriate. Negotiations on the TPP FTA delve deeply into many non-trade matters under the authority of Congress and state legislatures. If completed, the TPP FTA would lock in policies on these non-trade matters that could not be altered without consent of all other signatory countries. Thus, ensuring Congress has a robust role in the formative aspects of trade agreements is vital.

We are all deeply committed to creating jobs in our communities and across the country. To do so effectively, we believe it is critical that Congress maintains its authority to ensure American trade agreements are a good deal for the American people.

Sincerely,

U.S. Reps. Mark Pocan (WI-02), Ron Barber (AZ-02), Joyce Beatty (OH-03), Ami Bera (CA-07), Julia Brownley (CA-26), Tony Cardenas (CA-29), Matthew A. Cartwright (PA-17), William L. Enyart (IL-12), Bill Foster (IL-11), Lois Frankel (FL-22), Tulsi Gabbard

(HI-02), Pete P. Gallego (TX-23), Joe Garcia (FL-26), Alan Grayson (FL-09), Steven A. Horsford (NV-04), Jared Huffman (CA-02), Hakeem S. Jeffries (NY-08), Joseph Kennedy, III (MA-04), Ann Kirkpatrick (AZ-01), Annie McLane Kuster (NH-02), Alan S. Lowenthal (CA-47), Michelle Lujan Grisham (NM-01), Daniel B. Maffei (NY-24), Patrick Murphy (FL-18), Gloria Negrete McLeod (CA-35), Richard M. Nolan (MN-08), Beto O'Rourke (TX-16), Donald M. Payne Jr. (NJ-10), Raul Ruiz (CA-36), Carol Shea-Porter (NH-01), Kyrsten Sinema (AZ-09), Eric Swalwell (CA-15), Mark Takano (CA-41), Dina Titus (NV-01), Juan Vargas (CA-51), and Marc A. Veasey (TX-33).

###

“...The fact that foreign companies could be shut out of municipal projects funded by the U.S. federal government is particularly troubling to some U.S. trading partners. For instance, Canada has tabled legal language in the Trans-Pacific Partnership negotiations that would require that projects carried out by sub-federal entities with money provided by the central government be open to competition from firms within TPP countries ([Inside U.S. Trade, March 8](#))...”

Daily News

Business Groups Urge Congress To Oppose Wave Of Buy American Requirements

Posted: June 12, 2013

Fifteen trade associations last week urged House and Senate lawmakers to oppose legislation containing “Buy American” requirements, in an effort aimed in the near term at two pieces of legislation pending before the House that would impose such restrictions on federal funds for water infrastructure projects carried out at the municipal level.

In [their June 5 letter](#), the groups did not refer to any specific legislation pending before Congress. But Dawn Champney, president of the Water and Wastewater Equipment Manufacturers Association (WWEMA), which spearheaded the letter, said in an interview that it was prompted in part by two pieces of water infrastructure legislation under consideration in Congress that contain Buy American language identical to that included in the 2009 stimulus bill.

WWEMA and the other signatories of the June 5 letter argued against Buy American provisions for two reasons. First, they noted that such provisions may restrict the ability of U.S. companies to participate in covered procurements since their products contain components manufactured abroad. Champney said WWEMA members sell complex systems for water treatment plants that depend on technologies from around the world.

Second, the letter argued that imposing Buy American restrictions in the United States could prompt other countries around the world to impose similar measures, to the detriment of U.S. exporters. Champney pointed out that countries such as Brazil, Malaysia and Canada imposed domestic content rules for certain procurements after the U.S. included Buy American requirements in the 2009 stimulus bill, in some cases citing the U.S. measures as a basis for their actions.

The letter, which was also signed by the U.S. Chamber of Commerce and the National Foreign Trade Council (NFTC), implored lawmakers to “resist temptation and oppose legislation containing any new or more stringent protectionist measures, such as Buy American, which create regulatory burdens on municipalities and industry, impede technology advancements, and restrict market growth.”

One of the bills that the letter is partially aimed at is the Water Resources Development Act, which passed the Senate on May 15 but has not yet been taken up by the House. The bill deals principally with flood protection and waterway projects but would also establish a five-year pilot program for funding water infrastructure projects that are \$20 million or larger.

Projects funded through this Water Infrastructure Finance and Innovation Authority program would be subject to Buy American provisions that require the use of steel, iron and manufactured goods produced in the U.S., with limited exceptions.

Similar language is included in a House bill that would provide \$13.8 billion in federal funds over five years to so-called “Clean Water State Revolving Funds,” which provided subsidized loans to communities for wastewater infrastructure. That bill, H.R. 1877, was introduced by Rep. Timothy Bishop (D-NY) and has thus far gained 29 co-sponsors.

Both bills state that Buy American requirements must be carried out in accordance with U.S. obligations under international agreements. But Champney argued that this caveat is misleading because most public works projects, particularly in the area of water infrastructure, are carried out at the municipal level.

That is because the procurement of municipalities is not covered under the World Trade Organization's Government Procurement Agreement (GPA) or U.S. free trade agreements, although procurement by several major U.S. cities is covered under a 1995 memorandum of understanding with the European Union.

The fact that foreign companies could be shut out of municipal projects funded by the U.S. federal government is particularly troubling to some U.S. trading partners. For instance, Canada has tabled legal language in the Trans-Pacific Partnership negotiations that would require that projects carried out by sub-federal entities with money provided by the central government be open to competition from firms within TPP countries ([Inside U.S. Trade, March 8](#)).

Separately, NFTC is charging that a proliferation of Buy American bills at the state level could undermine pending trade negotiations. In a June 7 press briefing, NFTC Vice President Dan O'Flaherty warned that such state efforts could undermine negotiations for a U.S.-European Union free trade agreement and talks on China's GPA accession.

He said that is because they amount to the U.S. placing new barriers on government procurement at the same it is urging these partners to further open their procurement markets to U.S. companies.

Buy American bills have been introduced in 20 states this year, up from just 5 states last year, O'Flaherty said. But he conceded that only two states – Maryland and Ohio – have actually approved such legislation. In addition, Texas Governor Rick Perry last month signed into law a bill that contains Buy American requirements for water projects funded by the Texas Water Development Board, according to Champney.

Both Maryland and Texas cover some of their procurement under the GPA, while Ohio does not. NFTC is reaching out to state attorneys general in its efforts to oppose the bills.

O'Flaherty noted that the drive for Buy American legislation at the state level has been led by the Alliance for American Manufacturing, which is funded in part by the United Steelworkers.

Champney said U.S. ductile iron pipe companies have also supported Buy American requirements for water infrastructure projects.



Printed from: *Boston Herald* (<http://bostonherald.com>)

Obama trade dilemma: Scant support from Democrats

Saturday, June 15, 2013 -- The Associated Press

Sections:

U.S. Politics

Saturday, June 15, 2013

Author(s):

Associated Press

WASHINGTON — President Barack Obama is aggressively pushing an ambitious agenda to liberalize global trading.

But already political trade wars are forming, and they're with fellow Democrats rather than with Republicans, his usual antagonists.

Obama is promoting free-trade proposals with Europe and Asia that could affect up to two-thirds of all global trade.

The ambitious deals would reduce or eliminate tariffs and other trade barriers. But there's trouble ahead for both the Trans-Pacific Partnership and the Trans-Atlantic Trade and Investment Partnership — at the negotiating table and from Congress.

The deal with Europe will be a top item this coming week in Northern Ireland at the Group of Eight summit of major industrial democracies. But French and other objections have recently surfaced which could delay the planned launch of the negotiations.

The Asia pact was brought up pointedly by the new Chinese president, Xi Jinping, in his California meetings with Obama last weekend.

Republicans historically have supported free-trade agreements far more than have Democrats, and a politically weakened Obama may not have enough second-term clout to successfully twist the arms of enough Democratic lawmakers.

Some Republicans who usually vote for easing trade barriers may vote "no" just because the agreements will bear Obama's signature.

Both deals generally have the support of U.S. businesses. But labor unions and human rights and environmental groups — core Democratic constituencies — have so far viewed them cynically.

These organizations, and Democrats in general, say that free-trade deals can cost American jobs and lead to environmental and workplace abuses that would not be tolerated in the U.S.

"We certainly have concerns," said Celeste Drake, a trade and policy specialist at the AFL-CIO, the nation's largest labor federation. "I think Obama realizes this problem about Republicans always being the big supporters (on trade liberalization) and he would like to have our support. But overall we're skeptical. We wish we'd see more."

It's not a new problem.

President Bill Clinton powered the U.S.-Mexico-Canada North American Free Trade Agreement through Congress in 1993 only by heavily courting Republicans and overcoming stiff Democratic opposition, including from House Democratic leaders and unions.

As he campaigned for president in 2008, Obama courted blue-collar votes by criticizing NAFTA. Since then, he's changed his tune.

Obama worked to overcome Democratic resistance to win passage in 2011 of trade pacts with South Korea, Panama and Colombia, completing negotiations begun by his Republican predecessor, President George W. Bush.

The talks for a new Asia-Pacific free-trade zone came up in the Obama-Xi meetings last weekend.

At first, the deliberations involved the United States and 10 Pacific Rim nations: Australia, Brunei, Canada, Chile, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam. More recently, Japan has sought to join the talks, drawing the keen interest of the Chinese leader. Until now, China hasn't been included in the process.

"We have a half-a-trillion-dollar-a-year trade relationship with China," said Tom Donilon, Obama's national security adviser. "President Xi's point ... was that the Chinese would like to be kept informed and have some transparency into the process."

But the possible inclusion of Japan, the third-largest economy, after the U.S. and China, generated heat from auto-state lawmakers, who criticized Japan's efforts to restrict auto imports.

Sen. Debbie Stabenow, D-Mich., pledged to fight ratification if Japan won't "stop blocking American companies from its markets."

Michael Froman, a White House international economics adviser nominated to be the next U.S. trade representative, said the auto industry concerns are "well-founded" and he suggested they would be addressed.

Backers of a sweeping U.S. trade deal with the 27 European Union countries hoped to get an enthusiastic sendoff from the G-8 summit in Northern Ireland on Monday and Tuesday.

British Prime Minister David Cameron, the host, has made trade liberalization a priority, and many European nations are hoping the promise of expanded trade will help reverse Europe's spreading recessions.

"An EU-US trade deal could add tens of billions to our economies," Cameron told reporters. "Everything is on the table, with no exception."

But there already are serious divisions in Europe.

Despite Cameron's and Obama's assertions that everything should be on the table, the European Union Parliament bowed to strong French concerns and recently voted to exclude TV, movies and other cultural "audiovisual services" from the trade talks even before formal negotiations begin next month.

France stuck to this "cultural exception" at a meeting of the EU members in Luxembourg on Friday.

Also, some members of the European Parliament are urging that data protection provisions be made a key part of the negotiations — in response to recent disclosures of widespread snooping by the U.S. intelligence community on telephone and Internet communications at home and abroad.

Other potential roadblocks include longstanding arguments over genetically engineered food and other agricultural issues, as well as "Buy American" provisions in recent U.S. legislation, climate change and a squabble over government subsidies involving plane makers Boeing in the U.S. and Airbus in Europe.

"Both sides know that they need to work very hard," said Philipp Rosler, vice chancellor of Germany and minister of economics and technology.

"And only if the people understand that, and only if we don't end up just having discussions on tiny details — like chickens — only then will we have the opportunity of not only negotiating, but also of concluding a good agreement," Rosler told a conference at the Brookings Institution, a U.S. think tank.

Obama, with the backing of Michigan Rep. Dave Camp, the Republican chairman of the House Ways and Means Committee, is also pushing for renewal of an expired law that allowed the White House to submit trade deals to Congress for a straight yes-or-no vote without amendments.

"This is a Congress that's pro-trade. But it's also highly polarized," said James Thurber, a political science professor at American University. "Business has been pushing these trade deals for a long time. Labor has not. So that splits things in a difficult manner for Obama."

"He's got people who don't want him to win on anything. And then he's got some people from labor who are skeptical about expansionistic trade policies and their effect on the workforce here," Thurber said. "So it will be tough."

Follow Tom Raum on Twitter at: <http://www.twitter.com/tomraum> [1]

Source URL:

http://bostonherald.com/news_opinion/us_politics/2013/06/obama_trade_dilemma_scan_t_support_from_democrats

USTR NEWS

UNITED STATES TRADE REPRESENTATIVE

www.ustr.gov

Washington, D.C. 20508

[202-395-3230](tel:202-395-3230)

For Immediate Release:

Contact:

Carol Guthrie

March 20, 2013

cguthrie@ustr.eop.gov

Obama Administration Notifies Congress of Intent to Negotiate Transatlantic Trade and Investment Partnership

Washington, D.C. – The Obama Administration today notified the U.S. Congress of its intent to enter into negotiations on a comprehensive trade and investment agreement with the European Union. Today’s notification follows a joint [announcement](#) last month by President Obama and the Leaders of the European Union indicating their intent to pursue talks toward a Transatlantic Trade and Investment Partnership. Acting United States Trade Representative Demetrios Marantis noted in a letter to lawmakers that an ambitious, comprehensive, and high-standard agreement could significantly expand trade and investment between the United States and the European Union, generating new business and job opportunities.

“The decision to launch negotiations on the Transatlantic Trade and Investment Partnership reflects the broadly shared conviction that transatlantic trade and investment can be an even stronger driver of mutual job creation, growth, and increased competitiveness,” the letter read. **“The support for a comprehensive agreement that has been offered by a significant and diverse set of stakeholders boosts our confidence that it will be possible to find mutually acceptable solutions on difficult issues and conclude an agreement that will benefit U.S. workers. With average U.S and EU tariffs already quite low, new and innovative approaches to reducing the adverse impact on transatlantic commerce of non-tariff barriers must be a significant focus of the negotiations. The Administration will hold regular and rigorous consultations with Congress and stakeholders on all elements of the agreement.”**

The transatlantic economic relationship is already the world’s largest, accounting for one third of total goods and services trade and nearly half of global economic output. Transatlantic trade and investment currently supports 13 million jobs on both sides of the Atlantic.

To view a copy of the notification letter to Congress, click [here](#). For more information on America’s trade with the European Union, please visit the [European Union page](#) of USTR’s website.

BROOKINGS

UP FRONT

[« Previous](#) | [Next »](#)

Joshua Meltzer | March 18, 2013 10:27am

Japan to Join the Trans-Pacific Partnership – Finally!



Japanese Prime Minister Abe's statement of his country's willingness to join the Trans-Pacific Partnership (TPP) negotiations is good for the U.S., Japan and the TPP. It follows former Japanese Prime Minister Noda's announcement at the Asia-Pacific Economic Conference (APEC) in 2011 of Japan's interest in the TPP negotiations and almost two years of discussions between the Japanese government and the other TPP parties on their expectations should Japan join the trade agreement. The TPP parties currently include the U.S., Australia, Brunei, Canada, Chile, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam.

Japan's participation in the TPP will boost the agreement's economic and strategic significance. The TPP aims to be the 21st century trade agreement that sets the rules for trade and investment in the Asia-Pacific region going forward. Achieving this goal will require other major economies in the Asia-Pacific region to join the agreement with the intention of the TPP ultimately becoming a Free Trade Agreement of the Asia-Pacific (FTAAP), and Japan's participation in the TPP will give added momentum towards this goal. For one, with Japan the TPP will cover 8.6 percent of global trade and almost 40 percent of global GDP. Japan's entry into the TPP is also likely to give further impetus to other countries joining the TPP. In particular South Korea, which already has an FTA with the U.S., should now see the TPP as a key opportunity to negotiate new market access opportunities with Japan, with which it has a \$108 billion trading relationship. Other countries such as Colombia, the Philippines and Thailand are also watching the TPP negotiations careful with an eye to joining.

Japan's participation in the TPP is also of economic significance for the U.S. Without Japan's participation in the TPP the market access opportunities for the U.S. are limited because the U.S. has FTAs with six of the 10 TPP parties. Should the TPP lead to new market liberalization beyond what has already been promised in their current FTAs with the U.S., the already significant liberalization committed to under these FTAs means that any new market access gains for the U.S. will be minimal.

In contrast, the U.S. does not have an FTA with Japan, which is the world's third largest economy with significant tariff and nontariff barriers in areas of key export interest for the U.S., ranging from agriculture to automobiles to financial services. As a result, an ambitious outcome in the TPP could provide the U.S. with important new markets. Its potential economic value is highlighted by the size of total bilateral trade of \$220 billion in 2012 and a trade deficit of \$80 billion. But this understates the size of the trading relationship as many Japanese goods and services are now inputs into final goods exported from countries such as China and South Korea. Value-added trade data more accurately captures these dimensions, and on a value-added basis the U.S. trade deficit with Japan increases by approximately 60 percent. Additionally, there is a significant bilateral investment

relationship, with U.S. foreign direct investment (FDI) in Japan valued at \$134 billion in 2010 and Japanese FDI in the U.S. valued at over \$240 billion

Japan's participation in the TPP is also good for Japan. It will provide new market access opportunities for Japanese exporters amongst the TPP parties. But even more significantly, the TPP should become a key driver of domestic economic reform – something the Japanese economy sorely needs. The TPP will lead to economic reform in Japan through a number of channels. For instance, the TPP will lower tariff rates on goods and liberalize Japan's services sector, which constitutes 72 percent of Japan's GDP. The TPP will also eliminate many nontariff barriers – behind the border regulations that act as barriers to trade. These measures will lead to greater competition which should increase the productivity of the Japanese economy, improving its competitiveness, including in its export sector and boosting GDP. Additionally, the TPP will include new ambitious market access for investment, rules on intellectual property, competition, telecommunications and regulatory coherence, to name a few. In fact, the TPP is better understood as a comprehensive economic integration agreement that will touch most areas of economic life.

Prime Minister Abe's decision to commit Japan to joining the TPP should also be understood as a necessary compliment to his efforts to stimulate the Japanese economy with monetary easing and the related depreciation of the Yen. These efforts alone, without the type of economic reform the TPP will lead to, are unlikely to produce long-term improvements in Japan's growth prospects.

A further consequence for the TPP of Japan's participation will be a delay in finalizing the agreement. Efforts to conclude the TPP this year were always ambitious given the range of difficult issues still on the table, such as on intellectual property and state-owned enterprises. Following Japan's announcement of its intention to join the TPP, the Obama administration will now follow a 90 day consultation period with Congress, which means that the September round of TPP negotiations will be the first opportunity for Japan's formal participation. Irrespective of whether Japan is prepared to simply sign on to progress-to-date in the TPP, the needed new market access negotiations with Japan, combined with the existing challenges outlined above, makes completing the TPP by the end of 2014 a more realistic end date.

Joshua Meltzer

Fellow, Global Economy and Development

Joshua Meltzer is a fellow in Global Economy and Development at Brookings. He focuses on the intersection between climate change and international trade as well as U.S. trade with key economies such as China, India, Japan and the European Union.

More Posts from Joshua > | View Expert Page >

0 comments



Leave a message...

Best

Community

Share



Comment feed



Subscribe via email

Congressional Quarterly WEEKLY
March 18, 2013 - Page 490
From Negotiation to Policy: The Power of a Trade Pact

By Kate Ackley, CQ Staff

In a luxury hotel half a world away from Washington, lobbyists for U.S. corporations and trade groups spent the past two weeks hosting elegant receptions and wonky policy discussions while they staked out closed-door talks on a trans-Pacific free-trade agreement involving 11 nations.

The hubbub at Singapore's Grand Copthorne Waterfront Hotel could, at times, have passed for a scene on K Street. In fact, the involvement of business interests was driven not only by discussions of tariffs and of opening far-flung global markets but also of U.S. domestic issues.

Lobbyists view trade pacts such as the evolving text of the Trans-Pacific Partnership as a covert tool, a behind-the-scenes way to change domestic laws and regulations they find objectionable. Agriculture interests, food producers, financial service firms and technology and pharmaceutical executives who are closely monitoring the negotiations also must defend against competitors trying to do the same thing.

In short, trade agreements like TPP can morph into yet another forum for U.S. corporate, consumer and environmental interests to fight out their domestic policy squabbles on such matters as food safety and intellectual property rights under a veil of secrecy.

Although the policies contained in a trade agreement typically don't override federal law, experts in the field say that any inconsistencies could result in a trade dispute subjecting the noncompliant country to possible arbitration and sanctions. When faced with similar challenges, the United States has revised the offending regulations and, in some cases, is still considering how to bring them into compliance

In one case, Mexico successfully challenged U.S. regulations for keeping track of whether imported shrimp had been caught in turtle-safe nets. Another challenge from Mexico resulted in changes to "dolphin-safe" tuna labeling.

Just last week, the Agriculture Department proposed changing a rule on country-of-origin food labeling after an appeals panel of the World Trade Organization decided that the rule had had a detrimental effect on livestock imports from Mexico and Canada. Such a change could result in a tougher labeling rule or, as some industry advocates want, a decision to throw out the requirement.

"There certainly have been cases in which the United States has had laws related to consumer protection, food safety and consumer information that have been challenged at the World Trade Organization, and in some of those cases the U.S. has had to make modifications to its regulations in order to come into compliance," says Elizabeth Drake, a partner with Stewart & Stewart, which

represented the National Farmer's Union and other domestic interests in the labeling case.

Fear of Lowering Standards

TPP disputes might follow a similar path and serve as an alternative to revamping domestic laws and regulations to change their effect.

"An agreement like the TPP becomes a mechanism for a broad array of industry interests to re-litigate policies that they lost when the debate occurred in the sunshine of public scrutiny and the open congressional process," says Lori Wallach, director of Public Citizen's Global Trade Watch, who kept an eye on the negotiations unfolding in Singapore and whose group opposes the free-trade pact. "It can become a backdoor strategy for changing domestic policy."

That prospect isn't lost on Congress. Rep. Rosa DeLauro says she is worried that food and agriculture interests will weaken the 2010 food safety law, which she helped write, while the Obama administration continues to implement its provisions.

"It's my fear," the Connecticut Democrat says, that "it would mean we would have to lower our standards."

Vessels for Grievances

Congress typically takes up trade agreements under presidential fast-track authority, which forces lawmakers to vote up or down on the whole deal without being able to amend it. (The president's fast-track authority has expired, but the administration is expected to seek its renewal.)

The Obama administration rejects the notion that the trans-Pacific talks could gut portions of statutes such as the Dodd-Frank financial overhaul, the 2010 health care law or DeLauro's measure.

"Only Congress changes U.S. law, period," Carol Guthrie, spokeswoman for the U.S. Trade Representative, wrote in an email, "and only administrations, in consultation with Congress, change U.S. policies and regulations."

Lobbyists and representatives of several corporations deny that the trade talks could be an opportunity for U.S. policy do-overs.

One longtime lobbyist and expert in trade pacts calls the legislating-via-trade-deal route an "unusual strategy." He says that companies and other groups weighing in on negotiations are more likely to use their muscle to raise other countries' standards so that they are in harmony with those of the United States.

But the complex nature of the TPP negotiations coupled with the reach of those countries involved with the United States - Australia, Brunei, Canada, Chile, Malaysia, Mexico, New Zealand, Peru, Singapore,

Vietnam and, perhaps in the future, Japan - fuel speculation about the deal's eventual impact on the policies of individual countries.

David Thomas, the Business Roundtable's vice president for trade, says the TPP agreement "creates an opportunity to sort of knit together a regional free-trade area that can allow companies to more efficiently do business across those countries as well as within those countries."

There is precedent for trade-driven changes to U.S. laws. When Congress two decades ago passed the Uruguay Round Agreement Acts, transforming the General Agreement on Tariffs and Trade into the World Trade Organization, lawmakers approved a change in patent law that extended market exclusivity for U.S. products from 17 years to about 20 years. Trade and patent law experts say the change harmonized U.S. and international patent laws and benefited, in particular, big companies that file patents in multiple countries.

The North American Free Trade Agreement that Congress approved in 1993, "downwardly harmonized" federal rules for interstate trucking, says Mike Dolan, the legislative representative who handles trade policy for the International Brotherhood of Teamsters, which complained about NAFTA provisions giving Mexican trucks access to U.S. highways.

"The free-trade lobby," Dolan says, "uses these trade deals to enact a kind of domestic regulatory agenda that they can't get otherwise."

Inside Track

With the TPP talks, an immediate concern for Dolan is the "Buy American" policies that give preferential treatment to U.S. goods in federal procurement contracts. Negotiators could give that same preferred status to goods made in the 10 other countries.

Several senators late last year spelled out their Buy American concerns in a letter to President Barack Obama. Ohio Democrat Sherrod Brown, who signed the letter, has been a critic of pacts such as the Central American Free Trade Agreement and says he wants to use his position on the Finance Committee, which has jurisdiction over international trade matters, to illuminate the otherwise secretive process of trade negotiations such as the TPP.

"Corporate CEOs often have better access to information on trade negotiations than Congress does," Brown says. "These trade agreements are often good for large corporations and not so good for American workers."

Rep. Zoe Lofgren, a California Democrat and free-trade supporter who backs the TPP generally, is especially concerned about what might be in the copyright provisions of a deal.

Lofgren opposed legislation aimed at curbing online piracy - known by its acronym, SOPA - which was backed by the movie industry and other sectors that rely on copyright protections, because it would, she said, hamper Internet freedom. Technology giants such as Google Inc. led a lobbying and grass-roots effort in 2012 that derailed the legislation. Movie executives and other content providers, she says, have looked to trade pacts such as the Anti-Counterfeiting Trade Agreement as a back channel to resurrect some of SOPA.

"In the past, there have been efforts by Big Content to get in a trade agreement what they could not get through the Congress," Lofgren says, noting that ACTA had stalled.

Lofgren says she warned U.S. Trade Representative Ron Kirk, "Look at what happened to ACTA. ACTA went down because of a perception that it was delivering SOPA-like rules to the Internet. If there's overreach in the TPP, the entire trade agreement could go down just as ACTA went down." (Kirk stepped down March 15.)

A spokesman for the Motion Picture Association of America declined to comment, referring questions to the USTR and the U.S. Chamber of Commerce, which led a delegation to Singapore.

Richard Bates, senior vice president of government relations for Walt Disney Co., says movie studios would like to see in the TPP the same level of protections for intellectual-property rights as are included in a congressionally approved free-trade agreement with South Korea.

One entertainment industry executive, who declined to speak on the record because of the sensitivity of the talks, says allegations that content providers are trying to get SOPA policies into the TPP deal are "scare tactics."

On the flip side of this debate, some content providers and entertainment industry lobbyists say that technology companies are eyeing TPP as a way to weaken existing intellectual-property laws. Not surprisingly, both camps are watching the unfolding negotiations with immense interest. "Generally," says one lobbyist familiar with the issue, "the approach in the United States to these trade agreements has been to get other countries to adopt stronger intellectual-property rights so our movies, our products, aren't ripped off around the world."

Lawmakers gave corporate interests a say in trade talks in the Trade Act of 1974, which created industry trade-advisory committees that give feedback on relevant issues to trade negotiators. AFL-CIO President Richard Trumka has the same privilege.

"The purpose of a trade agreement is to help the U.S. economy," says one entertainment industry official, who was not authorized to discuss the talks. "The U.S. exporters have an important role to play in understanding what the barriers are."

This lobbyist added, though, that openness in negotiations often falls victim to the "horse trading" that goes on behind closed doors to arrive at a final deal.

Potential Complications

The secrecy of the deal-making may well provide lobbyists with an opportunity, but it can just as easily get in their way.

Because the draft text of any agreement is secret, lobbyists with the best access to officials on the inside must be careful to not reveal too much in public while also figuring out how to press their cases.

In Singapore, for example, the USTR hosted a "stakeholder engagement event" on March 6, at which business and other interests had "the opportunity to raise questions and share views directly with negotiators and other stakeholders," according to the USTR website.

Such out-in-the-open discussion is not the only way to try to influence the deal, however. The American Chamber of Commerce in Singapore hosted a March 8 reception for diplomats and outside interests in the grand ballroom of the hotel where negotiations were being held.

Corporate representatives also book suites where they can huddle with their counterparts and with government officials. Even public interest groups get in on the lobbying: Wallach of Public Citizen said that during a previous TPP round in New Zealand she took to standing outside, in the rain, trying to persuade negotiators to chat about her concerns.

Catherine Mellor, a trade policy expert with the U.S. Chamber of Commerce, says the group regularly keeps in touch with the USTR's office, administration officials and members of Congress. But the negotiations offer a potentially one-stop opportunity for face time with foreign officials too.

"We do meet with the foreign negotiators," explains Mellor, whose subtle accent is a reminder of her Australian roots. "A lot of these companies have real-market examples of why these policies are needed."

Banking-industry insiders say privately that the talks may be an opportunity to clarify "international, cross-border applications" of the "Volcker rule" in the Dodd-Frank law, which restricts banks from making speculative investments and is much maligned by the industry, one banking source says.

High stakes ensure that business will be engaged in future deal-making on trade, even when negotiators rebuff their input. "They might publicly say they don't want this, but they might give in if they need something else," says Mark Grayson of the Pharmaceutical Research and Manufacturers of America. Industry groups hang around so "they know you're there, in case they have some questions."

FOR FURTHER READING: Changing dynamics on congressional trade policy, 2008 Almanac, p. 6-18; World Trade Organization approval (PL 103-465), 1994 Almanac, p. 123; NAFTA approval (PL 103-182), 1993 Almanac, p. 171; Uruguay Round approval, 1993 Almanac, p. 171.

Source: CQ Weekly

The definitive source for news about Congress.

(c) 2013 CQ Roll Call All Rights Reserved.



Japan's Possible Entry Into the Trans-Pacific Partnership and Its Implications

William H. Cooper

Specialist in International Trade and Finance

Mark E. Manyin

Specialist in Asian Affairs

April 8, 2013

Congressional Research Service

7-5700

www.crs.gov

R42676

CRS Report for Congress

Prepared for Members and Committees of Congress

Summary

On March 15, 2013, Prime Minister Abe announced that Japan would formally seek to participate in the negotiations to establish the Trans-Pacific Partnership (TPP). In taking this step, Prime Minister Abe has had to confront influential domestic interests that argued against the move. Among the most vocal have been Japanese farmers, especially rice farmers, and their representatives. In his March 15 statement, Prime Minister Abe acknowledged these domestic sensitivities, but also insisted that Japan needed to take advantage of “this last window of opportunity” to enter the negotiations, if it is to grow economically. Other Japanese business interests, including manufacturers, strongly support the TPP.

The TPP would be a free trade agreement (FTA) among at least the current 11 participants—Australia, Brunei, Canada, Chile, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States, and Vietnam. The United States and its TPP partners envision the agreement as “a comprehensive, next-generation regional agreement that liberalizes trade and investment and addresses new and traditional trade issues and 21st century challenges.”

The 11 countries must still reach a consensus, if Japan is allowed to join the negotiations. As part of the process, Japan has been discussing conditions for its entry into the negotiations with each of the 11 countries. It has completed discussions with six countries, while continuing discussions with the United States, Australia, Canada Mexico, and New Zealand. The United States has identified issues regarding autos, insurance, and beef that need to be addressed.

Congress has a direct and oversight role in the issue of U.S. participation in the TPP. It must approve implementing legislation, if the TPP is to apply to the United States. Some Members of Congress have already weighed in on whether Japan should be allowed to participate in the TPP and under what conditions. More may do so as the process proceeds.

The TPP is the leading U.S. trade policy initiative of the Obama Administration and a core component of Administration efforts to “rebalance” U.S. foreign policy priorities toward the Asia-Pacific region by playing a more active role in shaping the region’s rules and norms. As the second largest economy in Asia, the third largest economy in the world, and a key link in global supply/production chains, Japan’s participation would be pivotal to enhancing the credibility and viability of the TPP as a regional free trade arrangement.

Japan’s membership in the TPP with the United States would constitute a *de facto* U.S.-Japan FTA. A large segment of the U.S. business community has expressed support for Japanese participation in the TPP, if Japan can resolve long-standing issues on access to its markets for U.S. goods and services. However, the Detroit-based U.S. auto industry and the UAW union have expressed strong opposition to Japan participating in the TPP negotiations.

The TPP issue presents both risks and opportunities for the United States and Japan. On the one hand, if successful, it could reinvigorate an economic relationship that has remained steady but stagnant, by forcing the two countries to address long-standing, difficult issues, and allowing them to raise their relationship to a higher level. On the other hand, failure to do so could indicate that the underlying problems are too fundamental to overcome and could set back the relationship. It could signify the failure of the United States and/or Japan to deal with domestic opposition to a more open trade relationship.

Contents

Introduction.....	1
An Overview of the TPP.....	2
U.S.-Japan Economic Ties.....	3
U.S.-Japan Trade Trends.....	3
Managing the Trade Relationship.....	5
Pending Challenges and the TPP.....	6
Market Access for U.S. Beef.....	7
Market Access for U.S.-Made Autos.....	7
Insurance, Express Delivery, and Japan Post.....	8
Overall U.S. Objectives.....	9
Market Access.....	9
Rules-based Trade Framework and Impartial Dispute Settlement.....	9
Enhanced TPP.....	10
Foreign Policy Interests.....	11
Japan's Objectives.....	12
Japanese Politics and the TPP.....	14
The Views of U.S. Stakeholders.....	16
Outlook, Possible Outcomes, and Consequences.....	17

Figures

Figure 1. U.S. Merchandise Trade with Various Countries and Trading Blocs.....	11
--	----

Tables

Table 1. U.S.-Japan Merchandise Trade, 2004-2012.....	4
Table 2. U.S.-Japan Trade in Services, 2004-2012.....	4
Table 3. Japan's Free Trade Agreements.....	13
Table 4. Comparative Japanese and U.S. Tariff Rates on Select Agricultural Products.....	15

Contacts

Author Contact Information.....	18
---------------------------------	----

Introduction

The United States is engaged in negotiations with 10 other countries to form a regional free trade agreement (FTA)—the Trans-Pacific Partnership Agreement (TPP).¹ In the negotiations, the United States and the other TPP partner-countries seek to build “a comprehensive, next-generation regional agreement that liberalizes trade and investment and addresses new and traditional trade issues and 21st century challenges.”² The TPP partners also envision the agreement to be a building block towards the establishment of a broader, Asian-Pacific regional FTA, sometimes referred to as the Free Trade Area of the Asia-Pacific (FTAAP).

On March 15, 2013, Japanese Prime Minister Shinzo Abe announced on March 15, 2013, that Japan would formally seek to participate in the negotiations to establish the TPP. The announcement followed an initial expression of interest in November 2011 by then-Prime Minister Noda. In the intervening months, Japanese supporters of the TPP, including representatives of major companies, and TPP opponents, including representatives of the very vocal and politically influential agricultural sector engaged in debate. In addition, lower house parliamentary elections led to the formation of a new government under the Liberal Democratic Party (LDP) and Abe as prime minister. In his March 15 statement, Prime Minister Abe acknowledged the interests and sensitivities of the agricultural groups, but he also insisted that Japan needed to take advantage of “this last window of opportunity” to enter the negotiations, if it is to grow economically.

U.S. and Japanese trade officials are engaged in preliminary discussions on conditions for Japanese entry into the discussions. The Obama Administration has identified issues regarding autos, insurance, and beef, which need to be addressed.

Congress has a direct and oversight role in U.S. participation in the TPP. It must approve implementing legislation, if a final TPP agreement is to apply to the United States. Some Members of Congress have already weighed in on whether Japan should be allowed to participate in the TPP and under what conditions. More may do so as the process proceeds.

The Obama Administration has been proceeding in negotiating the TPP as if trade promotion authority (TPA), which expired on June 30, 2007, were in force. TPA is the authority that Congress gives to the President to enter into trade agreements that can receive expedited legislative consideration. The Administration has been adhering to consultation requirements and notification deadlines that have been an integral part of previous TPA or fast-track statutes. To maintain this practice, the Obama Administration would have to notify both Houses of Congress 90 calendar days before it begins official negotiations (as opposed to preliminary discussions) with Japan on the TPP.

The TPP is the leading U.S. trade policy initiative of the Obama Administration and a pillar of its efforts to “rebalance” U.S. foreign policy priorities toward the Asia-Pacific region by playing a more active role in shaping the region’s rules and norms. As the second largest economy in Asia,

¹ The eight countries are: Australia, Brunei, Chile, Malaysia, New Zealand, Peru, Singapore, the United States, and Vietnam. The governments of Mexico and Canada also expressed interest and, after a series of consultations, were formally invited to join by the nine TPP partners on June 18 and June 19, 2012, respectively. They will join the negotiations officially in the fall of 2012.

² Trans-Pacific Partnership Leaders Statement, November 11, 2011.

the third largest economy in the world, and a key link in the global supply chain, Japan's participation would be pivotal to the credibility and viability of the TPP as a regional trade arrangement. The inclusion of Japan would expand the amount of U.S. trade and foreign investment that the TPP would cover if implemented.

For Japan, participation in the TPP could potentially transform its economy by providing unprecedented access to the Japanese market for foreign exporters and investors. It could also force Tokyo to confront structural economic problems that have long impeded economic growth. It would also symbolize Japan's continued position as an economic power in East Asia, an image that has been tarnished by decades of economic stagnation and the growth of China.

Japan's participation in the TPP would have important implications for the U.S.-Japan relationship. For example, it already has renewed a focus on long-standing issues, such as access to Japan's markets for autos, agricultural products, and insurance, which have remained irritants in the relationship. These issues will likely have to be addressed in one form or another, perhaps even before Japan is approved as a full-fledged TPP participant. New issues will undoubtedly also be raised in the process.

An Overview of the TPP

The TPP is an evolving regional free trade agreement (FTA). It was originally formed as the Trans-Pacific Strategic Economic Partnership—an FTA now in effect among Singapore, New Zealand, Chile, and Brunei (the so-called “P-4”). In the fall of 2008, the United States, along with Australia, Peru, and Vietnam, joined the negotiations to accede to the arrangement. Malaysia joined as the ninth negotiating partner in October 2010.

On November 14, 2009, President Obama committed the United States to engage with the TPP countries to transform the original P-4 pact into a regional arrangement with broad-based membership and “the high standards worthy of a 21st century trade agreement.”³ After several months of discussions, the nine partners announced a framework for the agreement in time for the ministerial meeting of the Asia-Pacific Economic Cooperation (APEC) forum in Honolulu, Hawaii, which was held November 8-13, 2011. The TPP partners conducted a series of rounds since that time and are aiming to complete the agreement by the end of 2013.

As reflected in the framework, the TPP partners envision a comprehensive arrangement covering a broad range of trade and trade-related activities, similar in structure to a number of recently concluded U.S. FTAs. These activities include market access for goods and services; government procurement; foreign investment; technical barriers to trade; trade remedies; sanitary and phytosanitary measures;⁴ intellectual property rights; worker rights; and environmental protection. The TPP countries also agreed to pursue cross-cutting issues such as regulatory coherence, competitiveness and business facilitation, also known as transnational supply and production chains; the participation of small and medium-sized companies; economic development; and potential disciplines on the state-owned enterprises (SOEs).

³ Remarks of President Obama at Suntory Hall, Tokyo, Japan, November 14, 2009.

⁴ Sanitary and Phytosanitary measures are procedures used by government agencies to ensure the animal and plant products are safe for consumption.

The TPP participants also envision the TPP to go beyond typical FTAs by being:

- a regional agreement that facilitates trade by minimizing the “noodle bowl” effect that has been created by different sets of rules under the more than 100 bilateral and regional FTAs that exist in the Asia Pacific-region;
- an agreement that addresses trade challenges that are emerging in the 21st century, for example, cloud computing and SOEs, that have not been addressed in previous FTAs nor not fully in the World Trade Organization (WTO) because they did not exist or were considered not as important; and
- a “living agreement” that will not restrict its membership to the 11 countries but will be open to other countries acceding to it as long as they are willing to commit to its provisions and will take on new issues as they arise.

The leaders of the nine TPP countries instructed their negotiators to develop a completed legal text as soon as possible. The complexity of the issues at hand, the diversity of the membership, and the possibility of new members, such as, Japan, and newly invited Canada and Mexico, suggest challenges ahead for the negotiators.

U.S.-Japan Economic Ties

A brief overview of U.S.-Japan economic ties can provide context for understanding U.S. and Japanese interests in the TPP and the potential implications from various perspectives. It could also shed light on opportunities and challenges presented by an FTA that includes the United States and Japan. A U.S.-Japan FTA is not a new idea, but it is a policy option that has failed to take hold in the past because of some fundamental issues which have been seemingly intractable.

U.S.-Japan Trade Trends

The United States and Japan are the world's first and third largest economic powers. Together they account for over 30% of gross world product.⁵ The two countries remain very important economic partners, accounting for large shares of each other's foreign trade and investment, even though their relative economic significance to one another has declined over the last few years. In 1999, Japan slipped from being the second largest U.S. trading partner to the third largest. In 2004, it slipped to number 4, where it has remained. Until 2007, the United States was Japan's largest trading partner, but it slipped to number 2 since 2007.⁶

The global financial crisis and economic downturn added another dimension to the relationship as the two countries have grappled with the severe impact of the crisis on their respective economies, while working with their partners in the G-20 to coordinate a multilateral response.⁷ The impact of the March 11, 2011 earthquake and subsequent tsunami and nuclear accidents in northeast Japan also affected trade, although not as much as originally anticipated.

⁵ CRS calculation based on data in CIA, *World Factbook*, <http://www.CIA.gov>.

⁶ Global Trade Atlas.

⁷ The G-20 countries are: Argentina, Australia, Brazil, Canada, China, France, Germany, India, Indonesia, Italy, Japan, Mexico, Russia, Saudi Arabia, South Africa, South Korea, Turkey, the United Kingdom, the United States, and the European Union.

U.S.-Japanese bilateral trade in goods and services declined significantly in 2009 over 2008 levels because of the global economic downturn but has picked up since. (See **Table 1** and **Table 2**.)

Table 1. U.S.-Japan Merchandise Trade, 2004-2012

(\$ billions)

Year	U.S. Exports	U.S. Imports	Total Trade	U.S. Trade Balances
2004	54.4	129.6	184.0	-75.2
2005	55.4	138.1	193.5	-82.7
2006	59.6	148.2	207.8	-88.6
2007	62.7	145.5	208.2	-82.8
2008	66.6	139.2	205.8	-72.3
2009	51.2	95.9	147.1	-44.8
2010	60.5	120.3	180.8	-59.8
2011	66.2	128.8	195.0	-62.2
2012	70.0	146.4	216.4	-76.3

Source: U.S. Department of Commerce, U.S. Census Bureau.

Table 2. U.S.-Japan Trade in Services, 2004-2012

(\$ billions)

Year	U.S. Exports	U.S. Imports	Total Trade	U.S. Trade Balances
2004	36.0	21.3	57.3	14.8
2005	42.5	23.8	66.3	18.7
2006	42.0	25.5	67.5	16.5
2007	41.2	26.2	67.4	15.0
2008	42.3	25.7	68.0	16.6
2009	41.4	22.9	64.3	18.5
2010	45.1	25.9	71.0	19.2
2011	44.9	27.5	72.4	17.4
2012*	47.1	29.4	76.5	17.7

Source: U.S. Department of Commerce, Bureau of Economic Analysis.

Note: * Preliminary.

Raw trade data likely underestimate Japan's importance because they do not readily measure Japan's role in the East Asian supply and production networks that produce goods exported to the United States. The two countries are also economically tied through investment flows. For example, Japanese investors are the second largest group (next to China) of foreign holders of U.S. treasury securities and, therefore, U.S. government debt and of direct investments in the U.S. economy.

In the 1980s and 1990s, the bilateral economic relationship was the centerpiece of U.S. and Japanese foreign economic agendas. Persistent and increasing U.S. merchandise trade deficits with Japan, sharp increases in Japanese exports to the United States of high-value manufactured products, such as cars, and large volumes of Japanese investments in the United States (including purchases of high-profile properties, such as the Empire State Building) stoked fears in the United States of Japan as an economic threat to the United States. Many scholarly and popular books and journal articles were written on the subject.⁸

However, since the mid-1990s, the trade relationship with Japan has been a lower priority for U.S. officials. One reason for the shift may be the rise of China as a global trade and economic power, and source of challenges and opportunities to U.S. trade policymakers. Symbolic of this rise are the relative merchandise trade balances with Japan and China. While U.S. merchandise trade deficits with Japan have remained relatively constant in recent years, the U.S. deficits with China have risen significantly. In 2012, the U.S. trade deficit with Japan was \$76.3 billion, while the trade deficit with China was \$315.1 billion.⁹

Another reason may have been that Japan's economic problems over the last two decades have made it seem less of a competitive "threat."¹⁰ In addition, the level of Japanese foreign direct investments in the United States has declined. Furthermore, security issues, such as North Korea's nuclear program (the United States and Japan are parties to talks on North Korea's fledgling nuclear program) and the relocation of U.S. troops in Japan, have overshadowed bilateral trade relations as a priority.¹¹ Nevertheless, trade-related tensions remained, albeit below the surface.

Managing the Trade Relationship

Over the years, U.S.-Japan economic relations have experienced degrees of friction, sometimes to the point of threatening the stability of the alliance. The United States dominated the economic relationship with Japan for many years after World War II. The United States was by far the largest economy in the world, and Japan was dependent on the United States for national security. The United States set the agenda, and the issues on the agenda were driven by the U.S. demands for Japan to curb exports to the United States and/or to remove barriers to U.S. exports and investments.

In the 1960s and 1970s, the primary issues were Japan's perceived protectionist economic policies that it implemented through high tariffs and other border restrictions. As Japan's economy became more developed and competitive and as it negotiated reductions in its tariffs with other members of the General Agreement on Tariffs and Trade (GATT)—now the World Trade Organization (WTO)—the United States focused on non-tariff barriers, including "behind the border" measures, such as government regulations that, while not ostensibly protectionist, may be applied in a way that restricts trade. Certain measures are not covered by WTO

⁸ For example, Clyde V. Prestowitz, *Trading Places: How We Allowed Japan to Take the Lead*, New York: Basic Books, 1988.

⁹ For more information on the rise of China in U.S. economic relations, see CRS Report RL33536, *China-U.S. Trade Issues*, by Wayne M. Morrison.

¹⁰ For more information on Japan's economic problems, see archived CRS Report RL30176, *Japan's "Economic Miracle": What Happened?*, by William H. Cooper.

¹¹ For more information on the overall U.S.-Japan relationship, see CRS Report RL33436, *Japan-U.S. Relations: Issues for Congress*, coordinated by Emma Chanlett-Avery.

agreements and are currently not readily addressed in trade negotiations since they serve non-trade functions. Examples of such measures include

- domestic taxes on car purchases and other regulations said to discriminate against sales of imported vehicles;
- a government contract bidding system that favors certain domestic providers of construction services;
- zoning regulations that discourage the establishment of large retail stores that are more likely to sell imported products than the smaller stores the regulations are designed to protect;
- government health insurance reimbursement regulations that discourage the purchase of newer, leading-edge pharmaceuticals and medical devices, many of which are imported; and
- government subsidies for the production of semiconductors.

To address these non-tariff barriers Japan and the United States employed, largely at the latter's instigation, special bilateral frameworks and agreements to conduct their government-to-government economic relations. These arrangements included

- the Market-Oriented Sector-Specific (MOSS) talks started in 1985;
- the Structural Impediments Initiative (SII), begun in March 1989;
- the United States-Japan Framework for a New Economic Partnership, begun in 1993;
- the Enhanced Initiative on Deregulation and Competition Policy (the Enhanced Initiative), begun in 1997;
- the U.S.-Japan Economic Partnership for Growth (The Economic Partnership) begun in 2001; and
- the United States-Japan Economic Harmonization Initiative, launched in 2010, which now operates as the primary bilateral forum for bilateral discussions.

The two countries also concluded bilateral agreements or memoranda of understanding (MOUs), whereby Japan agreed to address U.S. concerns about its trading practices for specific products, including autos and semiconductors.

These arrangements varied in their approaches. However, they shared some basic characteristics: they were bilateral; were designed to remedy U.S. - Japan trade problems by focusing on regulations and other fundamental barriers; and were typically initiated by the United States. However, these arrangements were only of limited success, judging by the fact that many of the issues they were supposed to address remain.

Pending Challenges and the TPP

Many of that issues that have continually irritated the U.S.-Japan economic relationship could be addressed within the TPP. U.S. policymakers and other stakeholders have identified three issues that, if resolved, would be considered "confidence-building measures" that could boost U.S.

support of Japan's inclusion in the TPP. The issues relate to: Japanese restrictions on imports of U.S. beef; market access in Japan for cars made by Detroit-based U.S. manufacturers; and preferential treatment for insurance and express delivery subsidiaries of state-owned Japan Post.¹²

Market Access for U.S. Beef

In December 2003 when Japan imposed a ban on imported U.S. beef (as did some other countries) in response to the discovery of the first U.S. case of bovine spongiform encephalopathy (BSE or "mad cow disease") in Washington State. In the months before the diagnosis in the United States, nearly a dozen Japanese cows infected with BSE had been discovered, creating a scandal over the Agricultural Ministry's handling of the issue (several more Japanese BSE cases have since emerged). Japan had retained the ban despite ongoing negotiations and public pressure from Bush Administration officials, a reported framework agreement (issued jointly by both governments) in October 2004 to end it, and periodic assurances afterward by Japanese officials to their U.S. counterparts that it would be lifted soon.

In December 2005, Japan lifted the ban after many months of bilateral negotiations, but reimposed it in January 2006 after Japanese government inspectors found bone material among the initial beef shipments. The presence of the bone material violated the procedures U.S. and Japanese officials had agreed upon. The then-U.S. Secretary of Agriculture Johanns expressed regret that the prohibited material had entered the shipments.

In July 2006, Japan announced it would resume imports of U.S. beef from cattle 20 months old or younger. The first shipments arrived in August 2006. Members of Congress had pressed Japan to lift restrictions on imports of U.S. beef from even older cattle. U.S. officials met with Japanese agricultural officials September 14-15, 2010, for technical discussions but produced no clear indication of resolution of the issue. On August 4, 2011, a bipartisan group of Senators sent a letter to Secretary of Agriculture Vilsack and to USTR Ron Kirk, urging them to press Japan (and China) to end restrictions on imports of U.S. beef. In December 2011 Japan announced that it was reassessing its BSE-related restrictions with the objective to raise the maximum age of cattle from which U.S. beef can be exported to Japan.

On February 1, 2013, the Japanese government loosened its restrictions on beef imports from the United States to allow beef from cattle 30 months or younger for the first time since December 2003. According to a joint press release from the Office of the United States Trade Representative and the Department of Agriculture, the Japanese government's Food Safety Commission would continue to monitor shipments of U.S. beef and would consider the possibility of allowing U.S. beef from cattle of any age to be imported into Japan.

Market Access for U.S.-Made Autos

Auto and auto-parts-related trade and investment have been a very sensitive set of issues in the U.S.-Japan economic relationship. The issue has its roots in the late 1970s and early 1980s, when U.S. imports of Japanese-made vehicles surged as a result of the increase in U.S. consumer

¹² Office of the USTR, *U.S., Japan Hold High-Level Discussions on the Trans-Pacific Partnership*, <http://www.ustr.gov/about-us/press-office/press-releases/2012/february/us-japan-hold-high-level-consultation-trans-pacif>.

demand for smaller vehicles, largely in response to the rapid increase in gasoline prices, while demand for U.S.-manufactured cars plummeted. Facing pressure from the U.S. auto industry and pressure from Congress in the form of limits on imports of Japanese made cars, the Reagan Administration persuaded Japan to agree in 1981 to voluntary export restraints. Japanese manufacturers responded to the restraints by establishing manufacturing facilities in the United States and exporting high-valued, passenger cars. U.S. manufacturers asserted that Japan employed various measures to restrict sales of foreign-made cars in Japan and the use of U.S.-made parts in Japanese cars manufactured in the United States. These issues were the subject of bilateral negotiations and agreements through the 1990s. The agreements were mostly in the form of Japanese government pledges to ensure that government regulations did not impede the sale of U.S.-made cars in Japan and voluntary efforts on the part of Japanese manufacturers to increase the use of U.S.-made auto parts in cars made in the United States. The U.S. government pledged to implement programs to promote the export of U.S.-made cars in Japan.

The intensity of the issue had subsided somewhat but has regained attention in the context of Japan's possible participation in the TPP negotiations. (See TPP discussion below.) The three Detroit-based car manufacturers—Chrysler, Ford, and General Motors—charge that Japanese government regulations continue to prevent them from obtaining their fair share of Japanese domestic vehicle sales. They cite the traditionally small share of total cars sales in Japan that consist of imported cars—around 7.4%. U.S. manufacturers account for a small share of sales of imported cars in Japan—2.1% in 2011.¹³

Insurance, Express Delivery, and Japan Post

Japan is the world's second largest insurance market, next to the United States. U.S.-based insurance providers have found it difficult to enter the market, especially in life and annuity insurance. They have been concerned about favorable regulatory treatment that the government gives to the insurance subsidiary Japan Post Insurance of Japan Post, the national postal system, which holds a large share of the Japanese domestic insurance market. Japan Post subsidizes the insurance operations from revenues from its other operations. Also, Japan Post Insurance is not subject to the same regulations as other, privately owned insurance providers, both domestic and foreign-owned. Similarly, U.S. express delivery providers have charged that Japan Post's express delivery company obtains subsidies from the government-owned parent agency that gives it an unfair competitive advantage.

On October 1, 2007, the Japanese government of then-Prime Minister Junichiro Koizumi introduced reforms to privatize Japan Post and a major objective of his administration. The Bush Administration and many U.S. companies, particularly insurance companies, supported these reforms. However, successor governments led by the Democratic Party of Japan (DPJ) have taken steps to roll back the reforms. On March 12, 2012, the government introduced, and on April 27, 2012, Japan's legislature passed, a bill into law to loosen regulatory requirements. According to industry reports and other commentaries, the bill reverses the reforms that the Koizumi government introduced.¹⁴

¹³ Japan Automobile Manufacturers Association, <http://www.jama.org/pdf/MVS2011.pdf>.

¹⁴ Coalition of Service Industries, *Proposed Japanese Legislation Complicates Entry in to the TPP*, press release, April 6, 2012. Also, Parker, David A. and Matthew P. Goodman, *Japan Post Reform: Return to Sender*, commentary from Center for Strategic and International Studies, May 30, 2012.

Among other things, the United States wants the Japanese government to refrain from allowing Japan Post to expand its coverage of services until a “level playing field” for competition between its services and those offered by privately owned providers. In addition, the U.S. government wants enhanced transparency in the development and implementation of regulations pertaining to Japan Post-provided services. The U.S. government and U.S.-based providers have had similar concerns about insurance services sold by cooperatives (kyosai) that are not subject to the same regulatory authorities as private insurers and have argued give them an unfair advantage over U.S. and other privately owned and operated companies.¹⁵

Overall U.S. Objectives

Japan's possible entry into the TPP touches on a range of U.S. trade and foreign policy objectives. Acting USTR Demetrios Marantis greeted positively Prime Minister Abe's March 15, 2013 statement but stipulated:

Since early last year, the United States has been engaged with Japan in bilateral TPP consultations on issues of concern with respect to the automotive and insurance sectors and other non-tariff measures, and also conducting work regarding meeting TPP's high standards. While we continue to make progress in these consultations, important work remains to be done. We look forward to continuing these consultations with Japan as the 11 TPP countries consider Japan's candidacy for this vital initiative in the Asia-Pacific region.¹⁶

The United States is also working with Japan on “gap issues,” to make sure that Japan would be prepared to take steps to meet goals of the TPP in areas that Japan has not addressed in its previous FTAs.¹⁷

Market Access

Japan's entry into TPP negotiations could likely expand U.S. trade and investment opportunities in Japan. The target for the United States would be to get Japan to liberalize non-tariff measures, such as certain government regulations, which have been a more significant irritant than tariffs in U.S.-Japan trade relations. The TPP, as envisioned and being negotiated by the current set of 11 countries, would cover at least some of these non-tariff measures that Japan maintains. If Japan enters the TPP negotiations, the United States and Japan would have a framework within which to address these long-standing market access issues.

Rules-based Trade Framework and Impartial Dispute Settlement

One drawback of bilateral frameworks that the United States and Japan have used in the past is that they have had no formal dispute settlement mechanism. For example, a number of trade

¹⁵ United States Trade Representative, *National Trade Estimates Report on Foreign Trade Barrier*, 2013.

¹⁶ United States Trade Representative, *Statement by Acting U.S. Trade Representative Demetrios Marantis on Japan's Announcement Regarding the Trans-Pacific Partnership*, March 15, 2013.

¹⁷ *World Trade Online*, March 21, 2013.

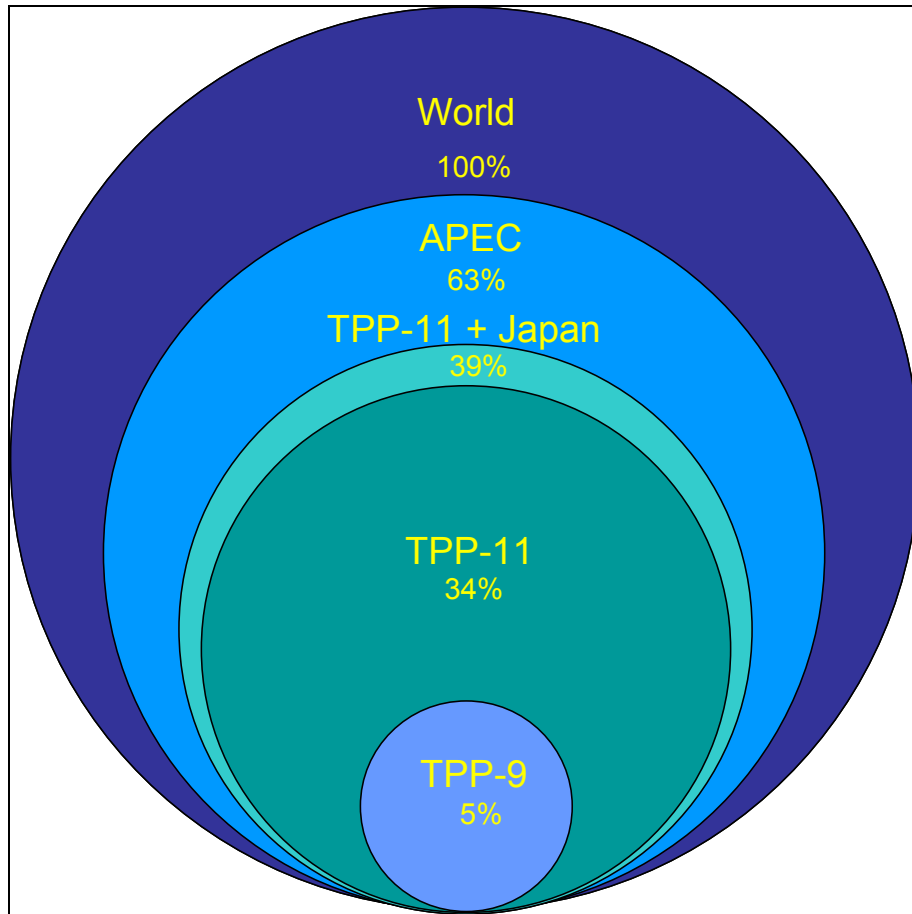
disputes in the 1980s and 1990s—including on market access for U.S.-made autos and autoparts in Japan, Japanese trade practices in semiconductors, and access to Japanese markets for construction services—became highly politicized with threats of U.S. unilateral action, potentially undermining the overall relationship. Disputes usually were resolved through brinkmanship but often did not produce meaningful changes in Japan's trade practices or a significant increase of U.S. exports of the products in question. The TPP would provide a set of mutually agreed-upon rules that go beyond the WTO but would likely use an impartial, multi-party dispute settlement mechanism like that used in the WTO that would reduce the role of one-on-one confrontations in resolving issues.

Enhanced TPP

Japan would increase the economic importance of the TPP from the U.S. perspective. It would increase the amount of U.S. merchandise trade that the TPP (the original 9 countries plus Canada and Mexico) would cover, from 34% to 39% based on 2011 data and would also increase trade in services and foreign investment activity within the TPP. (See **Figure 1.**) Japan would increase the share of the world economy accounted for by TPP countries (including Canada and Mexico), from around about 30% to about 38%.¹⁸

¹⁸ CRS calculations based on data in nominal dollars contained in the CIA *World Factbook* at <http://www.cia.gov> and in CRS Report R42344, *Trans-Pacific Partnership (TPP) Countries: Comparative Trade and Economic Analysis*, by Brock R. Williams.

Figure 1. U.S. Merchandise Trade with Various Countries and Trading Blocs
(shares of total, 2011)



Source: Analysis by CRS. See CRS Report R42344, *Trans-Pacific Partnership (TPP) Countries: Comparative Trade and Economic Analysis*, by Brock R. Williams, Data from U.S. ITC.

Japan's participation might strengthen the U.S. position on many issues within the TPP. The United States and Japan share some common objectives, including strong intellectual property rights protection; protection of foreign investment; clear rules of origin to facilitate trade; and market access for services.

Foreign Policy Interests

In addition to trade and investment interests, Japan's participation in the TPP could affect U.S. political and foreign policy interests. The U.S. entry into the TPP negotiations is part of the Obama Administration's foreign policy and military "rebalancing" to the Asia-Pacific—often referred to as the "pivot" to the Pacific—announced in 2011.¹⁹ The pivot refers to a series of diplomatic, military, and economic measures that the United States has taken or plans to initiate to influence the evolving rules and norms of the Asia-Pacific region. Many policymakers and

¹⁹ For more analysis of the "pivot," see CRS Report R42448, *Pivot to the Pacific? The Obama Administration's "Rebalancing" Toward Asia*, coordinated by Mark E. Manyin.

analysts believe that China's pursuit of its own bilateral and multilateral economic arrangements has produced a competition of sorts over the shape of Asia's future economic architecture, in which the United States and several other countries in the Pacific are pushing for a deeper set of regional economic rules and expectations than Chinese leaders prefer.²⁰ The potential inclusion of Japan, as the second largest economy—and richest economy on a per capita basis—in East Asia could transform this struggle between alternative visions of regional trade rules. Additionally, U.S. and Japanese participation in the same free trade agreement could arguably be viewed as a means to reaffirm their alliance. The long-running bilateral relationship at times over the years has been overshadowed by U.S. and Japanese interests and concerns elsewhere in Asia, e.g., China and the Korean Peninsula, and in other parts of the world.

Japan's Objectives

Underlying the arguments for Japan to join the TPP talks is a growing feeling among many Japanese that, after two decades of relatively sluggish growth, Japan's economic and political influence is waning in comparison with China and with middle powers such as South Korea. The rapid aging and gradual shrinking of Japan's population has added to a sense among many in Japan that the country needs to develop new sources of growth to maintain, if not increase, the country's living standards. Japanese proponents of TPP have called for joining the talks for a number of overlapping reasons, some defensive in nature, others more proactive:

- **A desire to promote Japanese growth and prevent the hollowing out of Japan**—i.e., the relocation of Japanese companies to other countries—by expanding Japanese exports, especially to the fast-growing Asia-Pacific region. The decade-long stalemate in the WTO's "Doha Round" of trade talks, plus the explosion in bilateral and multilateral FTAs over the past decade, has led Japan to cautiously pursue its own FTAs.²¹ As noted earlier, Japan is an important link in the Asia's global supply chains, and the TPP could facilitate operations within the supply chain. Conversely, greater trans-Pacific economic integration could potentially erode Japan's place in these manufacturing and export networks.²² In his March 15, 2013 press conference announcing his decision to seek entry into the TPP negotiations, Prime Minister Abe spoke of the multiple commercial benefits Japan would derive from joining, and how doing so would help "leave to our children and our children's children a strong Japan...."²³
- **A feeling that Japan is being left behind in negotiating FTAs.** Although Japan has signed 13 FTAs—what it calls Economic Partnership Agreements (EPAs)—it has none with a major economic power, with the possible exception of the 2011 Japan-India EPA, and many of them exclude agricultural trade. (See **Table 3.**) In contrast, South Korea, the country many Japanese now compare themselves to, has signed FTAs with the United States, the European Union (EU), and in 2012 opened

²⁰ August 2012 conversation with Takeshi Terada, Professor, Doshisha University.

²¹ For historical background on Japan's FTA strategy, see archived CRS Report RL33044, *Japan's Free Trade Agreement Program*, by Raymond J. Ahearn.

²² For more information on supply chains, CRS Report R40167, *Globalized Supply Chains and U.S. Policy*, by Dick K. Nanto.

²³ Japanese Prime Minister's Office, "Press Conference by Prime Minister Shinzo Abe," Friday, March 15, 2013 (provisional translation).

negotiations with China. If Japan is left behind in the FTA race, the feeling runs, its companies will be left at a competitive disadvantage.²⁴ Japan has belatedly tried to make up for the gap in 2013 by launching FTA negotiations with the EU and with China and South Korea on a trilateral FTA.

- **A desire to help shape the rules of economic activity in the Asia-Pacific and beyond.** In his announcement of Japan's bid to participate, Prime Minister Abe said that the TPP would likely serve as "a basis for rule-making" in other multilateral trade negotiations.²⁵ If Japan waited any longer to join the talks, in his view, it would be too late to help write the TPP's rules. "Now is our last chance," Abe said, "Losing this opportunity would simply leave Japan out from the rule-making in the world. Future historians will no doubt see that "the TPP was the opening of the Asia-Pacific Century."²⁶

Table 3. Japan's Free Trade Agreements

In Force	Negotiating	Under Discussion
Japan—ASEAN ^a	Japan—Australia	
Japan—Brunei	ASEAN+3	Japan—Canada
Japan—Cambodia	ASEAN+6	
Japan—Chile	Japan—European Union	Japan—Mongolia
Japan—India	Japan—China—South Korea	Japan—South Korea
Japan—Indonesia		TPP
Japan—Malaysia		
Japan—Mexico		
Japan—Peru		
Japan—Philippines		
Japan—Singapore		
Japan—Switzerland		
Japan—Thailand		
Japan—Vietnam		

Source: Japanese Ministry of Foreign Affairs, <http://www.mofa.go.jp/policy/economy/fta/index.html>.

²⁴ For instance, in his opening statement at a November 2011 press conference to discuss Japan's decision to explore joining the TPP talks, Prime Minister Noda said, "as a trading nation, in order to pass down the affluence we have cultivated to our future generations and to develop our society into one with vigor, we must incorporate the economic growth of the Asia-Pacific region." Japanese Prime Minister's Office, "Press Conference by Prime Minister Yoshihiko Noda," Friday, November 11, 2011. In his March 2013 press conference, Prime Minister Abe said "If Japan alone should become inward-looking, we would have no chance of growth."

²⁵ Abe specifically mentioned the 16-nation Regional Comprehensive Economic Partnership (RCEP), a 16-nation economic grouping among nearly all East Asian countries plus Australia, India, and New Zealand. Thus, in Abe's vision, TPP and RCEP appear to complement rather than compete with one another.

²⁶ "Press Conference by Prime Minister Shinzo Abe," Friday, March 15, 2013.

- a. ASEAN stands for the Association of Southeast Asian Nations, which consists of Brunei Darussalam, Burma (Myanmar), Cambodia, Indonesia, Laos, Malaysia, the Philippines, Singapore, Thailand, and Vietnam.
- **A belief that entering the TPP will help promote economic reforms inside Japan.** Over the years, many experts and government officials have argued that Japan needs structural reform to spur its economy. A number of Japanese commentators and officials believe that one way to overcome resistance to reform from vested interests is through negotiating a comprehensive, high-standard FTA such as the TPP, which will help reform-minded groups and individuals by giving them political cover. Also, negotiating the TPP could potentially enable Japan to gain benefits by trading structural reforms for concessions from negotiating partners.
- **A hope that entering the TPP will help Japan's strategic situation in Asia.** Joining the TPP would complement Japan's moves in recent years to augment the U.S.-Japan alliance by strengthening Tokyo's relationships with middle powers in and around the Asian region. Behind this push is a concern that China's rise is diminishing Japan's influence and jeopardizing its security and economic interests. Since leading his party to power in late 2012, Prime Minister Abe has made one of his top priorities restoring Japanese standing, through revitalizing its economy and strengthening relations with the United States.²⁷

Japanese Politics and the TPP

The question of whether Japan should join the TPP negotiations has often been front-page news in Japan and has generated enormous political controversy since serious discussion of the possibility began in 2009 and 2010. Both Prime Minister Abe's ruling Liberal Democratic Party (LDP) and the largest opposition party, the Democratic Party of Japan (DPJ) are split over the TPP issue. Until Abe's March 2013 announcement, the frequent turnover among Japanese prime ministers—Abe is the seventh premier in as many years—failed to produce the leadership that might unify the pro-TPP camps across the two parties. These political weaknesses exacerbated the traditional institutional limitations of the prime minister's powers, making it easier for motivated interests to effectively veto government action and stymie the efforts of Abe's two predecessors from unambiguously trying to enter the talks. For the moment, Abe appears to have surmounted these obstacles, in part by using his high popularity ratings as leverage against opponents in his LDP and by centralizing decision-making on TPP issues in the prime minister's office. The latter move could blunt opposition to the TPP within the LDP. Abe came to power in December 2012 after leading the LDP to victory in national elections, ending the DPJ's roughly three-year reign.

Japan's powerful agricultural institutions, most notably the nationwide agricultural cooperative organization (JA), have been the most vocal opponents of joining the TPP, as has been true of virtually all trade liberalization agreements that Japan has pursued for the past 40-50 years. JA has called for over 800 farm items to be exempt from tariff elimination.²⁸ Japan's farm sector has taken advantage of the fact that Japan's rural areas are over-represented in the Diet. As a result,

²⁷ See, for instance, Japanese Prime Minister's Office, "Press Conference by Prime Minister Shinzo Abe," December 26, 2012; and Shinzo Abe, "Japan is Back," Speech at the Center for Strategic and International Studies, February 22, 2013.

²⁸ "Abe Surprises on TPP," *The Oriental Economist*, Volume 81, No.3, March 2013.

farm lobbies have significant sway in both the ruling LDP and opposition DPJ and have supported an array of policies that benefit the agricultural sector. For example, many farm products remain protected behind high tariff barriers such as rice (778%) and wheat (252%). (For others, see **Table 4**.) Additionally, a range of other policies ensure that Japanese farming remains small scale, performed increasingly by aging and part-time farmers, and generally unproductive compared to farms in most other countries. The Japanese government provides around ¥1 trillion (about \$12 billion) annually in direct income to farming households.²⁹ The Abe government and the LDP reportedly are considering a new subsidy package that could be offered to Japan's farm sector to compensate for losses that would be expected if a TPP agreement is reached.³⁰

Table 4. Comparative Japanese and U.S. Tariff Rates on Select Agricultural Products

(Average applied ad valorem MFN rates)

Category	Japan	United States
Animal Products	18.9	2.3
Dairy Products	93.3	20.3
Fruits & Vegetables	10.6	4.9
Coffee & Tea	15.3	3.2
Cereals & Preparations	42.0	3.5
Oilseeds, Fats & Oils	9.0	4.6
Sugars and Confectionary	27.2	10.3
Beverages & Tobacco	14.6	15.6

Source: WTO Tariff Profiles.

JA has allied with a variety of other powerful interest groups to mount an aggressive campaign against entering the TPP. The most significant of these other groups may be the Japan Medical Association, which argues that TPP will erode if not eliminate Japan's universal healthcare insurance system because it will be forced to pay higher prices for medicines and medical equipment. Many experts argue that until Abe's March 2013 announcement, Japan's traditional agriculture interests, medical lobby, and other TPP opponents successfully controlled the debate about TPP inside Japan. They have gained the support of scores of lawmakers, including over 200 LDP members (over half the LDP's parliamentary caucus) that prior to Abe's decision joined a group calling for Japan not to join the TPP. Nonetheless, in mid-March, after considerable internal debate the LDP formally announced it supported Abe's decision.³¹ Around the same time, an LDP panel on the TPP designated five product lines – rice, sugarcane/sugar products, wheat, dairy products, and beef – as "important items" that must be protected.³² In 2012, prior to the elections that swept Abe into power, the Abe-led LDP had said it opposed entering the negotiations unless the final agreement allowed for some exemptions, a position that many interpreted as designed to appeal to anti-TPP voters. At the time, the LDP also objected to some

²⁹ Aurelia George Mulgan, "Japan's New Agricultural Policy Plan Neglects Trade Liberalisation," East Asia Forum blog, November 2, 2011, <http://www.eastasiaforum.org>.

³⁰ "Analysis: New Farm Subsidy May Turn Into Another Pork Barrel," *Nikkei Report*, March 26, 2013.

³¹ Liberal Democratic Party, "LDP's Decision to Participate in the TPP," March 13, 2013.

³² "LDP Designates Rice, Sugar, Others as 'Important Items'," U.S. Embassy Tokyo, Japan Morning Highlights, March 13, 2013.

investor-state dispute settlement requirements that might be agreed to in the TPP, and argued that government procurement and financial services must have their basis in Japan's "special characteristics."³³ It is unclear to what extent these views have or will become Japanese government positions. The reservations about TPP among many LDP members indicate that, if Japan enters the talks, the Abe government may face difficulties gaining domestic support for making painful concessions, particularly if Abe's public approval ratings decline.

The Views of U.S. Stakeholders

In a December 7, 2011 *Federal Register* notice, the Office of the USTR solicited the views of private sector stakeholders on whether Japan should be included in the TPP. USTR received over 100 responses. Around 40% of the responses were from agricultural firms, another 25% came from manufacturing firms, 15% from services providers and the remainder from various non-government organizations (NGOs) and business associations. Some of the responses came from Japanese companies or associations representing Japanese companies.

In a few cases, the respondents expressed outright opposition to Japan's participation. One of the most notable members of this group is the American Automotive Policy Council (AAPC).³⁴ The AAPC represents the three Detroit-based auto manufacturers—Chrysler, Ford and General Motors. In its statement, the AAPC said:

The AAPC opposes Japan joining the Trans-Pacific Partnership negotiations at this time.... Japan's trade barriers in the auto sector cannot be addressed easily or quickly, and will needlessly slow down the negotiations. To date Japan has not indicated a willingness to change its decades-long practice of maintaining a closed automotive market. Given the systemic trade imbalance and lack of willingness to reform, a U.S. free trade agreement with Japan would only lock-in the already one-way trade relationship that Japan's closed auto market has created, and significantly delay, if not prevent proceeding with a high quality TPP trade agreement with other more compatible trade partners in the important and rapidly growing Pan-Pacific region.

The AFL-CIO also opposes Japan's participation in the TPP, having stated:

Given the numerous unknowns about the yet unfinished Trans-Pacific FTA, it is difficult to provide significant technical advice or even formulate well-grounded opinion with respect to the possible impacts on working families of Japan's accession to the Trans-Pacific FTA.

As such, the AFL-CIO has serious concerns regarding the premature expansion of the Trans-Pacific FTA negotiations to include Japan or any other nation before US negotiators first demonstrate an ability to successfully negotiate an agreement that will produce genuine benefits for American workers and increase domestic production.

[Japan's] markets are notoriously closed to foreign goods, and this is not the result of high tariff barriers.... To gain significant and substantial market access to Japan, the United States

³³ Aurelia George Mulgan, "Can Trade Talks Drive Reform in Japan?" *Current History*, Volume: 111, Issue: 746, September 2012, p. 242.

³⁴ AAPC, The American Automotive Policy Council's (AAPC) Views Regarding Japan's Expression of Interest in the Trans-Pacific Partnership (TPP) Trade Negotiations, January 13, 2012.

Trade Representative (USTR) would have to adopt a new and revolutionary approach.... If USTR is not willing to 'think outside the box' and abandon its currently slavish approach to free trade, it is difficult to see how Japan's accession to the Trans-Pacific FTA can benefit American working families.³⁵

In some cases, respondents expressed strong support for Japan's inclusion in the TPP. For example, Caterpillar, Inc. argues that the TPP would be the vehicle for addressing Japan's remaining non-tariff barriers.³⁶ The U.S. Chamber of Commerce and the U.S.-Japan Business Council, in separate submissions, also expressed support for Japan's participation in the TPP negotiations. However, each group asserted that Japan would have to address issues that have plagued relations with member companies, including regulatory barriers, favored treatment of insurance and express delivery subsidiaries of Japan Post, and government procurement, among others.³⁷

Some Members of Congress have weighed in on the issue. For example, in a November 8, 2011, bipartisan letter to USTR Ron Kirk, the Chairmen and Ranking Members of the House Ways and Means Committee and the Senate Finance Committee stated that Japan's participation "would represent an opportunity for much needed change in Japan's approach to international trade." They assert that, while Japan is a long-time U.S. ally and friend in Asia,

paramount considerations in evaluating a request relating to a trade agreement must be whether Japan is willing and able to meet the high standard commitments inherent in U.S. free trade agreements and whether inclusion would truly open this historically closed market to the benefit of our companies, workers, and farmers.

These comments and others from stakeholders suggest that the debate within the United States and negotiations with Japan on the TPP will be difficult and complex. The legacies of a sometimes contentious bilateral economic relationship have carried over into the TPP negotiations.

Outlook, Possible Outcomes, and Consequences

Japan's negotiations with the United States, as well as its negotiations with Australia and New Zealand, continue with no publically announced deadline or timeframe. The Obama Administration has stated that it wants to take as much time as necessary but would not let these negotiations interfere with the pace of the negotiations among the current TPP countries.

If Japan enters the TPP, it could represent a major change in the shape and dynamic of the U.S.-Japan economic relationship. Over the years, trade policymakers, business representatives, and regional specialists in both countries have floated the concept of a U.S.-Japan FTA. Until the TPP talks began in earnest, the idea had not gained traction because the hurdles—Japanese agricultural policy, problems in auto trade, government regulations and practices—have been too high to

³⁵ AFL-CIO, Comments in Response to "Request for Comments on Japan's Expression of Interest in the Proposed Trans-Pacific Partnership Trade Agreement."

³⁶ Caterpillar's Views Regarding Expanding Trans-Pacific Partnership Negotiations to Include Japan, Mexico, and Canada, January 11, 2012, Submission to the Office of the USTR.

³⁷ U.S. Chamber of Commerce January 13, 2012, letter to USTR and U.S.-Japan Business Council, Public Comment, *Japan's Expression of Interest in the Proposed Trans-Pacific Partnership Negotiations*.

overcome. These same hurdles would need to be overcome if Japan and the United States are able to work successfully in the TPP.

The outlook for Japan's entry into the TPP negotiations remains unclear at this time and depends on a number of factors. Perhaps the most critical factor is whether Japanese political leaders can reach a political consensus on whether to proceed with the negotiations and then whether Japan can reach agreement with the TPP partners on conditions of its entry. The timing of Japan's decision on whether to proceed has likely been delayed by domestic politics. Recently, in return for the LDP and the New Komeito Party agreeing to a vote on the consumption tax, Prime Minister Noda promised to dissolve the Lower House "at an early date." As a result, new elections for the lower house would be called, possibly resulting in changes in control of the legislature. Therefore the decision on TPP will likely not be before this December at the earliest but most likely later. Japan expert Ed Lincoln has suggested the decision will likely be pushed even farther out.³⁸

The outcome of this issue could have implications for the U.S.-Japan bilateral trade relationship, the overall alliance, and the TPP. The TPP issue presents opportunities and challenges for the United States and Japan. On the one hand, if successful, it could reinvigorate an economic relationship that has remained steady but stagnant, by forcing the two countries to address long-standing, difficult issues, and allowing them to raise their relationship to a higher level. On the other hand, failure to do so could indicate that the underlying problems are too fundamental to overcome and could set back the relationship. It could signify the failure of the United States and/or Japan to deal with domestic opposition to a more open trade relationship.

The implications for the overall U.S.-Japanese alliance are less certain. While the TPP would likely be viewed as strengthening the alliance and failure of the negotiations could be considered a setback, the alliance is also built on common national security concerns, such as North Korea's nuclear program and the economic and military advancement of China, which could well trump trade problems.

Furthermore, Japan's possible entry into the TPP is largely viewed, on the one hand, as an important step in forming a wider Asia-Pacific regional trade arrangement. On the other hand, the absence of Japan could undermine the credibility of the TPP as a viable regional trade arrangement and a setback for Asia-Pacific economic integration.

Author Contact Information

William H. Cooper
Specialist in International Trade and Finance
wcooper@crs.loc.gov, 7-7749

Mark E. Manyin
Specialist in Asian Affairs
mmanyin@crs.loc.gov, 7-7653

³⁸ *World Trade Online*, August 9, 2012.

Safeguards for Tobacco Control: Options for the TPPA

*For full analysis, see American Journal of Law and Medicine,
2013 Symposium Issue, by Robert Stumberg
April 13, 2013 – v5c*

TPPA threats to tobacco control

The tobacco industry uses an international campaign of litigation and lobbying to chill, divert or delay tobacco-control policies. Existing flexibilities in trade agreements might enable countries to defend their measures, but the multi-year, multi-million dollar cost of doing so is daunting. The tobacco industry seeks to reinforce its strategy in trade negotiations to expand market access, strengthen trade rules, and expand investor rights. The industry stands to benefit from at least six chapters of the proposed Trans-Pacific Partnership Agreement (TPPA). Based on publicly available drafts, these chapters add WTO-plus rules that could be used in later rounds of litigation or to bolster industry threats in lobbying:

- (1) *Investment chapter* – expands investor-state arbitration. Philip Morris International uses investment agreements to challenge tobacco-control measures; PMI argues that the measures frustrate their expectations and ability to market tobacco products.
- (2) *Intellectual property chapter* – adds a new right to use a trade name that indicates a location even if the product does not originate from it (e.g., Parmigiano or Marlboro). This proposal excludes wine and spirits, but it still applies to tobacco.
- (3) *Cross-border services chapter* – expands the service sectors to which trade rules apply (e.g., tobacco distribution, packaging, and advertising); it potentially limits domestic regulation of such services. It could be used to challenge restrictions on advertising, promotion, or sales as “zero quotas.”
- (4) *Regulatory coherence chapter* – promotes industry stakeholder participation in decision-making; promotes regulatory impact assessments, which the tobacco industry has used to generate evidence to support its litigation.
- (5) *Technical barriers to trade chapter* – potentially limits how governments cooperate to set standards or guidelines for tobacco control.
- (6) *Tariff schedules* – expand market access in countries with high tobacco tariffs (notably Vietnam). Studies show that after high tariffs are reduced, prices go down, marketing increases, competition increases, and smoking rates go up in the range of 10%, often double that increase among women and girls, who are specifically targeted.

Intersecting frameworks: trade promotion and tobacco control

The Framework Convention on Tobacco Control requires 176 parties to fill the regulatory framework by exercising their regulatory powers. The WTO agreements require 157 members to refrain from exercising regulatory powers that restrict trade.

The trade and tobacco frameworks have overlapping coverage. The following chart maps where six chapters of the TPPA intersect with types of tobacco-control measures. At most of these intersections, the tobacco industry litigates or lobbies in its campaign to shrink the policy space available for regulation. In the TPPA negotiations, the industry expects to benefit from WTO-plus elements such as expanded coverage (e.g., regulation of services), stronger trade rules (e.g., use of trademarks), and investor protection (e.g., expanded opportunities to litigate).

Intersecting Frameworks

Tobacco Control: Selected FCTC measures	Trade Promotion: Selected TPPA chapters					
	Goods, tariff reduction	Goods, technical barriers	Intellect. property	Cross- border services	Regulatory coherence	Investment
6. Price & tax measures 2b. Restrict duty-free sales	↗	↗			↗	↗
Product contents 9. Regulate (or ban) 10. Disclose	↗	↗			↗	↗
11. Packaging & labeling 1a. Misleading 1b. Warnings 2. Constituents & emissions		↗	↗	↗	↗	↗
13. Advertising 1. Comprehensive ban 2. Restrictions 3. Minimum 4. Eliminate cross-border 5. Eliminate sponsorship		↗	↗	↗	↗	↗
5. General 3. Protect from commercial interests					↗	↗

Limits of the GATT/GATS health exception

If a country is challenged under the TPPA, it might be able to defend a tobacco-control measure under a health exception, which typically incorporates the GATT/GATS exception (WTO exception) by reference. Six elements of an exception create a complex formula for defending tobacco measures:

- (1) *Scope* – Based on the model of U.S. free trade agreements, the baseline health exception applies to selected chapters of the agreement but not to specific rules being used to litigate against tobacco-control measures (including the investment chapter, among others).
- (2) *Protection* – Tobacco investors use MFN to incorporate rules from outside the primary agreement that provide more favorable treatment. The draft TPPA investment chapter excludes procedural treatment from MFN, but MFN would still apply to substantive investor rights.
- (3) *Deference* – The WTO agreements have no terms of deference to non-WTO treaties.
- (4) *Nexus* – The necessity test creates uncertainty with stages of analysis that enable litigation to challenge the contribution of a measure, weigh that contribution against trade restrictiveness, and identify less-restrictive alternatives. Some scholars predict that investment arbitrators would apply the necessity test with less deference than trade panels.
- (5) *Objective* – Some measures serve multiple purposes, including non-health purposes like revenue or business licensing; their connection to protecting health may be indirect.
- (6) *Additional restrictions* – Even a “necessary” measure can be challenged as having a discriminatory effect in the market as applied. This works against incremental change or measures that freeze the market at its current stage of development.

Win or lose, the threat of costly litigation has long been part of the tobacco industry’s strategy to chill, divert or delay implementation of tobacco-control measures. Each of the exception’s six elements provides an opportunity to litigate, and together they create uncertainty of outcomes. The most certain litigation threat is not that tobacco companies or their allies will win; it is the likely litigation costs of one to two million USD per year for several years – more than the tobacco control budget for most developing countries.

U.S. proposal for a TPPA tobacco exception

Anticipating potential litigation, the United States has vetted a narrowly crafted TPPA exception for regulation of tobacco products. But this does not protect legislation or measures adopted by tax, licensing or customs authorities. In place of the necessity test, it requires scientific evidence, a burden of proof that the GATT/GATS exception does not require. The U.S. proposal would not have protected against the clove cigarette dispute that the United States lost, the WTO claims against Australia, or the investment claims against Australia or Uruguay.

The U.S. proposal is in the form of a summary that has not been tabled. What follows is the original summary with each key term noted to show, first, the shortcomings of that term, and second, stronger alternatives for that term. The alternatives are also compared in the chart below, so the notes are keyed to columns of that chart.

Original summary of the U.S. proposal

“^[1] Language in the general exceptions chapter that ^[2a] allows health authorities ^[2b] to adopt ^[2c] regulations ^[2d] on specific tobacco products/classes ^[3a] that impose origin-neutral, ^[3b] science-based restrictions ^[4]^[5] in order to ^[6] safeguard public health.”

Column 1: Scope

1. U.S. proposal – “Language in the general exceptions chapter”

1. *Shortcoming* – It is not clear whether the U.S. proposal applies to all chapters or whether it applies to selected chapters or rules, excluding those that contain rules that are being used to challenge tobacco control-measures.

1. *Alternatives* – Make clear that the tobacco exception applies generally: “*Nothing in this agreement* [prevents] or [applies].”

Column 2: Protection

2a. US proposal – “allows health authorities in TPP governments”

2a. *Shortcoming* – By covering only health authorities the U.S. proposal leaves out non-health authorities that are often involved in tobacco control, e.g., licensing, taxation, and customs authorities.

2a. *Alternatives* – Stronger protection would provide that nothing “*prevents a party.*” Note that the U.S. government takes the position that the “nothing prevents” language does not apply to the investment rule that requires compensation for expropriation. An exception that does not apply to expropriation would be significantly compromised. A stronger alternative that works on expropriation would be: Nothing in this Agreement “*applies*” to measures [covered by the exception]. Alternatively, an interpretive clause could be added: For greater certainty, this exception applies to any duty to compensate for direct or indirect expropriation.

2b. U.S. proposal – “to adopt”

2b. *Shortcoming* – The GATT/GATS exception covers measures that a party adopts or enforces. To cover only measures that a country *adopts* appears to leave out existing measures that a country enforces.

2b. *Alternatives* – Use the GATT/GATS language: “*adopting or enforcing*.”

2c. U.S. proposal – “regulations”

2c. *Shortcoming* – By covering only regulations, the U.S. proposal appears to not cover legislation, which is how most governments establish their tobacco-control measures.

2c. *Alternatives* – Use the GATT/GATS exception, which applies broadly to “*measures*.”

2d. U.S. proposal – “on specific tobacco products/classes”

2d. *Shortcoming* – Covering only regulations on tobacco products appears to not cover measures that apply to tobacco-related services (e.g., distribution, packaging, advertising) or investments (e.g., trademarks).

2d. *Alternatives* – Use “*measures*.” The scope of measures could be limited to “*tobacco-control measures*,” but the clearest way to limit the class of measures is in the objective (see column 6 below).

Column 3: Additional restrictions

3a. US proposal – “that impose origin-neutral,”

3a. *Shortcoming* – “Origin-neutral” is a synonym of national treatment; a measure can be a de facto violation of either.

3a. *Alternatives* – Use “*facially origin-neutral*.” A stronger alternative is to delete “origin-neutral” as an additional restriction.

3b. U.S. proposal – “science-based restrictions”

3b. *Shortcoming* – Proving that restrictions are “science-based” is a heavier burden than the GATT/GATS health exception, which requires only a qualitative, logical rationale. The tobacco industry has a long history of generating scientific evidence to counter a defending government’s science. For example, in the *Cloves Cigarettes* case, some science was not enough.

3b. *Alternatives* – A stronger alternative is to delete “science-based” as an additional restriction.

Column 4: Deference

4. U.S. proposal – none

4. *Shortcoming* – Without terms of deference, the threat of extended litigation to defend a measure based on this exception is more likely.

4. *Alternatives* – Terms of deference would be: “*that a party considers appropriate*.”

Column 5: Nexus

5. U.S. proposal – “in order to”

5. *Comment* – This is an appropriate nexus from a health perspective; it requires a rational connection between a measure and its health objective.

5. *Alternatives* – An alternative nexus would be: “*that contribute or aim to.*” This would cover measures that are either (a) designed to achieve health objectives, or (b) make a contribution to achieving health objectives, even if they serve multiple purposes.

Column 6: Objective

6. U.S. proposal – “*safeguard public health*”

6. *Comment* – This is a broad health objective, which is good. A reason to consider alternatives is this: If the prior elements of the U.S. proposal are strengthened, negotiators may want to narrow the objective of safeguarding public health in order to avoid “slippery slope” opposition from other sectors such as alcohol and processed food products.

6. *Alternatives* – If the strongest objective, protecting public health, is too broad to address “slippery slope” concerns, an alternative is “*reduce use of tobacco products or its harms.*”

Examples of how alternatives can be combined

The alternatives can be mixed and matched in various combinations. For example:

“Nothing in this Agreement prevents a party from adopting or enforcing ...
... measures that it considers appropriate for science-based protection of public health.”
... measures that contribute or aim to reduce use of tobacco products or its harms.”
... measures that it considers appropriate to reduce use of tobacco products or its harms.”

“Nothing in this Agreement applies to measures that contribute to or aim to reduce tobacco use or its harms.”

Additional interpretive clauses:

For greater certainty,
... this exception applies in addition to other exceptions; it has no effect on operation of those exceptions.
... this exception applies to any duty to compensate for direct or indirect expropriation.
... if this exception applies to a measure, it is consistent with MFN treatment.

The clearest and strongest alternative – Use an exclusion

The more elegant alternative to a complex exception is to simply exclude tobacco-control measures. An exclusion provides better protection than a defense; it contains litigation at the initial stage of determining whether a treaty applies to a measure. If the political will is lacking for a full exclusion, there are several ways to draft a partial exclusion.

See the next page for a chart that summarizes the alternatives noted above.

Alternatives to the U.S. Proposal for a Tobacco Exception

1. Scope	2. Protection	3. Additional restrictions	4. Deference	5. Nexus	6. Objective
U.S. Proposal					
[1] Language in the general exceptions chapter: <i>Unclear whether it applies to all chapters and articles.</i>	[2a] allows health authorities in TPP governments [2b] to adopt [2c] regulations [2d] on specific tobacco products/classes	that impose [3a] origin-neutral, [3b] science-based restrictions	[4] none	[5] in order to	[6] safeguard public health
First alternative for key terms ... read columns as better to best protection					
[1] <i>Add to the chapters covered by the exception: For purposes of [listed chapters plus] ... investment, intellectual property, regulatory coherence, etc.</i>	[2a] [nothing] prevents a party [2b] from adopting or enforcing [2c] measures [2d] none	[3a] [that are] facially origin neutral [3b] none – see “contribute to” as a nexus	[4] none	[5] to	[6] reduce use of tobacco products or its harms
Second alternative for key terms					
[1] Nothing in this Agreement	[2a] prevents a party [2b] from adopting or enforcing [2c] measures	[3a] none [3b] none	[4] none	[5] that contribute or aim to	[6] reduce use of tobacco products or its harms
Third alternative for key terms					
[1] Nothing in this Agreement	[2a] applies to [2c] measures	[3a] none [3b] none	[4] that a party [it] considers appropriate	[5] to	[6] protect public health
Examples of how alternatives can be combined					
<p>Nothing in this Agreement prevents a party from adopting or enforcing measures that contribute or aim to reduce use of tobacco products or harms. ... measures that it considers appropriate for science-based protection of public health. ... measures that it considers appropriate to reduce use of tobacco products or harms. Nothing in this Agreement applies to measures that contribute to or aim to reduce tobacco use or its harms.</p> <p><i>Interpretation clauses:</i> For greater certainty, this exception applies in addition to other exceptions; it has no effect on operation of those exceptions. ... this exception applies to any duty to compensate for direct or indirect expropriation. ... if this exception applies to a measure, it is consistent with MFN treatment.</p>					

U.S. struggles with pharmaceutical goals in Asia trade talks

By Doug Palmer

WASHINGTON | Thu Mar 28, 2013 5:31pm EDT

(Reuters) - The United States is striving to find an appropriate balance in Asia-Pacific free trade talks between providing strong patent and data protections for U.S. drug manufacturers and ensuring poor people have access to medicine, a U.S. trade negotiator said on Thursday.

"We're looking to promote innovation and R&D (research and development) that results in the development of new medicines. But we are also - and this is just as important - we are trying to promote access to medicines for all," Deputy Assistant U.S. Trade Representative Probir Mehta said.

The remarks at a discussion organized by the Washington International Trade Association show the conflicting pressure on President Barack Obama's administration in talks on the Trans-Pacific Partnership (TPP), a proposed free trade agreement between the United States and ten countries in the Asia-Pacific region that negotiators hope to conclude this year.

Mehta said the United States would not make a new proposal on pharmaceuticals when TPP negotiators meet in Peru <<http://www.reuters.com/places/peru>> in mid-May for their 17th round of talks but would continue to exchange information on each country's policies "with a view to finding possible common ground."

U.S. drug manufacturers want the strongest possible intellectual property rights (IPR) protections in the pact, but advocacy groups such as Oxfam and Doctors Without Borders are warning TPP countries such as Vietnam and Malaysia that such terms threaten to raise the price of medicines in the region by restricting production of generic drugs.

Former U.S. Trade Representative Ron Kirk summarized the situation at a meeting of the President's Export Council shortly before he left office this month.

"It is very difficult to convince (other TPP countries) of the need to embrace, accept, and implement robust IPR chapters when, many times, we have NGOs (non-governmental organizations) from here in the United States that are sitting there and giving them contrary information," Kirk said.

The tension is illustrated in the area of "biologic medicines," where U.S. drug companies such as Pfizer and Eli Lilly (and many members of Congress want test data for new drugs protected for 12 years in the TPP pact to delay the development of generic versions.

Congress provided 12 years of data protection for biologics in Obama's healthcare reform legislation, the Affordable Care Act, in line with what many experts say is needed to recoup the average \$1.2 billion cost of developing the drugs.

But in annual budgets, the White House has proposed lowering the period of data exclusivity to seven years to encourage faster development of generic versions of the drugs and to save billions in Medicare and Medicaid costs.

So far, U.S. negotiators have not asked for 12 years of data exclusivity for biologics in the TPP, prompting Senator Orrin Hatch, the top Republican on the Senate Finance Committee, to recently ask whether the Obama administration was trying to change U.S. law to the lower standard through the TPP talks.

On Thursday, Mehta said "biologic medicines are clearly the future of the biopharmaceutical industry and certainly a very important area of innovation in the United States. But at this point, we are still reflecting on input and discussing this issue with our trading partners."

Although that stance might seem encouraging for groups that favor early availability of generic medicines, Stephanie Burgos, a senior policy adviser at Oxfam America, said she fears the Obama administration is simply waiting until the end of the negotiation to press its demands, forcing poorer TPP countries such as Vietnam and Malaysia to decide whether to accept tough intellectual property provisions or walk away.

"Instead of a compromise, it's like 'let's put this on hold until everything else is agreed' in the hope that countries that are objecting to the provisions won't have the wherewithal to continue objecting," Burgos said.

Jay Taylor, vice president for international affairs at Pharmaceutical Research and Manufacturers of America, said generic versions of most drugs are already available in TPP countries and shouldn't be affected by the pact.

"The TPP, if done correctly, should reduce tariffs and extra additive costs to medicines that ultimately hurt patients," Taylor said.

By lifting incomes in the region, it also should make medicines relatively more affordable, he said. (Reporting by Doug Palmer; Editing by Jim Loney)

Energy

India Takes Aim at U.S. State, Local Incentives for Renewable Energy Sector

By [Daniel Pruzin](#)

GENEVA—India April 17 took aim at credits, rebates and other incentive programs for the renewable energy sector provided by state and local authorities in the United States, which New Delhi suggests may be in violation of global trade rules.

In a communication forwarded to the World Trade Organization, India charged that some of the incentive programs in question make the availability of incentives contingent upon the use of domestic or state-specific products.

This “raises concerns about their compatibility with the obligation of the United States” under Article 2 of the WTO's Agreement on Trade-Related Investment Measures (TRIMs) and Article III:4 of the General Agreement on Tariffs and Trade, India said. “There are issues of consistency with relevant provisions of (WTO's) Agreement on Subsidies and Countervailing Measures as well.”

Article 2 prohibits investment measures that are in violation of the national treatment principle established under Article III of GATT. Article III:4 in particular requires WTO members to provide imported goods with the same treatment afforded domestically produced goods with respect to all laws, regulations and requirements affecting their internal sale.

The Indian communication follows the Feb. 6 announcement by the United States that it was initiating WTO dispute settlement proceedings to address what it charges are illegal domestic content requirements in India's national solar energy program.

Five State, Local Programs Cited

India in particular cited five programs at the state and local level which raised concerns: the state of Michigan's 2008 Clean, Renewable, and Efficient Energy Act (Public Act 295); the Los Angeles Department of Water and Power's Solar Photovoltaic Incentive Program; the state of California's Self Generation Incentive Program (SGIP); and the Commercial Solar Photovoltaic Performance-Based Incentive Program as well as the Residential Solar PV Rebate Program offered by Austin Energy, a publicly-owned power company and a department of the City of Austin, Texas.

According to India, the Michigan program grants renewable energy credits to electricity providers for each megawatt hour of electricity generated from a renewable energy system constructed using equipment made in the state, or for each megawatt hour of electricity from a renewable energy system constructed using a workforce composed of residents from the state.

Under the Los Angeles program, payment credits are provided for photovoltaic and solar power equipment where at least 50 percent of the components are manufactured or assembled within the city limits, or where at least 50 percent of the wholesale value of the product is derived from the use of local labor or locally manufactured components.

California's SPIG program, which offers incentive payments to producers of wind turbine, fuel cell, and other environmentally friendly energy sources, provides an additional 20 percent incentive payment for the installation of equipment or technologies from a California supplier, India noted, while the two programs operated by Austin Energy offer higher rebates and higher payments for solar power generated from equipment which is at least 60 percent manufactured or assembled in Austin Energy's service area.

India asked the United States to provide details on the current status for each of the targeted programs in terms of their duration. It also asked the United States to provide details on any other state, regional or local level renewable energy programs where incentives or benefits are granted contingent upon compliance with domestic content requirements.

U.S. Has Similar Complaint Against India

The U.S. complaint against India focuses on domestic content requirements under the Jawaharlal Nehru National Solar Mission (JNNSM).

According to the Office of the U.S. Trade Representative, India initially required that developers of solar photovoltaic (PV) projects employing crystalline silicon technology use solar modules manufactured in India. India later expanded the domestic sourcing requirement to cover crystalline silicon solar cells as well.

India has also drafted new provisions that might expand the scope of the domestic content requirements to include solar thin film technologies, which comprise the majority of U.S. solar exports to India, USTR charged. India also offers solar energy developers participating in the JNNSM a guarantee that the government will purchase a certain amount of solar power at a highly subsidized tariff rate, provided that they use domestically manufactured solar equipment instead of imports.

The United States may request the establishment of a WTO dispute panel to rule on its complaint if WTO-required consultations between the two sides fail to produce a settlement.

> **Inside U.S. Trade - 04/12/2013**

> **With TPP Tobacco Proposal On Hold, Stakeholders Eye Impact On EU FTA**

> **Posted: April 11, 2013**

>

> Although the United States continues to hold off on tabling a draft proposal in the Trans-Pacific Partnership (TPP) talks that would establish a special "safe harbor" for tobacco regulations, members of Congress and U.S. stakeholders are already beginning to think through what this potential new development in U.S. trade policy would mean for the forthcoming U.S.-European Union trade negotiations.

>

> Industry sources opposed to the draft proposal concede that, if the White House ultimately goes ahead with it in the context of TPP, that will set a precedent and would likely mean that the Office of the U.S. Trade Representative would then look to table the same proposal in the context of talks with Europe. "You can't do it in TPP and not do it in the EU FTA," one industry source lamented.

>

> This source said that, if the U.S. goes ahead with its tobacco proposal in TPP, business groups opposing it would likely demand that the U.S. completely reverse course in the EU FTA talks. However, this outcome would probably be unrealistic, this source conceded, and U.S. business groups will end up focusing on ensuring that the U.S. and EU do not agree to anything that would be even more far-reaching than the outcome on tobacco in the TPP context.

>

> Conversely, sources on both sides of the issue agreed that if the opposition to the U.S. proposal from the business community and members of Congress is so strong that the administration abandons it in the TPP context, it would appear to make little sense for the administration to reopen this issue in the talks with Europe. Either way, then, TPP could set an important precedent for what position the U.S. takes in the trans-Atlantic talks, sources agreed.

>

> Of course, it is entirely possible that the EU would reject the tobacco proposal even if the U.S. were to table it in the bilateral trade talks. Although the EU typically takes a more cautious approach than the U.S. when it comes to health matters -- for instance, the EU is much slower to approve genetically modified organisms (GMOs) for consumption -- some trade officials in Europe believe that the U.S. proposal is misguided and would likely oppose it, sources said.

>

> Overall, many trade lawyers have joined with U.S. tobacco companies and business groups in criticizing the U.S. proposal. They argue that World Trade Organization rules already provide sufficient leeway to governments to implement measures meant to promote public health, including in the area of tobacco control, and some fear that special rules for tobacco could lead to the misguided perception that general WTO rules are too weak.

>

> Several opponents to the U.S. tobacco proposal added that it would be ironic for the U.S. to demand a specific "safe harbor" for tobacco litigation while simultaneously urging the EU to speed up GMO approvals, for instance, in the context of the FTA talks. One industry source warned that if the U.S. demanded a tobacco exemption, the EU would surely demand a similar exemption for the beef hormones issue, or some other sensitive topic.

>

> But U.S. anti-smoking advocates are hoping that the European Commission as a whole will decide to push for special tobacco provisions in a U.S.-EU trade deal, regardless of which position the U.S. takes. They note that European countries are already strong proponents of tobacco control, and the European Commission last January published a draft revision to its Tobacco Products Directive (TPD) that would further restrict the way tobacco

products can be sold.

>

> In the TPP context, the U.S. is the most powerful negotiator and will likely have a large say over what special language, if any, is ultimately included in a TPP deal, one anti-smoking advocate noted. In the trans-Atlantic talks, by contrast, the two negotiating partners are more evenly paired, meaning that an EU decision to push tobacco control in the bilateral talks could carry real weight and may be difficult for the U.S. to dismiss, the advocate said.

>

> In an interview, Rep. Henry Waxman (D-CA) -- a major proponent of tobacco control and a supporter of the USTR draft TPP proposal -- underscored the fact that Europe is a proponent of tobacco control, and hinted that he would like to see the administration move ahead with its "safe harbor" proposal in both trade contexts.

>

> "As the administration lays the groundwork for negotiations of an EU-U.S. FTA, I will continue to advocate for protecting the authority to regulate tobacco products under the Tobacco Control Act," he said. At its core, the U.S. draft proposal is an effort to ensure it can regulate on tobacco pursuant to that act. The WTO's Appellate Body ruled that the legislation is discriminatory, and the U.S. has until July 24 to comply with the case findings.

>

> "The EU has taken strong action to regulate tobacco products, and there is great opportunity for collaboration in an EU FTA to protect public health measure in Europe and the United States," Waxman added. The California congressman is not only urging USTR to go forward with its proposal in TPP, but has even argued that it should strengthen the proposal by excluding tobacco products from tariff cuts (Inside U.S. Trade, June 29).

>

> A U.S. tobacco control advocate was similarly optimistic. "We are gearing up for the EU-U.S. agreement," he said. "The EU has a major change to their tobacco policies working its way through the system, so they should be sensitive to this issue." This advocate stressed that civil society groups are "still developing our strategy and building partnerships." This source also emphasized that strategy in the EU FTA context "will depend on the lessons of the TPP."

>

> Both anti-smoking advocates and business representatives said it remains unclear why USTR publicly described its draft TPP proposal last May but has continually held off on tabling it. However, many speculated that the administration must have been surprised by the level of opposition, and subsequently decided to hold off on doing anything with the proposal until the end of the negotiations in order to avoid confronting opponents unnecessarily over the issue.

>

> One industry source said it is still a bit unclear whether and how the TPP negotiations will come together, meaning it would make little sense for USTR to insist on its tobacco proposal at this point. Sources on all sides of the debate said the administration is not actively engaging with the private sector on its proposal at this time. Anti-smoking advocates, and even some industry sources, believe the administration will still ultimately table its proposal in the TPP talks.

>

> Still, anti-smoking advocates appear to be getting a bit nervous. In a March 28 letter to Deputy National Security Adviser Michael Froman, five major health groups urged the administration to formally table the proposal at the next round of negotiations, which is taking place in mid-May in Peru.

>

> "We urge the United States to offer the tobacco proposal during the upcoming round of negotiations in Peru," they wrote. "Since the goal is to conclude the TPP agreement later this year, there is increasing urgency to put forth the tobacco language." The groups expressed their disappointment that, 10 months after USTR posted the

outlines of the proposal on its website, negotiators have still not formally tabled it.

>

> That letter also notes that Secretary of State John Kerry, who previously served as chairman of the Senate Foreign Relations Committee, has urged USTR to move ahead with the TPP tobacco proposal. Kerry did so in a separate letter dated June 7, 2012, that was sent to then-USTR Ron Kirk. In that letter, Kerry not only supported the proposal but argued that USTR should completely exclude tobacco products from the confines of a TPP deal.

>

> The new letter sent last month by anti-smoking groups was signed by the American Academy of Pediatrics; Cancer Action Network; American Heart Association; American Lung Association; and the Campaign for Tobacco-Free Kids.

>

> In the interview, Waxman said he continues to urge USTR "to table it at the earliest possible opportunity." Last year, many observers said the proposal had been given the "green light" for inclusion in the TPP talks by the White House despite facing some skepticism from officials in USTR. The proposal was championed by the Department of Health and Human Services (HHS), they said, which favored special treatment for tobacco in a final TPP deal.

>

> Inside U.S. Trade - 04/12/2013, Vol. 31, No. 15

United States Welcomes New Zealand's Decision to Join U.S. Challenge to Indonesia's Import Restrictions on Horticultural Products, Animals and Animal Products

August 30, 2013

Washington, D.C. – United States Trade Representative Michael Froman today announced two important developments in the ongoing U.S. challenge under the dispute settlement provisions of the World Trade Organization (WTO) to Indonesia's trade-restrictive measures applied to horticultural products, animals, and animal products. First, New Zealand is joining the dispute by filing its own request for consultations addressed to Indonesia's measures. Second, the United States is filing a revised consultations request to address recent modifications to Indonesia's measures and to facilitate coordination with co-complainant New Zealand. The United States filed an initial consultations request earlier this year.

“Consultations with Indonesia earlier this year failed to resolve our concerns with Indonesia's unjustified and trade-restrictive import licensing system,” said Ambassador Froman. **“To the contrary, although Indonesia has revised its measures, they continue to pose a serious impediment to U.S. agricultural exports. Accordingly, today the United States is submitting a revised consultations request addressed to Indonesia's most recent measures. I am also pleased that New Zealand, which is similarly harmed by Indonesia's restrictions, has decided to join the dispute by filing its own request for consultations.”**

“The Obama Administration is committed to protecting the rights of our farmers, ranchers and processors to compete on a level playing field,” Ambassador Froman added. **“The Interagency Trade Enforcement Center (ITEC), created by this Administration to enhance U.S. trade enforcement capabilities, has played a significant role in enabling us to follow through on this commitment.”**

Background:

Indonesia has adopted non-automatic import licensing requirements and quotas that serve as serious impediments to trade in horticultural products, animals, and animal products. As set out in the U.S. request for consultations, these measures appear to be inconsistent with Indonesia's WTO obligations, including under the General Agreement on Tariffs and Trade 1994 (GATT 1994), Agreement on Import Licensing Procedures, the Agreement on Agriculture, and the Agreement on Preshipment Inspection. Since the time the United States filed its original consultations request with Indonesia in January 2013, Indonesia has revised its import licensing and quota measures. These changes did not remove the trade restrictions and thus failed to address U.S. concerns. Instead, Indonesia's revised measures include new laws on food, beef, and other agricultural products that contain further import-restrictive provisions. The affected products include, but are not limited to, fruits, vegetables, flowers, dried fruits and vegetables, juices, cattle, beef, and other animal products.

Filing a revised consultations request, in coordination with New Zealand's filing of its own request, will allow the consultations with Indonesia to be held together. If the United States and New Zealand subsequently were to request the establishment of a WTO dispute settlement panel, the two disputes would be adjudicated before a single panel.

Ministerial Guidance Energizes Negotiators' Work During 19th Round of TPP Negotiations

Bandar Seri Begawan, Brunei – Trans-Pacific Partnership (TPP) negotiators intensified their work this week to close gaps between them as directed by their Ministers, who met last week in Brunei Darussalam to discuss possible landing zones on remaining sensitive and challenging issues and sequencing of issues in the final talks. A Ministerial meeting of the TPP countries – Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, United States and Vietnam – gave guidance to negotiators on achieving an ambitious and balanced 21st century agreement that will enhance trade and investment between them, promote innovation and competitiveness, economic growth and development, and support the creation and retention of jobs in their countries.

Buoyed by the ministerial engagement and their commitment to actively guide the negotiations, negotiators advanced their technical work this round on the texts covering market access, rules of origin, investment, financial services, intellectual property, competition, and environment. They also made progress on the packages providing access to each other's markets for goods, services, investment, financial services, temporary entry, and government procurement. Their discussions both jointly and bilaterally were successful in identifying creative and pragmatic solutions to many issues and further narrowing the remaining work. Also this week, negotiators covering labor issues continued their work on the outstanding issues in the chapter.

Having identified pathways forward, negotiators will meet again intersessionally in the coming weeks to further their work. Several other negotiating groups that did not meet during this round because they required additional time for domestic consultation before convening also will meet, including those covering technical barriers to trade, e-commerce, and legal issues. The intersessional work is intended to further advance the negotiations in the lead up to APEC Leaders meeting in Bali, Indonesia, on the margins of which TPP Leaders are expected to meet as they have in past years. This meeting will be an important milestone as the 12 countries work intensively to conclude this landmark agreement this year.

On August 27, the TPP negotiations were temporarily adjourned so that negotiators could meet with 150 stakeholders on site from across the TPP region. Stakeholders made presentations to negotiators on a wide range of issues, and Chief Negotiators met informally with stakeholders to discuss in detail on specific issues of interest to them.

USTR Newsletter: 9/12/13

USTR, SBA Launch New Effort to Help U.S. Small Businesses Export to the European Union

Small Businesses to Offer Suggestions for Increasing Exports under the Transatlantic Trade & Investment Partnership (T-TIP)

Washington, D.C. – U.S. small businesses currently exporting to the European Union (EU) will have the opportunity to voice their concerns on existing barriers to trade with the EU through a series of roundtables across the country. The roundtables will be held as part of broader outreach efforts under the recently launched U.S.-EU Transatlantic Trade and Investment Partnership (T-TIP) negotiations. The objective of the roundtables is to listen to and better understand small business' suggestions on how to reduce and eliminate those barriers, and help expand U.S. small business exports to the EU.

In July, the United States and the European Union held the first round of T-TIP negotiations aimed at increasing jobs, economic growth, and international competitiveness on both sides of the Atlantic. The transatlantic economic relationship is already the world's largest, accounting for one third of total goods and services trade and nearly half of global economic output, while supporting 13 million U.S. and EU jobs. In both the United States and the EU, small and medium businesses are critical motors of growth, job creation, and innovation. Negotiators intend to conclude an agreement that recognizes the important role small businesses play in the transatlantic relationship and enhances their ability to participate in and benefit from new trade and investment opportunities.

The roundtables were commissioned by the Office of the United States Trade Representative (USTR), which asked the U.S. International Trade Commission (USITC) to conduct a study on the existing trade barriers that disproportionately affect U.S. small business exporters. Since the President's National Export Initiative (NEI) goal to double exports by the end of 2014 has focused on increasing the current base of 295,000 small business exporters, an increase in small business participation could result in increased trade between two regions whose two-way trade already exceeds \$630 billion.

USITC responded by organizing the T-TIP roundtables, which will be held from September 9th through September 27th in key cities. The schedule for the roundtables is:

Month/Day	City	Month/Day	City
9/9	Detroit	9/19	Houston
9/10	Cleveland	9/20	Salt Lake City
9/11	Minneapolis	9/23	Philadelphia
9/12	Milwaukee	9/23	Los Angeles
9/13	Chicago	9/24	New York
9/16	Raleigh	9/24	Irvine

9/17	Raleigh	9/25	Long Island
9/18	Atlanta	9/25	Sacramento
9/17	Denver	9/26	Boston
9/19	Miami	9/27	Providence
9/18	Albuquerque	9/27	Fresno

If you'd like to take part in a roundtable, please contact sme@usitc.gov for more information.

In addition to participating in the roundtables, exporters will have other means to convey their concerns and suggestions through public hearings in San Jose, California (September 26th) and Washington, D.C. (October 8th). Business owners who are interested in having their voices heard but cannot attend the roundtables or public hearings can submit written statements by sending an email to sme@usitc.gov (by October 15, 2013) or by mail to EU-SME Project, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436 (no later than September 30, 2013).

For more detailed information, visit http://www.usitc.gov/332_541_Trade_Barriers.htm and http://www.usitc.gov/secretary/fed_reg_notices/332/332_541_notice07252013sgl.pdf. For more information on the Transatlantic Trade and Investment Partnership and U.S trade with the European Union, visit www.USTR.gov/TTIP.

Readout of TPP Call with U.S. Stakeholders

September 9, 2013

This afternoon, U.S. Trade Representative Michael Froman reached out to a broad cross-section of stakeholders to join him on a call to discuss the Trans-Pacific Partnership (TPP) negotiations. As U.S. negotiators press forward to complete a high-standard trade agreement that levels the playing field for U.S. workers and businesses in Asia-Pacific trade, Ambassador Froman set the stage for a deeper level of engagement with these and other stakeholders in the weeks and months ahead.

“We very much view stakeholder input, whether through our cleared advisers or other stakeholders, as absolutely critical,” said Ambassador Froman. **“We’re at a stage in TPP where we’re going to have to make difficult decisions. I imagine that not everyone will be 100 percent pleased with every decision, but we can guarantee that we will seek your input, we will consult with you. We won’t make these decisions in isolation. And we will be proactive about getting your participation in this process.”**

More than 170 participants, including stakeholders from key sectors such as business, labor, environment, public health, academia, advocacy groups, and some members of USTR’s Trade Advisory Committee system participated in the call. Many asked and received information about the status of U.S. proposals and prospects for advancing various issues in the talks - from agricultural market access to intellectual property - in the near future.

Ambassador Froman said that TPP negotiators have been working “around the clock” to keep moving forward toward an agreement. He noted that negotiations over number of sensitive issues will likely take to the end of the talks; he also reviewed the facts on the new U.S. proposal on tobacco in the TPP, which will for the first time in a trade agreement acknowledge the impact of tobacco on public health and include measures to address the issue. Ambassador Froman said that October meetings on the margins of the Asia-Pacific Economic Cooperation forum in Bali, Indonesia would be “an important milestone” in the process, offering a chance for Leaders of the TPP countries to come together and offer guidance to trade ministers and negotiators on dealing with remaining issues with the goal of finishing the negotiations this year.

USTR Froman underscored the President’s focus on making trade a driver of America’s economic recovery and a pillar of our future economic stability. He called the President’s trade agenda bold in scope, emphasis, and in ambition, with TPP as the cornerstone of the Obama Administration’s economic policy in the Asia-Pacific region. He committed to keep Americans informed and involved in the negotiating process as efforts continue this year.

Aug 28, 2013

Trans-Pacific Partnership: U.S. Negotiating 'Biologics' Proposal, Marking End to 'Period of Reflection'

Trans-Pacific Partnership (TPP)

Key Development: "Period of reflection" on biologics has ended.

What's Next: 19th round of TPP talks set to conclude Aug. 30.

By Len Bracken

The United States is negotiating the terms of the provisions it will propose in the Trans-Pacific Partnership (TPP) talks concerning intellectual property rights protections for the bio-pharmaceutical medicine commonly known as "biologics," a civil society source in Brunei for the 19th round of negotiations told BNA Aug. 27.

The negotiations mark the end of what U.S. trade officials have called a "period of reflection" in which, for longer than a year, the administration has been in consultations on the issue of biosimilar medicines that are envisioned as cheaper, follow-on or generic versions of expensive biologics.

"I think the United States is getting ready to table something on this," the source said, referring to a concrete yet confidential proposal on biologics in particular, and possibly on the pharmaceutical sector as a whole. "I don't think it will happen at this round, but the negotiations are taking place, and the proposal will be tabled soon."

U.S. trade negotiators have said their goal on the issue is to strike a balance between innovation that results in the development of new medicine and access to medicines for all people in the region. The period of reflection stemmed from strong opposition by the other TPP partners to a previous U.S. proposal, the source said.

Companies such as Baxter, Eli Lilly, Novartis and Pfizer are notable manufacturers of biologics, which are created using living organisms and often treat diseases such as cancer and diabetes.

"Push-Back From Consumers" Cited.

While current U.S. law provides for 12 years of test data protection, a form of nonpatent exclusivity, for biologics, there are indications that the United States may be willing to compromise on the issue with the other 11 TPP partners—Australia, Brunei Darussalam, Canada, Chile, Malaysia, Mexico, New Zealand, Peru, Singapore, Vietnam and Japan.

The data exclusivity means that potential manufacturers would have to

conduct their own clinical trials, as with a branded drug, and would therefore not have the cost savings afforded to generics.

“There has been push-back from consumers in developing and developed countries, so in order to get something on pharmaceuticals, the United States would have to give up something in another area,” the source said, referring to those who want to limit the length of data protections to make less-expensive generics more quickly accessible.

Certain House Democrats have in the past recommended that the United States refrain from negotiating any provisions related to exclusivity for biosimilar medicines in the TPP talks, arguing that it would thwart Congress's ability to trim that exclusivity to seven years without running afoul of U.S. trade obligations. Lawmakers on both sides of the aisle, however, have said that 12 years of regulatory data protection for biologics should be included in the TPP agreement.

Pharmaceutical Research and Manufacturers of America (PhRMA), which represents research-based pharmaceutical and biotechnology companies, told BNA that it expects the administration to propose 12 years of data protection for biologics in TPP because that is current U.S. law.

Mark Grayson, deputy vice president for international public affairs for PhRMA, said that it is important for the administration to take the time to “get the substance right” and ensure intellectual property rights are protected.

Trade-Offs Needed to Close Deal.

James Love, director of Knowledge Ecology International (KEI), told BNA that so far President Obama has not proposed 12 years—or any specific term—for test data protection in the TPP.

“The president's own domestic budget assumes billions of savings from rolling back the 12-year period that is now U.S. law to seven years,” Love said, referring to the potential cost savings to Medicare and Medicaid if generic versions of expensive biologics could be made in seven years rather than 12.

“Many members of Congress, all receiving ample money from the pharmaceutical industry, have pushed for 12 years, but there is opposition from OMB [Office of Management and Budget], which has to budget to pay for drugs, and opposition from some companies that want to market biosimilars, and from businesses concerned about exploding USA health care costs.”

Love said the United States could seek different deals with different countries, as there is considerable opposition to some of the U.S. positions. He noted that transition periods have varied in past agreements, such as the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), and side letters have been used to provide for special understandings about certain issues.

“The thing is that the TPP has a lot of chapters in it—there is more to it

than just pharmaceuticals—and there are a lot of countries that are not of a like mind on many issues,” he said. “The United States will have to make trade-offs regarding different sectors of the economy in the final end game—not everybody gets everything, so it becomes a question of whose interests will be sacrificed to get a deal.”

KEI views the 12 years of data exclusivity as a mistake and opposes what it sees as the worldwide rapid rise in drug prices. The group advocates that trade policy be used to encourage countries to contribute more to the cost of public sector medical research and to follow the National Institute of Health lead with regard to publicly releasing the results of studies.

“Other countries are beginning to think this is a productive way because they don't want a future in which no one can afford cancer drugs,” KEI's Love told BNA. “Apparently 11 out of the last 12 cancer drugs to hit the market were priced at over \$100,000 per course of treatment.”

President's 2013 Budget Has Biologics Component

The president's 2013 budget has two subsections concerning biologics that, if enacted, the administration claims would generate \$15 billion in savings over 10 years.

The first subsection is entitled “Prohibit ‘Pay for Delay’ Agreements to Increase the Availability of Generic Drugs and Biologics.”

It reads as follows: “The high cost of prescription drugs places a significant burden on Americans today, causing many to skip doses, split pills, or forgo needed medications altogether. The Administration proposes to increase the availability of generic drugs and biologics by authorizing the Federal Trade Commission to stop companies from entering into anti-competitive deals, known also as ‘pay for delay’ agreements, intended to block consumer access to safe and effective generics. Such deals can cost consumers billions of dollars because generic drugs are typically priced significantly less than their branded counterparts. These agreements reduce competition and raise the cost of care for patients both directly, through higher drug and biologic prices, and indirectly through higher health care premiums. The Administration's proposal facilitates greater access to lower-cost generics and will generate \$11 billion over 10 years in savings to Federal health programs including Medicare and Medicaid.”

The second subsection is entitled “Modify the Length of Exclusivity to Facilitate Faster Development of Generic Biologics.”

It reads: “Access to affordable lifesaving medicines is essential to improving the quality and efficiency of health care. The Administration's proposal accelerates access to affordable generic biologics by modifying the length of exclusivity on brand name biologics. Beginning in 2013, this proposal would award brand biologic manufacturers seven years of exclusivity rather than 12 years under current law and prohibit additional periods of exclusivity for brand biologics due to minor changes in product formulations, a practice often referred to as ‘evergreening.’ Reducing the exclusivity period increases the availability of generic biologics by

encouraging faster development of generic biologics while retaining appropriate incentives for research and development for the innovation of breakthrough products. The Administration's proposal strikes a balance between promoting affordable access to medications and encouraging innovation to develop needed therapies. The proposal will result in \$4 billion in savings over 10 years to Federal health programs including Medicare and Medicaid."

By Len Bracken

Inside U.S. Trade - 09/06/2013

TPP Countries Will Consult Internally On Tobacco Proposals, Official Says

Posted: September 5, 2013

BANDAR SERI BEGAWAN, Brunei -- The United States and Malaysia simultaneously tabled competing proposals at a chief negotiators' meeting during the 19th round of Trans-Pacific Partnership (TPP) talks here that aim, with varying degrees, to give countries greater flexibility to put in place tobacco control measures.

TPP countries intend to discuss these proposals internally before holding further talks on them, a U.S. trade official said in an Aug. 28 interview with Inside U.S. Trade.

They are expected to resume discussion on the proposals at the technical level during a meeting of the negotiating group on legal issues slated to take place in Washington during the second week of September, sources said.

The Malaysian proposal would completely carve out tobacco control measures from any TPP obligations, thereby precluding state-to-state or investor-state challenges against such measures under the deal. An informed source said it would also exclude tobacco products from tariff reductions on TPP.

This would go far beyond the U.S. proposal, which has come under fire domestically from business groups who oppose it and public health organizations who think it does not go far enough. Both these stakeholder groups are pressing TPP countries to back their respective demands (see related story).

The U.S. proposal would simply reaffirm that tobacco control measures would fall within the scope of an already existing general exception for measures necessary to protect human life or health.

Malaysia's language also goes farther than the "safe harbor" from dispute settlement for tobacco regulations that the U.S. had considered last year, but ultimately scaled back in favor of the proposal tabled at the 19th round. The "safe harbor" would have only applied to tobacco control regulations -- not legislation -- and would not have protected governments from investor-state challenges, only state-to-state dispute settlement cases.

The Malaysian government was under pressure to table a tobacco carveout from the Malaysian Council for Tobacco Control (MCTC), which had as one of its goals to ensure that nothing in the TPP would

prevent countries from implementing the World Health Organization Framework Convention on Tobacco Control (FCTC). All TPP countries have ratified the FCTC except for the United States, which has signed the deal but not ratified it.

The FCTC requires parties to adopt and maintain price and tax measures to reduce the demand for tobacco, as well as non-price measures such as regulation of the contents of tobacco products as well as packaging and labeling requirements.

Public health advocates point out that the FCTC is the world's first and only global public health treaty, reflecting the unique status of tobacco as the world's single most deadly product. This is one reason why these groups believe that tobacco should be treated differently than other products in trade agreements.

The U.S. trade official did not respond directly when asked whether the U.S. would maintain its position in light of the stronger Malaysian proposal. "We are going to reflect on the proposals that we got and then decide how we're going to proceed," the official said.

In an interview, MCTC President Molly Cheah said there was "broad support" for the Malaysian proposal among the countries she spoke to during the 19th round here. But she conceded that some said they needed to take the proposal back to their governments and legal experts for further consultations.

One informed source said even Japan expressed support for the proposal, despite the fact that the Japanese government owns a minority stake in the Japan Tobacco company. Japan has indicated that its stake in the company has no bearing on its position on this issue, this source said. Vietnam also has a state-owned tobacco company.

At the same time, this source said several TPP countries expressed worries about the implications the Malaysian proposal might have on market access negotiations, although they did not elaborate.

This source speculated that some TPP countries may feel that a move to exclude their tobacco tariffs from elimination could affect the balance of their market access negotiations. For instance, if one TPP member is facing pressure to lower tobacco tariffs from the United States or another TPP country, but opts not to do so, it may be forced to make concessions to that country on other tariff lines, this source said.

Cheah welcomed her government's proposal. "To me, that proposal that was put up by Malaysia just completely satisfies us, because that is what we wanted all along," she said. "I'm just overwhelmed; to me,

it's a milestone for tobacco control globally."

During the course of the TPP negotiations, anti-tobacco groups have met with all participants except Japan to discuss the possibility of including specific language protecting tobacco regulation, and none of these countries has been "hostile" to that idea, one source said.

Anti-tobacco groups do not expect Australia to lead the charge on including tobacco-related language in TPP due to the fact that its plain cigarette packaging law is currently being challenged both in the World Trade Organization and in an investor-state case brought by tobacco giant Phillip Morris under the Hong Kong-Australia bilateral investment treaty.

Australia fears that advocating for new language in TPP to protect anti-tobacco regulations would give the impression that current trade rules are insufficient to protect a country's right to regulate tobacco, sources said. This could undermine its legal argument that the plain packaging law is consistent with WTO rules, they said.

Malaysia had already decided to move forward with its tobacco proposal when the U.S. announced on Aug. 21 that it intended to unveil its tobacco-specific language at the Brunei round, according to an informed source. Malaysian public health groups were worried that if the U.S. tabled its proposal first, it would become the basis for negotiations and Malaysia would get squeezed out of the discussion, this source said.

The groups urged the Malaysian government to table its proposal first, but ultimately the chief negotiators from both countries worked out an arrangement where they would table the two proposals at the same time, sources said.

The Malaysian proposal originated in the Ministry of Health, which also drafted its legal language, according to one informed source. The Malaysian Ministry of International Trade and Industry (MITI) deferred to the health ministry on the tobacco carveout, the source said.

"The carveout means that the tobacco industry will not be able to use any provisions in the TPP to sue governments or to threaten governments, and that's what they have been doing," Cheah, head of the Malaysian tobacco control group, said in an interview here.

She pointed to the investor-state challenge and WTO dispute against Australia's plain packaging law, among other cases. "We want to ensure that the proposal is broad enough not to allow loopholes ... for the tobacco industry to take advantage of," she added.

The Malaysian proposal has already garnered the support of several U.S. public health groups, as well as an explicit endorsement by The New York Times in an Aug. 31 editorial. Nine U.S. groups, including Action on Smoking and Health and the Center for Policy Analysis on Trade and Health, endorsed the Malaysian proposal in an Aug. 27 joint press release, while the Campaign for Tobacco-Free Kids praised it in a separate Aug. 26 statement.

"Now that Malaysia has offered this proposal, we urge the United States to work with Malaysia and others to support a proposal that will provide real protection for tobacco control measures, rather than press for its own language," Susan Liss, executive director of the Campaign for Tobacco-Free Kids, said in the Aug. 26 statement.

In an earlier statement e-mailed to Inside U.S. Trade on Aug. 25, Liss said her group would also press other TPP countries to strengthen the "weaker" U.S. proposal, although this secondary goal was not mentioned in the group's Aug. 26 statement. -- Matthew Schewel

Daily News

FDA Takes More Active Role In TTIP, TPP Talks; Establishes Trade Team

Posted: September 3, 2013

The U.S. Food and Drug Administration (FDA) is taking a more offensive role in ongoing trade talks with countries in the Asia-Pacific and the European Union as negotiators increasingly focus on regulatory issues in those initiatives, according to an FDA official.

Mary Lou Valdez, director of FDA's Office of International Programs, earlier this month said the agency has typically taken a more "defensive" posture in past trade negotiations involving the United States. But that has changed with the Trans-Pacific Partnership (TPP) and the more recently launched Transatlantic Trade and Investment Partnership (TTIP), she explained.

With those agreements likely to include new rules on regulatory coherence and transparency, and with TTIP especially focusing on how to more closely align the U.S. and EU regulatory systems, FDA is evaluating, "How do we move away from just the defensive posture, to really a much more comprehensive and proactive [one]," Valdez said.

The agency is also weighing what kind of proposals it can put on the table during negotiations, "so that we're champions and we're trying to promote a different kind of alternative thinking within a trade agreement," she added.

Officials at the Department of Health and Human Services, which houses FDA, have also said they are taking a more active role in shaping trade policy by advocating interagency proposals seeking to safeguard tobacco regulations and intellectual property protections for pharmaceuticals (*Inside U.S. Trade, April 26*).

As examples of how FDA is operating more proactively in the trade arena, Valdez said FDA is communicating more with other foreign regulators directly, and also emphasizing the importance of their measures being based on science.

FDA has also set up a special public health and trade team within the Office of International Programs and has been conducting direct stakeholder outreach that in the past would have been handled exclusively by the Office of the U.S. Trade Representative, according to Valdez.

"You need to hear us, and we need to hear you guys," she said, speaking in an Aug. 15 presentation to members of the Alliance for a Stronger FDA, which advocates for more agency funding. USTR and FDA are also sometimes jointly meeting with Congressional committees with jurisdiction over FDA, so that lawmakers can hear about "the intersection between trade and regulatory systems within these negotiations," Valdez added.

In what appeared to be a veiled reference to the EU, Valdez said that "some other [foreign] governments" evaluate the relevant science in issuing their regulation but then put a "cultural overlay" on top of their rules.

"And that's what I think is going to bring us some challenges in these new, 21st-century free trade agreements," she added. "I'm not sure what the answer is, but we think that there is some opportunity to really look at ways that we can align. Because we all understand the [scientific] underpinning."

The U.S. and EU have clashed over a number of food and health related issues, typically in the area of agricultural trade. For example, the EU bans the use of the growth-promoting veterinary drug ractopamine in meat production; the drug was approved for use in the U.S. by the FDA in 1990s.

The ractopamine ban has been a friction point between the EU and U.S., although USTR and the U.S. Department of Agriculture have typically been the agencies in the administration that have pressed the issue most aggressively.

Valdez conceded that some of FDA's interests are still defensive. The agency is keen to ensure that nothing in a trade agreement, for example, would hinder its ability to implement the far-reaching Food Safety Modernization Act (FSMA), she said. Private-sector sources have also said that FDA has resisted industry demands to make rules on sanitary and phytosanitary (SPS) measures enforceable, for fear that it could hinder its ability to regulate on health matters.

FDA is already behind on rolling out regulations under FSMA, which, among other things, requires the agency to drastically expand the number of overseas inspections it conducts and implement new requirements for food importers to show that what they are bringing in is safe (*Inside U.S. Trade*, Aug. 9).

Valdez appeared to implicitly endorse the overarching goal laid out by TTIP negotiators to bring the U.S. and EU regulatory systems more in line with each other, in an early public sign that at least some U.S. regulators are on board with the initiative. While House Republicans and business officials have lauded this aim, some Democratic lawmakers and non-governmental groups have expressed fear that it could lead to back-door deregulation.

"One of the things we're hearing loud and clear from industry ... particularly in TTIP, the Europeans or the U.S., is how do we really better align our approaches so that we can gain efficiencies," Valdez said. "I think there's a couple ways that we can do that. One is really to better understand, and dig deep so that we can really leverage our respective regulatory processes, and ... by having that knowledge seeing how we can maybe bring them closer together."

Valdez did not elaborate on what types of proposals FDA is advocating and an FDA spokeswoman declined a request for a follow-up interview for this article.

The New York Times

Sunday Review | The Opinion Pages

Search All NYTimes.com



WORLD U.S. N.Y. / REGION BUSINESS TECHNOLOGY SCIENCE HEALTH SPORTS OPINION ARTS STYLE TRAVEL JOBS REAL ESTATE AUTOS

Power Your Business

Terms and Conditions Apply

The Business Gold Rewards Card

The Plum Card

CHOOSE YOUR CARD

OPEN

Advertise on NYTimes.com

EDITORIAL

The Hazard of Free-Trade Tobacco

By THE EDITORIAL BOARD
Published: August 31, 2013

Give thanks to Malaysia for heading off, at least temporarily, an American effort to weaken the ability of countries to impose stiff rules on the sale of cigarettes and other tobacco products within their own borders. The Malaysian proposal to preserve that ability led to a stalemate at a Trans-Pacific Partnership trade meeting in Brunei last week and forced the deferral of the issue to future meetings.

- FACEBOOK
- TWITTER
- GOOGLE+
- SAVE
- E-MAIL
- SHARE
- PRINT
- REPRINTS

Today's Editorials

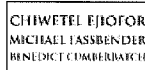
Editorial: Labor, Then and Now (September 1, 2013)

Editorial: Doctors and Their Medicare Patients (September 1, 2013)

Editorial | Notebook: Plan B for Voting Rights (September 1, 2013)

Editorial | Notebook: New York's Living Wilderness (September 1, 2013)

The United States and 11 countries bordering the Pacific Ocean had been engaged in the latest round of negotiations over a treaty intended to lower tariffs and other barriers to commerce. One of the issues was whether tobacco should be included in such a treaty or "carved out" so that health considerations could take precedence over expanded trade. The issue pits health advocates against the tobacco industry and other commercial interests.



Related in Opinion

Op-Ed Contributor: Why Is Obama Caving on Tobacco? (August 23, 2013)

On public health grounds, tobacco ought to be excluded from whatever rules are designed to increase trade in agricultural products. Reducing trade barriers to tobacco, a uniquely dangerous product, would serve to increase tobacco consumption and lead to many additional deaths on top of an already high total. Tobacco killed an estimated 100 million people in the 20th century and is projected to kill 1 billion people in this century unless strong action is taken to mitigate the damage. A carve-out from trade rules is only one tactic, but it could save millions of lives, especially in developing countries vulnerable to the industry's pressure.

The United States, which in advance of the meeting had favored a relatively strong proposal to protect a nation's tobacco control measures from being challenged as violations of trade agreements, offered a weaker proposal in Brunei. The American proposal simply refers to other international agreements that allow exceptions for public health and requires health officials from the 12 Trans-Pacific Partnership countries to consult each other before making trade challenges. It would not prevent the challenges from moving forward.

Mayor Michael Bloomberg, a strong advocate of tobacco control in this country and abroad, rightly denounced the American proposal as "weak half-measures at best." The proposal leaves the door open for multinational tobacco companies to challenge legitimate tobacco control measures, as they

Advertise on NYTimes.com

al: t years.

M: lete carve-out of tobacco control
 m: ability to set its own rules for
 m: ; various tobacco products, among
 ot: r Tobacco-Free Kids and several
 ot: ps, including the American College of
 O: led the Malaysian proposal. It would
 pr: osts of fending off trade challenges
 and from potentially stiff financial penalties if they lose. And it would remove
 the danger that some countries might not enact strong tobacco control
 measures in order to avoid any possibility of challenges.

INSIDE NYTIMES.COM

American trade officials need to toughen their stance when Trans-Pacific Partnership negotiations resume. They should be siding with the public and those concerned about public health, not the makers of products known to be lethal and highly addictive.

[Meet The New York Times's Editorial Board »](#)

A version of this editorial appears in print on September 1, 2013, on page SR10 of the New York edition with the headline: The Hazard of Free-Trade Tobacco.

SAVE E-MAIL SHARE

Try unlimited access to NYTimes.com for just 99¢. SEE OPTIONS »

Get Free E-mail Alerts on These Topics

- Malaysia
- Smoking and Tobacco
- International Trade and World Market
- Regulation and Deregulation of Industry

Ads by Google

Ruum.com Fall Sale
 Up To 50% Off Fall + Extra 30% Off
 All Orders w/ Promo Code: 23489.
www.Ruum.com/Sale