

**Public Hearing Summary  
Maine Citizen Trade Policy Commission  
December 10, 2015  
Eastern Maine Community College  
Room 105, Rangely Hall  
268 Sylvan Road  
Bangor, ME 04401**

Members Present: Senator Amy Volk, Senator John Patrick, Representative Robert Saucier, Representative Stacey Guerin, Sharon A. Treat, John Palmer, Pam Megathlin, Dr. Joel Kase, Linda Pistner

Staff: Lock Kiermaier (Contract)

**Subject of the Public Hearing:** *to gather public comment on the proposed TransPacific Partnership free trade agreement*

CTPC Chair Senator Amy Volk convened the public hearing at approximately 5 PM.

To begin the public hearing, Senator Volk invited any members of the public who were present and wanted to testify to please come forward. A total of 15 persons testified in person. The following summary briefly recounts the gist of each person's testimony in the order in which they testified. Most of the spoken testimony was supplemented by written statements which were distributed to commission members. In addition to the personal testimony, the CTPC also received written testimony from several other individuals. All written testimony received by the CTPC is available for viewing at the CTPC website:

<http://legislature.maine.gov/legis/opla/citpol.htm>

1. Coralie Giles; resident of Brewer and representing the Maine State Nurses' Association- Ms. Giles testified in opposition to the TPP. In her written testimony, Ms. Giles included the following points:
  - a. The TPP will permit drug companies to challenge and overturn laws and regulations which allow government to negotiate lower drug prices for bulk purchases;
  - b. Maine nurses are opposed to monopoly pricing protections that exist in the TPP for large pharmaceutical firms; and
  - c. The TPP will undermine environmental and food safety standards.
2. Alex Jackimovicz; resident of Boothbay, electrical contractor and representing the Maine Small Business Coalition- Mr. Jackimovicz testified in opposition to the TPP. In his written testimony, Mr. Jackimovicz included the following points:
  - a. By transferring power to unaccountable, extra-governmental entities, the TPP threatens national, state and local sovereignty over the environment, food safety and public health;

- b. The TPP replaces democracy with private, corporate power over many aspects of American life including intellectual property rights, labor and environmental protections, consumer safety, government procurement and national resource management;
  - c. Economic globalization and free trade have had significant negative effects on American jobs, wages and benefits; and
  - d. The TPP is inadequate to protect human rights abuses in many TPP countries;
  - e. Through the use of ISDS, the TPP potentially overturns state and federal regulations that are considered “trade irritants” thereby eliminating many public health regulations such as food labeling laws.
3. Bonnie Preston; resident of Blue Hill and member of the National Council of the Alliance for Democracy- Ms. Preston testified in opposition to the TPP. In her written testimony, Ms. Preston included the following points:
- a. The TPP and other FTAs provide multi-national corporations with power that they could not get through the democratic process;
  - b. The use of ISDS in the TPP allows corporations to have equal footing with our democratic government and, for first time, will allow financial regulations to be challenged;
  - c. The TPP is not the only FTA that challenges the democratic process. The TTIP and TISA FTAs also present grave challenges to our nation; and
  - d. Ms. Preston also provided a copy of model legislation to create “TPP-Free Zones”.
4. Betsy Garrold; resident of Knox and representing Food for Maine’s Future- Ms. Garrold testified in opposition to the TPP. In her written testimony, Ms. Garrold included the following points:
- a. By gutting our sovereign courts’ ability to defend our safety, labor and environmental regulations, the TPP will be very bad for Maine’s farms; and
  - b. Based on previous experience with NAFTA and WTO, many small-scale farms in Maine will go out of business as a result of the TPP.
5. Christine Greenleaf; resident of West Gardiner and Unemployment Counselor- Ms. Greenleaf testified in opposition to the TPP. In her written testimony, Ms. Greenleaf included the following points:
- a. Ms. Greenleaf is currently engaged in her 4<sup>th</sup> career; her previous three jobs with a shoe manufacturing shop in Gardiner, Health-Tex in Gardiner and Carleton Woolen Mills in Gardiner all went out of the manufacturing business because of the influx of foreign imports created by recent FTAs;
  - b. In recent years, 3 mill closures have resulted in the loss of 1,695 jobs; and
  - c. The TPP and other FTAs have largely been responsible for the destruction of our national economy and need to be replaced with FTAs that level the playing field for American workers.
6. Sherri Mitchell; resident of the Penobscot Nation, indigenous rights attorney and representing the Land Peace Foundation- Ms. Mitchell testified in opposition to the TPP. In her written testimony, Ms. Mitchell included the following points:
- a. The TPP does not in any way reflect input from Indigenous People that live in the countries that will be members of the TPP;

- b. The TPP completely disregards the concept of Free, Prior and Informed Consent which is a basic tenant of the UN Declaration on the Rights of Indigenous Peoples;
  - c. The TPP will allow trans-national corporations to extract oil, gas and minerals without the consent guaranteed by the UN Declaration;
  - d. The TPP will allow companies to evade compensation for environmental damage done to land belonging to Indigenous Peoples;
  - e. The TPP awards exclusive rights over seeds and traditional plant-medicines to corporations;
  - f. The use of ISDS in the TPP allows corporations to sue nations for any profits lost to laws and regulations; this will severely impact the efforts made by Indigenous Peoples to protect the environment; and
  - g. The culmination of these injustices under the TPP amounts to a new form of colonization for Indigenous Peoples.
7. Dennis Chinoy, resident of Bangor and member of Power in Community Alliances in Bangor- Mr. Chinoy testified in opposition to the TPP. In his written testimony, Mr. Chinoy included the following points:
- a. Like other FTAs, the TPP has winners and losers; Maine loses through a loss of industrial jobs and challenges through the ISDS process to our laws which protect public health and safety, public services, labor rights and the environment; and
  - b. Mr. Chinoy provided a list of concerns posed by ISDS as compiled by the Citizens Trade Campaign.
8. James Moore, resident of Bangor and attorney- Mr. Moore testified in opposition to the TPP. In his oral testimony, Mr. Moore included the following points:
- a. Mr. Moore has 3 primary concerns about the TPP;
    - i. Loss of manufacturing jobs;
    - ii. Will provide rights through ISDS to foreign corporations that are not enjoyed by companies in the US; and
    - iii. Countries that will benefit from the TPP will not be able to live up to the enforcement requirements for the labor standards, environmental protection, copyright and other laws.
  - b. The TPP is an overall assault on our democratic form of government
9. Gray Cox, resident of Bar Harbor and Professor at College of the Atlantic- Mr. Cox testified in opposition to the TPP. In his written testimony, Mr. Cox included the following points:
- a. The TPP will threaten our existing sovereignty and transfer power to a system dominated by corporate interests;
  - b. Advocates for the TPP typically claim three things- each of which are fundamentally mistaken:
    - i. The theory of “comparative advantage” advances our national economy by seeking the benefits of trade. In the case of the TPP, comparative advantage benefits corporations but not average citizens;
    - ii. The TPP is necessary to thwart economic dominance of the Pacific Rim countries by China. The more appropriate question is rather “which economic system will dominate and govern us?”

- iii. The TPP is necessary to pursue economic development as an outgrowth of a free market capitalist society; without the TPP we are promoting a governmental system of a socialist society which depends on regulations and governmental interventions. This reasoning is inherently false in that it fails to recognize that every economy is essentially a hybrid of the two systems.
    - c. The ISDS system in the TPP is fundamentally opposed to the sovereignty that citizens in Maine have used to accomplish a sense of how life in Maine should be.
10. Stefano Tijjerina; resident of Old Town, Professor at UMO and Director of the Peace and Justice Center- Mr. Tijjerina testified in opposition to the TPP. In his oral testimony, Mr. Tijjerina included the following points:
- a. As a historian, Mr. Tijjerina believes that the TPP must be viewed in a historical context which is the globalization and the expansion of markets beyond the nation-state;
  - b. We are moving from a world market of 12% of trade occurring due to NAFTA towards a more global 40% of the economic market represented by the TPP;
  - c. Since the end of the 20<sup>th</sup> century we have been moving away from the sovereignty of the nation-state towards a new kind of sovereignty of globalization where the decision makers are drawn from the private sector or trans-national corporation with no national identity or loyalty;
  - d. The regional context of the TPP is that of the Pacific Ocean which is far removed from Maine and bears no real benefit for the state of Maine;
  - e. As reflected in the TPP, primary shareholder interests (those of large corporations) have little relevance to Maine;
  - f. The Pacific orientation of the TPP suggests that we as Mainers have very little leverage in this latest globalization effort and even less of the economic protections that we have become accustomed to; and
  - g. Rather than a race to the top, the TPP represents a race to a very deep bottom.
11. Jessie Dowly; resident of Whitefield and small farmer- Ms. Dowly testified in opposition to the TPP. In her oral testimony, Ms. Dowly included the following points:
- a. Very concerned about how the TPP will affect small businesses and small farms;
  - b. She believes that the TPP is a bad deal for Maine and for small farmers; and
  - c. She hopes that the CTPC will do everything in its power to prevent the TPP from passing
12. Troy Jackson; resident of Allagash and former legislator and former Chair of CTPC- Mr. Jackson testified in opposition to the TPP. In his oral testimony, Mr. Jackson included the following points:
- a. The TPP is an awful deal for the citizens of Maine;
  - b. He sees no benefit from the TPP for anyone that he knows;
  - c. He does not believe in FTAs and believes that TPP will lead Maine and the nation as a whole into third world status; and
  - d. Questions why anyone would give up their right to have an agreement like this discussed in a an open and transparent manner and not to do so is very shortsighted and represents bad government.
13. Karl Norton; resident of Bangor- Mr. Norton testified in opposition to the TPP. In his oral testimony, Mr. Norton included the following points:

- a. He agrees with the points that had been made earlier by previous speakers;
  - b. He has been studying parts of the TPP text for a number of hours;
  - c. He believes that the TPP is excessively lengthy, too complicated, too comprehensive, and too difficult to understand- a document like the TPP does not lend itself to good democratic government;
  - d. A document like the TPP should be broken into smaller pieces and each piece should be carefully examined and debated in full; and
  - e. Given the only option of an up or down vote, the TPP should be voted down.
14. Stephanie Mattsen; resident of Bangor- Ms. Mattsen testified in opposition to the TPP. In her oral testimony, Ms. Mattsen included the following points:
- a. She agrees with the points that had been made earlier by previous speakers;
  - b. She appreciates the opportunity to speak in this type of open format where people are allowed to express their beliefs;
  - c. If the TPP passes, she believes that that this type of meeting will no longer be possible with the loss of local control;
  - d. The TPP is not working in the local interests of the people of Maine and that the real power will rest in the ISDS process;
  - e. She believes that the CTPC is very negative for everyone in Maine.
15. Martha Spiess; resident of Freeport and veterinarian- Ms. Spiess testified in opposition to the TPP. In her written testimony, Ms. Spiess included the following points:
- a. Ms. Spiess believes that the TPP serves to undermine our government's health policy and does not believe that the TPP "carve-outs" for tobacco in the ISDS process are adequate; and
  - b. Ms. Spiess provided copies of a statement from the Center for Policy Analysis on Trade and Health which specifies to what extent the TPP falls short of protecting existing health policy and provides a suggested set of public health guidelines for FTAs.

**Written Testimony provided to the CTPC but no oral testimony**

16. Chellie Pingree; resident of Maine and U.S Representative- In her written testimony, Representative Pingree testified in opposition to the TPP and included the following points:
- a. Representative Pingree fears that the TPP's effort to remove "non-tariff barriers to trade" will inhibit our efforts to enact protections in areas such as worker protection, public safety and the environment;
  - b. Representative Pingree believes that the TPP will result in the loss of even more jobs being lost overseas; and
  - c. Representative Pingree objects to the lack of transparency in the TPP approval process and objects to the fact that the agreement cannot be amended or changes.
17. Glen Brand; resident of Maine and Maine Chapter Director of the Sierra Club- In his written testimony, Mr. Brand testified in opposition to the TPP and included the following points:

- a. Mr. Brand objects to the use of ISDS in the TPP and believes that it gives foreign investors unprecedented means to challenge climate and environmental laws and regulations;
- b. The inclusion of any so-called “safeguards” in the TPP are inadequate;
- c. The TPP will force the US Department of Energy to approve all exports of Liquefied Natural Gas, which is a product of fracking and contributes significantly to global warming and climate change; and
- d. The TPP will result in the continued loss of manufacturing jobs to other TPP countries with less effective environmental regulations thereby adding to climate change.

### **Adjournment**

The public hearing was adjourned at approximately 7 PM.

Testimony of Cokie Giles, RN  
President of the Maine State Nurses Association  
Before the Maine Citizen Trade Policy Commission  
Dec. 10, 2015

Good evening. Thank you for the opportunity to speak today on behalf of Maine nurses.

My name is Cokie Giles.

I am a Registered Nurse, the President of the Maine State Nurses Association, and a Vice-President of National Nurses United, the largest organization of registered nurses in the United States.

Nurses are patient advocates—and by extension advocates of our patients' families and our communities—and we are here to sound the alert on the Trans-Pacific Partnership.

Despite the promises and reassurances offered by the Obama administration, the final text of the Trans-Pacific Partnership, or TPP, is even worse than prior reports had predicted.

As an example, RNs know from the frontlines of fighting HIV/AIDs around the world that when brand-name drugs were the only option, AIDS was a death sentence in the world's poorest countries.

It was only when the introduction of generic drugs was allowed that dramatic price drops occurred -- from \$15,000 per person per year to just \$150 -- making treatment possible for millions.

The TPP would allow drug companies the legal authority to challenge and overturn national laws and regulations that permit governments to negotiate lower drug prices through bulk purchases, which cuts costs for everyone.

That would hurt the people in the countries signatory to the agreement that already do drug bulk purchasing and it would hurt the ability of the US government to finally do it here at home.

These gifts to the billionaire drug companies are a cruel and disgraceful threat to the lives of millions of people.

The pretext of giving the pharmaceutical corporations expanded monopoly control to 'repay' them for research and development costs is particularly hollow considering that a substantial percentage of those costs are paid for with public funds with drugs developed at public universities.

Nurses are appalled at the provisions regarding the so-called Investor State Dispute Settlement ISDS process that allow global corporations to sue to overturn laws and regulations, including public safety and environmental protections.

As has already occurred with prior trade deals, the ISDS process allows corporations to challenge domestic laws through extrajudicial tribunals, staffed by corporate attorneys that can demand taxpayers reimburse corporations for lost "expected" profits. In prior trade pacts, this provision has forced some countries to drop health, safety, or environmental rules rather than face bankruptcy from billion dollar ISDS rulings.

Maine nurses urge Congress to reject this fatally flawed agreement and strongly encourage the Maine legislature to speak out in the public interest against the TPP.

While there are many good reasons to ~~to~~ reject the TPP, Maine's registered nurses are particularly appalled about this agreement's threat to public health and safety. Monopoly pricing protections for giant pharmaceutical firms in the TPP could be a death sentence for countless patients in need of affordable medications around the world.

Pharmaceutical corporations would be given years more of monopoly pricing practices on their patents for high-priced, brand name drugs to block distribution of competitive, cheaper, lifesaving generic medications.

That is especially critical for people suffering from cancer, HIV/AIDS, hepatitis, and other illnesses in developing countries as well as in the United States. Patent exclusivity rules, that affect when cheaper, generic versions of high priced name brand drugs, can go on the market, can produce long delays in access to affordable medicines, under the TPP.

This agreement is an all out assault on not only health and safety but also on the democratic rights of the American people to pass public protections. It's another reminder that the pharmaceutical industry and other corporate lobbyists, who wrote many of these provisions, continue to dominate and corrupt our political system.

We can understand why these huge multinational corporations want such deals—and why they in fact are helping write them—bigger and bigger profits for them. But Congress should reject this outright because it is clearly not in the public interest.

In addition to the health concerns that I have already outlined, the TPP would undermine environmental and food safety standards. Maine nurses also share the concerns of workers across the country that the TPP will lead to more job loss, driving down wages, and weakened labor protections in the United States.

Nurses and working people will not be silent in working to stop and overturn this dangerous agreement.

Maine's members of Congress must now step up and join this fight to defeat the TPP, and we urge this commission and the legislature to strongly recommend they do so.

Thank you.

Good evening, and thank you to the members of the Maine Citizens' Trade Policy Commission, for holding this public hearing on the important matter of the proposed Trans-Pacific Partnership trade agreement.

My name is Alex Jackimovicz. I'm an electrical contractor and business owner from Boothbay. And, I'm a member of the Maine Fair Trade Campaign. I'm speaking today as a steering committee member of the Maine Small Business Coalition, representing over 4,000 small businesses in Maine, and as a concerned citizen and taxpayer. I'd like to thank you for the opportunity to offer our perspective on this issue as small business owners.

The TPP is an enormous and expansive trade deal, arguably the largest in United States history, and it deserves a full hearing, to examine its likely impacts, globally, nationally, and in regard to Maine. We all have the right and the responsibility to ensure that it is well understood, by all those who will be impacted by its

implementation. Due to limitations on time, I will only be able to address a few of our most alarming concerns this evening.

The Trans-Pacific Partnership, while being argued at the highest levels of government, as an engine to further develop the strength of the American economy, by easing trade barriers and encouraging U.S. exports, actually poses substantial threats to American jobs and wages. It also threatens national, state, and local economic and regulatory sovereignty over the environment, food safety, and public health. More than just a give away of national, and regional sovereignty rights, modern proposed trade deals like the Trans-Pacific Partnership represent significant take-overs and appropriations of economic decision-making, formerly the domain of national, state, and local governments. In essence, it transfers power to unaccountable, extra-governmental, corporate entities.

The TPP is designed to deliberately remove many layers of democracy, public input and scrutiny in decision-making. This is a

net loss for democracy at every level. The TPP replaces democracy with private, corporate power over many economic decisions with “significant implications for nearly every aspect of American life—including intellectual property rights, labor and environmental protections, consumer safety and product labeling, government procurement, and national resource management...”<sup>1</sup>

This binding pact, which encompasses as much as 40% of the world’s economic activity, falls far short of establishing the high standards that the United States should require of a modern trade deal. Rather than having closed-door discussions, that narrowly focus on which industries may receive small advantages and disadvantages, policymakers should be asking deeper questions about whether the rules of the TPP as a whole will create American jobs, enhance environmental sustainability, improve public health, raise worker’s wages, and advance human rights and democracy.

After carefully considering all the terms outlined in the TPP, the members of the Maine Small Business Coalition, along with the Maine Fair Trade Campaign and thousands of other business and worker's groups across the country, believe that the answer to every one of those deeper questions is no.

Our opposition to the TPP is broad and varied. Unfortunately, I can only offer a short summary of the issues that we find most disturbing:

First, let's put things into context. As a result of globalization, there has been a consolidation of industries that has created great disruption of regional and local economies. Regional and local leaders used to provide localized economic development plans that met the needs of the local communities. Now, the needs of the local communities are overlooked in favor of large-scale corporate benefit. This leaves those in small American communities to pay the price at the local level. Jobs are

outsourced, and manufacturing of goods purchased locally has been moved. In addition, locally made goods and services can't compete with the prices of goods, where production is subsidized and where economies 'of scale' are making huge amounts of cheaply produced products for export. Economic globalization and free trade has had dire impacts on workers and local communities. In addition to literally re-locating jobs to locations where profit comes at the expense of worker wages, human rights, and the environment, free trade agreements in the industrialized nations have strengthened the ability of employers to accept lower wages and benefits. To quote a recent Citizen's Trade Campaign letter:

The TPP is the latest opportunity to “offshore more good-paying American jobs, lower [the] wages in the jobs that are left and increase income inequality by forcing U.S. employers into closer competition with companies exploiting labor in countries like Vietnam, with workers legally paid less

than 65 cents an hour, and Malaysia, where an estimated one third of workers in the country's export-oriented electronics industry are the victims of human trafficking.”

“And the TPP's labor standards are grossly inadequate to the task of protecting human rights abroad and jobs here at home. The countries involved in the TPP have labor and human rights records so egregious that the “May 10th” model — which was never sufficient to tackle the systemic labor abuses in Colombia — is simply incapable of ensuring that workers in Mexico, Vietnam, Malaysia and all TPP countries will be able to exercise the rights they are promised on paper. Even if the labor standards were much stronger, the TPP is also so poorly negotiated that it allows products assembled, mainly from parts manufactured in “third party” countries, with no TPP obligations whatsoever to enter the United States duty free.”

One of the more disturbing TPP requirements affecting small, local businesses includes procurement waivers that eliminate “Buy American” and “Buy Local” preferences that are currently found in many types of government purchasing contracts. Buy American policies require most federal government purchases of goods to go to American firms, which allows tax dollars to be recycled back into our economy. Under TPP requirements, Buy American would be effectively gutted as TPP rules require that foreign corporations receive “national treatment” in government procurement bids. This will allow foreign corporations to take over the local procurement markets and effectively export American jobs directly tied to federal procurement laws, by ‘off-shoring’ our tax dollars.

While previous trade agreements were aimed to open up new markets, a primary intention of the TPP is to reduce or eliminate state and federal regulations that are viewed as “trade irritants,” which is likely to eliminate many small markets nationally and

globally. To deal with “barriers to trade,” an expansive body of investor rights takes up most of the text of the TPP. The TPP sets up a system of independent, extra-governmental, secret tribunals, known as an Investor-State Dispute Settlement (ISDS) system. This system allows corporations the right to sue for losses from ‘expected future profits,’ such as when business profits could be hurt by environmental or regulatory standards which rise above an accepted standard for all signatory nations--except as they pertain to ‘investor rights’. These private three-person corporate tribunals will be given greater rights and more power to arbitrate disagreements than even the Supreme Court of the United States!<sup>2</sup>

What this means for states like Maine and Vermont is that state labelling laws (including GMO-labelling, and identifying products as being produced locally) may be vulnerable to litigation, and thus struck down. Numerous health warnings and nutrition information labels are at risk of being viewed as “barriers to trade”

and eliminated. There is also a threat of litigation for evolving environmental, health and safety standards that meet the needs of local people, or from local procurement laws (after a three year window eclipses), if they are viewed as impeding corporate profitability. This will have a definite chilling effect on regulatory standards, while also diminishing the regulatory sovereignty of local, state and national governments, since nations, states and towns can be sued by foreign corporations for any losses to 'expected future profits' that may result from any such regulation. This takes away our control at the local level to determine the quality of life that we wish to promote in our communities and on behalf of our citizens.

I'd like to end by pointing out that the aims of the TPP are contrary to the interests of small, local businesses in Maine. The TPP will not strengthen our local economies. It will not result in workers seeing higher wages, or allow environmental and safety standards to be strengthened. It will not allow greater access to

locally produced goods and services. In fact, the opposite is true. We can and should collectively look at the big picture and realize that in adopting the provisions of the TPP, we are forcing our Maine businesses to compete with thousands of foreign corporations that do not have our labor laws, health and safety regulations, or environmental standards. We will be facing a 'race to the bottom' to compete with those countries that maintain archaic standards that violate the rights of the people and the environment on nearly every level. This isn't good for our communities, or our state or national governments. And, it certainly isn't good for our livelihoods. The TPP favors a handful of large multi-national corporate entities, and it destroys the checks and balances that allow smaller businesses to succeed. In order to protect American sovereignty, the integrity of the American workforce, and ensure an equitable opportunity for all businesses to succeed, we need to strongly reject the Trans-Pacific Partnership. Thank you.

Alex Jackimovicz, Boothbay

Notes:

1. Korten, David. "Do Corporations Really Need More Rights?

Why Fast Track for the TPP Is a Bad Idea." YES! Magazine. 9

Mar. 2015.

Web. 5 Apr. 2015.

2. *"Comprised of three private attorneys, the extrajudicial tribunals are authorized to order unlimited sums of taxpayer compensation for health, environmental, financial and other public interest policies seen as frustrating the corporations' expectations. The amount is based on the "expected future profits" the tribunal surmises that the corporation would have earned in the absence of the public policy it is attacking. There is no outside appeal."*

Investor-State Attacks: Empowering Foreign Corporations to Bypass our Courts, Challenge Basic Protections'-- Public Citizen

Web. 5 Apr. 2015. <http://www.citizen.org/investorcases> There are currently about 500 cases of corporations versus national or local governments, and the ad hoc 'arbitration tribunals' overwhelmingly favor the corporate over local interests. The TPP would greatly expand the ability of corporations to sue, likely resulting in an explosion of litigation and have a chilling of regulatory standards as even the threat of suing a poorer government or state within a government would have a powerful effect on future legislation. A report entitled, "Profiting from Injustice: How law firms, arbitrators and financiers are fueling an investment arbitration boom" shows that the *"arbitration industry is far from a passive beneficiary of international investment law. They are rather highly active players, many with strong personal and commercial ties to multinational companies and prominent roles in academia who vigorously defend the international investment regime. They not only seek every opportunity to sue governments, but also have campaigned forcefully and successfully against reforms to the international investment*

*regime....Rather than acting as fair and neutral intermediaries, it has become clear that the arbitration industry has a vested interest in perpetuating an investment regime that prioritises the rights of investors at the expense of democratically elected national governments and sovereign states.”* Executive Summary of “Profiting from Injustice: How law firms, arbitrators and financiers are fueling an investment arbitration boom” published by Corporate Europe Observatory and the Transnational Institute.

Maine Citizen Trade Policy Commission  
Dec. 10, 2015  
Testimony

Good evening, and thank you for having this hearing tonight. My name is Bonnie Preston, and I live in Blue Hill. Tonight I want to urge you to recommend to our Congressional delegation to vote No on the TPP--the Trans Pacific Partnership.

I am on the National Council of the Alliance for Democracy. We work to keep alive the dream that Abraham Lincoln expressed as government of the people, by the people, and for the people. Currently we have government of the corporations, by the corporations and for the corporations. As David Talbot says in his new book, *The Devil's Chessboard*, "Democracy [...] is an impediment to the smooth functioning of the corporate state."

One of the main reasons that we have this corporate state is that the "free" trade regime, under the WTO, IMF, World Bank and various "free" trade agreements, have given multi-national corporations power they could not get from transparent, democratic processes. I will show this with a few pieces of the provisions of the Investor-State Dispute Settlement chapter of the TPP.

Under the WTO, multi-national corporations must get their national government to challenge laws that threaten their "expected future profits." Under NAFTA and the TPP, these corporations can challenge a government directly, putting a foreign corporation on an equal footing with our nation. The dispute does not go to a court of law, but to a 3-person tribunal made up of judges who are corporate lawyers. They are tasked with deciding whether the trade agreement has been violated, not with deciding on the merits of the case. The lawyers making up the tribunals rotate between their roles as judge and their roles, in other cases, as advocates for the corporations. There is no requirement that they be impartial or independent; they can even be connected financially to the corporation that has brought a case forward. This is the system that just days ago imposed over \$1 billion of trade sanctions on the US because of our country of origin labeling requirement for meat. Americans want to know where their food comes from; we now will not be able to because Canada and Mexico do not want us to know. When our Congress is allowing corporations--nearly 600 participated in writing the TPP-- to write the laws in ways that will serve corporate interests rather than the interests of the people, we have given away our claims to be a sovereign, democratic nation in which we are all equal under the law.

For the first time in any U. S. trade agreement, financial regulations may be challenged using the same ISDS processes as other types of corporations. What progress that has been made since 2008 in reining in the banks and other financial institutions will be thrown out the window, rather inevitably leading, sooner or later, to another crisis of massive proportions.

Claims against the United States are already impacting us on such issues of particular importance to Maine as forestry rules, water services, and mining regulations, and there are pending claims against the US that total over \$25 billion. If the TPP passes, our exposure to claims will be doubled because of the expanded number of foreign corporations and their subsidiaries that are in the U.S.

There are many more problems just in that one chapter of the TPP. The Transatlantic Trade and Investment Partnership and the new Trade in Services Agreement are already being negotiated, both in the interests of the multi-national corporations. It doesn't look like We the People stand a chance to decide how our country will be run. Fortunately, opposition to a new world order of total control by big business is building. The Alliance for Democracy has a campaign to get municipalities and counties in the U.S. to declare themselves, by ordinance or by resolution, a TPP-Free Zone. So far, 19 entities have done this or are in the process of doing it. They range in size from Fort Bragg CA to New York City, and in geographic scope from Bellingham WA to Hialeah Gardens FL. Cities in Europe are starting to plan TTIP-Free Zones.

Defeating the TPP is the number one priority if we are to be able to even pretend that the U.S. is a democracy. All of our Congressional delegates voted No on Fast Track; we need you to recommend to them that they stay strong and vote No on the agreement. They will be under tremendous pressure to do otherwise, but with your support and the support of the Maine people, which they have on this issue, we can expect them to help defeat the biggest corporate take-over yet.

Thank you.



## TPP-FREE ZONE: MODEL LEGISLATION

Whereas the TransPacific Partnership (TPP) is being negotiated between the US and 12 or more Pacific Rim countries by the US Trade Representative in secret without any consultation with our local government either directly or through the National League of Cities or the US Conference of Mayors or the National Association of Counties; and

Whereas, the text is being drafted with transnational corporations which will benefit greatly from its rules;

Whereas, the TPP text has not been made available to the public or even to our local officials;

Whereas the TPP would have direct, potentially undesirable consequences for our municipality, its people, its local businesses, and its ecological systems on which all life depends;

Whereas the Investment Chapter of the TPP, which was leaked in 2012, would allow foreign corporations to sue the US and its states over any law or regulation violating TPP rules which could take away their "right" to future profits and therefore potentially rob our municipality of needed protections for our people, local businesses and environment;

Whereas TPP financial rules would prevent regulation of risky financial products such as "interest rate swaps" thereby threatening the financial stability of our government and more broadly the stability of our overall economy;

Whereas US, state and local food safety rules could be challenged by foreign corporations as "illegal trade barriers" if higher than standards in other TPP countries thus threatening the health of our residents;

Whereas the TPP would provide large pharmaceutical firms with new rights and powers to increase medicine prices and limit access to cheaper generic drugs which would impact our residents;

Whereas the US would agree to waive "Buy American" or "Buy Local" requirements aimed at enhancing our local economy and creating local jobs;

Whereas, we would have no right or ability to represent our interests before the foreign tribunals which would have the authority to hear cases brought by corporations under the TPP; and

Whereas such rulings might require taxpayer compensation which could impact the financial health of our municipality and its residents;

Therefore the City/Town Council of \_\_\_\_\_ hereby declares as a matter of law that \_\_\_\_\_ is a TPP-Free Zone where we will not recognize the secretly negotiated rules laid down without our consent nor any decisions by any secret tribunals which would in any way diminish our ability to act in the best interest of our residents and our local businesses and to protect our ecological systems on which all life is based.

Further, we will convey our ordinance to our Congressional delegation, to President Obama and to US Trade Representative Michael Froman, with our demand that all text be made public and that all further negotiations cease.

And finally, if despite the harm to our community and our nation, Congress approves the TPP, we will take all necessary measures to ensure that this ordinance is enforced.

Good evening, my name is Betsy Garrold, I am the President of the board of directors for a small non-profit, Food for Maine's Future, which advocates for small farmers, farm laborers and their patrons against corporate food monopolies. I come here today to tell you that the Trans-Pacific Partnership trade deal will be very bad for Maine's small farms.

Back in the spring I wrote an op-ed for the Bangor Daily News in response to <sup>a</sup> ~~another~~ piece that had been written by someone from the USDA. This person's article represented very well the sentiments of the big agribusiness concerns and it needed some push back.

This government official stated in her op-ed that rural economies needed "trade promotion authority" in order to "compete on a level playing field" when it comes to international trade and the export of U.S.-grown food and manufactured goods. As the North American Free Trade Agreement, the Central American Free Trade Agreement and the World Trade Organization have proven, this is pretty far from the facts on the ground — unless your idea of a level playing field is one that is dirty, polluted and economically ravaged.

What does the TPP mean for small farmers? We know about the devastation of the manufacturing base in the American Midwest after the above mentioned trade deals took effect. Companies scurried to move their plants to places with lower standards of living, loose or non-existent environmental protections and no history of organized labor protecting poorly paid workers. If this is what we want for our small family farms, then by all means let's sign the Trans Pacific Partnership and the Transatlantic Trade and Investment Partnership, both of which, like NAFTA and CAFTA, gut our own sovereign courts' ability to defend our soil, water, air and workers from abusive lawsuits brought by multinational corporations. These lawsuits are not decided in a U.S. court of law but by an international tribunal composed of three judges looking only at the trade rules for their decision. We saw a prime example of this just this week with the WTO's decision in the meat country of origin labeling case.

In a May 2013 article on food imports to the U.S., Public Citizen's trade watchdog stated, "Smaller-scale U.S. family farms have been hardest hit by the import influx caused by deals like NAFTA and the WTO. About 170,000 small U.S. family farms have gone under since NAFTA and the WTO took effect, a 21 percent decrease in the total number. After the WTO required elimination of various U.S. price support and supply management policies, small farmers were also hard-pressed to survive the increasing year-to-year volatility in prices paid for commodities, making investment and planning more difficult than before the WTO."

The National Family Farm Coalition is watching these trade deals closely and has reported on the Obama administration's aggressive push for Fast Track trade authority. I serve on the executive board of this organization and we will be convening from all over the country in DC this coming February to lobby congress and, we hope, stop passage of this disastrous trade deal.

Small farmers across the country are organizing to tell Congress that what may be good for big agribusiness firms is definitely not good for struggling, small family farms. Here in Maine we are fortunate to have a young, vibrant group of farmers who are working to grow food, rebuild the local food infrastructure and feed the people of Maine. Their livelihood does not depend on exports, but they are subject to the same vagaries that affect small-scale farmers everywhere. If the market becomes flooded with cheap imported food of questionable quality, they may well find it impossible to compete and will leave the land, just as countless others have been forced to do from Iowa to Chiapas.

Again from Public Citizen, "U.S. corn exports to Mexico in the three years after NAFTA soared 377 percent above the level in the three years before the deal. In 2013, the United States exported 26 times as much corn to Mexico as before NAFTA. But when the flood of U.S. corn in Mexico caused corn prices to plummet 66 percent for Mexican farmers, 2.5 million farmers and agricultural workers in Mexico lost their livelihoods, many of whom resorted to migration. In NAFTA's first seven years, the annual number of people emigrating from Mexico to the United States more than doubled."

Talk about unintended consequences. Do we really want to turn our young farmers into economic refugees?

This would happen to Maine growers as cheap and questionably "organic" food floods the market from China. We must protect our family farms and help them grow their businesses to keep the rural economy growing and supporting all the people who live and work in towns and villages across the state and the nation.

*Betsy Garrold is the president of the board of directors for Food for Maine's Future. She monitors the Maine Citizen Trade Policy Commission for that organization. She also serves on the executive committee for the National Family Farm Coalition and lobbies in Augusta for the Farm-to-Consumer Legal Defense Fund. She can be reached at hgarrold@yahoo.com or 568-3302.*

→ and elsewhere.

Testimony for Trade Policy Commission Hearing December 10, 2015

My name is Christine Greenleaf and I would like to share my personal experiences with you on how trade policies have affected my life. I have held four jobs in my lifetime, but the first three I lost due to foreign imports - a shoe shop that closed in Gardiner in 1979 that employed 105, Health-Tex that closed in Gardiner and Brunswick in 1986 that employed little over 400 people mostly women, and Carleton Woolen Mills in Gardiner which closed in 1998 employing 121. In all three facilities I did different types of work, made good money for that period, but all in the manufacturing sector which has been hit hard by foreign imports. I would still be at any one of them making an honest living had they not closed, because I loved the feeling of producing a product that was sold all over the country. I took great pride in that, we all did, and each one of us enjoyed sharing our life with our "work family" in all three facilities. One of the hardest emotions on all of us who have lost a job, is the grief of losing that contact with "work family".

In my fourth job I am employed as a member of a team who delivers information on Unemployment Insurance, Career Center Services, Community Resources, and Health Insurance Options, then if the company becomes TRADE certified, also presenting all aspects of that program, to our states laid off workers due to downsizings and closures. A huge number of these dislocations are eligible for the TAA-TRA program because the layoff was due to foreign imports. I have some numbers and experiences I thought this group would be interested in. I have been doing this for 17 years now, working with thousands of laid off workers who have lost their jobs and plan to share numbers from the last 2 years but would first like to share a couple of facts that I can never forget.

#### **Sherman Lumber Company: Trade Certified closure due to imports**

I remember the closure of Sherman Lumber company in 2002 with 136 employees affected from Sherman, Stacyville, Patten and the surrounding small little towns. A few of these folks were not able to read and write and most everyone had little or no computer experience or even access to a computer. The reason this one sticks out, and always will, is that I was told by the union president that a very significant number of the people laid off used their severance pay and cashed in their 401K's to pay off their houses so they wouldn't lose them. Money to enjoy retirement was no longer an option for them. I remember feeling so sad that they had been saving for retirement all their work life and suddenly it was more important not to lose their home.

#### **Hathaway Shirt: Trade Certified closure due to imports**

Hathaway Shirt company closed at the end of 2002 leaving 235 employees (90% women) out of work. A fact about this closure that I will never forget: 4 women died of heart attacks within 6 months of this closure. Yes these things matter to the overall health of the employees affected. All of this matters to these workers and it matters to me.

I have many more but for the sake of time I will move on to here and now so everyone has enough time to convey their message.

Every year we all as a team say "maybe this year there won't be as many layoffs" and then we are hit with the next big closing. I don't even want to add up the number we have seen in the last 17 years, I would be able to, but I don't want to - it's heartbreaking to me, so I only total the count for the year.

The last 2 years began November of 2013 - Lincoln Paper & Tissue became Lincoln Pulp & Tissue when they took their paper making machines off line and laid off 186 workers.

This was very closely followed by the layoff of 256 in February 2014 and the eventual final closure of Great Northern Paper in East Millinocket.

October 2014 brought the announcement of the closure of Verso Paper in Bucksport with 578 workers scrambling to figure out, can I retire now or do I need to find another job, after 40 years in the mill. 75% of this workforce were 50 and older, 518 male, 58 female.

End of September 2015 started the announcements of three more major dislocations.

Verso/ Androscoggin in Jay announced the layoff of 300 workers at the end of this year, Expera Speciality Solutions in Old Town announced it was closing laying off 195 workers (they are being paid until December 28<sup>th</sup>) and Lincoln Pulp & Tissue has closed displacing another 180 workers.

That is 1695 workers, 1395 of which are within a 80 mile radius of three of the northern mills. All of these sites have now been approved for the TRADE program, meaning we lost these jobs due to foreign imports. The trickledown affect has already begun with layoffs happening in the trucking industry, the woods cutting industry, the Mom and Pop stores, restaurants, municipal services, ect.

These workers have lost good paying jobs and a way of life. Most are lucky to replace the wages at 58 – 64%. Some have been able to replace their wage but probably had to move, or are driving more than 100 miles one way to work.

This is why, to me, it's unthinkable that our elected leaders in Congress continue to stack the deck for multinational corporations at the expense of Maine workers as they pass these unfair free trade agreements. We need trade, but it needs to be fair. This NAFTA trade model encourages companies to outsource jobs so they don't have to follow labor or environmental laws.

We need a new trade model that levels the playing field for American workers. The proposed Trans Pacific Partnership, or TPP, is a big expansion of this same failed model that has destroyed our economy. If the TPP passes, this problem will continue to get worse and will crush any hope for future job growth. I hope our elected official's, and you as members of this Commission, will do everything you can do turn this around and give Maine workers a chance again.

In closing I would just like to say I love what I do for work, but I hate that it is necessary. Someday, I'd like to move on to a 5<sup>th</sup> job in my life, not because I don't love my work, but because I hope someday there won't be any need for me and the team and there could finally be an end to these layoffs that hurt Maine families.

Thank you.

## Maine Citizens' Trade Policy Commission Public Hearings on the TPP

### Testimony of Sherri Mitchell, Penobscot Nation, Indigenous Rights Attorney

Hello my name is Sherri Mitchell, I'm a member of the Penobscot Nation, an Indigenous Rights Attorney, and the Executive Director of an Organization called the Land Peace Foundation.

I'm here tonight to talk with you about an issue that often gets overlooked when discussing the TPP, Indigenous Rights.

In the same vein as deals like the North American Free Trade Agreement and the World Trade Organization, the TPP is being drafted with no input from the Indigenous Peoples who live in countries that will be affected by the deal. The TPP could have broad implications for Indigenous Peoples living in the United States, Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam. The TPP entirely disregards the concept of Free, Prior and Informed Consent, a tenet of the UN Declaration on the Rights of Indigenous Peoples which states that policies affecting Indigenous Peoples should not move forward without the full understanding and approval of those it might affect.

The TPP threatens to dramatically affect Indigenous Peoples by ramping up trade policies that have allowed for trans-national corporations to engage in oil, gas, and mineral extraction without the Free, Prior and Informed Consent of their communities. TPP policies would encourage the natural gas industry, which has already severely impacted Native and First Nations communities in North America, by facilitating "increased exports of liquefied natural gas by requiring the US Department of Energy to automatically approve all natural gas exports to TPP countries. Increased exports would mean an increase in hydraulic fracturing, or fracking, the dirty and violent process that dislodges gas deposits from shale rock formations." (Sierra Club). Natural gas companies have already begun encroaching on otherwise off-limits Native lands. In fact, we've seen a precursor to this in the recent Defense Bill that illegally gave Apache lands to a foreign mining company. Going back to the issue of fracking on tribal lands, Native women are particularly victimized, as fracking operations have been correlated with increased sex trafficking, rape, missing women, and influxes of drugs and alcohol into communities. This results from the man camps that crop up around fracking operations. In addition, there is also environmental contamination of local water and air quality that impacts the health and well being of community members.

The TPP would also allow companies to evade financial responsibility for environmental contamination, even when it occurs on Indigenous Peoples' lands. Under the proposed agreement, investors could demand taxpayer compensation for imposed fines, effectively burdening the public

with the cost of environmental cleanup. This is true for both Indigenous lands and non-Indigenous land holds as well. According to Professor Jane Kelsey of New Zealand, the TPP draft chapter on environmental regulations fails to define its key terms, leaving vagueness that will allow for inconsistent interpretation and implementation of regulations. Nowhere in the chapter does it detail a mechanism for setting penalties for environmental offenders, which is problematic for all people, and the planet, not just for Indigenous peoples. It also excludes resource management practices and ignores standards set by the UN Declaration on the Rights of Indigenous Peoples.

The TPP's draft article on Trade and Biodiversity recognizes the rights of states over natural resources and genetic material. This would allow for multinational corporations like Monsanto and industries like Big Pharma to benefit enormously by allowing them exclusive rights over seeds and traditional plant-based medicines found in biodiverse areas managed by Indigenous communities. The draft flagrantly ignores Article 31 of the Declaration, which states that "Indigenous Peoples have the right to maintain, control, protect and develop... the manifestations of their sciences, technologies and cultures including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora."

The patenting of plants that have been used traditionally by Indigenous Peoples without their consent or beneficial sharing has been called bio-piracy, and would conceivably snowball upon the approval of the TPP. Indigenous activist Te Kaituhi, a Māori of Aotearoa New Zealand, asks us to "imagine a world where Indigenous knowledge, language, and customs are outright owned by multinational corporations and copy-right enforcement is heavily backed by government police forces." Kaituhi argues that "the TPP won't only affect Indigenous freehold land, nor will it just push our people further into poverty. The TPP will give multinationals the right to exploit the ecosystem and further aid them in the acquiring of enforced trademarking and copyrighting of Indigenous intellectual property and cultural or traditional knowledge," in other words, a new form of colonization.

Another troubling aspect of the TPP is found in the draft chapter on investment deals with investor-state dispute settlement, which gives corporations the right to sue a government for unlimited cash compensation in private and non-transparent tribunals over nearly any law or policy that a corporation alleges will reduce its profits. Today, the majority of investment arbitrations under similar agreements involve natural resources, especially mining, and have resulted in billions of dollars of damages against governments for measures designed to protect the environment from harm caused by foreign corporations. But, there's no cause to believe that this won't expand to other areas under the TPP. In fact, the terms of the TPP are so sweeping, as to include nearly all areas of our lives,

that there is great cause to believe that these law suits will broaden and expand, crippling local communities under their weight and pressure.

Under the proposed TPP, the investor-state clause can be used to pressure governments into allowing the continued operation of severely polluting industries out of fear of being sued for lost profits. Governments around the world are already reluctant to regulate industries like mining and oil, which can bring large revenues. With the potential for States to be held financially responsible for reigning in harmful business practices, corporate profits will gain an even stronger precedence over disenfranchised Indigenous Peoples living with destructive industries in their backyards.

If history is any indicator, there is nothing that would prevent these same corporate entities from suing states or nations for laws that protect Indigenous peoples and Indigenous lands. The TPP would take us back hundred of years, to a time where feudal overlords ran roughshod over the people, without any consideration for human rights or environmental responsibility. The profit driven foundation of the TPP, and the Investor State Dispute systems attached to it, are archaic as they unravel all the rights and protections that we have worked so hard to establish as an evolving society. As Indigenous peoples, we have been dealing with the harmful impacts of industrial negligence for decades. These same practices are now leaking out into the commons, where communities around the country, and the world, are facing illegal land takings and the destruction of local habitat and ecosystems for the benefit of private industry. If you allow the TPP to move forward, these same practices will soon be in your backyard.

Thank you.

Source materials: Sierra Club, UN Declaration on the Rights of Indigenous Peoples, Cultural Survival.

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### Testimony to Maine Trade Policy Commission 12/10/2015

Thanks so much for coming to Bangor to hear citizens concerns; I know it's quite a drive for many of you.

I volunteer with PICA which is Power in Community Alliances in Bangor, which for many years has focused on issues of social and economic justice at home and across borders. Ever since NAFTA and later CAFTA, it's been clear that such agreements are not Win-Win propositions for all concerned, as was initially advertised. Rather, these agreements create winners and losers. So it behooves us to understand just who gains and who suffers. You know this because the Maine Trade Policy Commission was in fact created in order to evaluate how Maine's businesses, consumers and ordinary citizens may be positively or negatively affected by trade pacts.

Free trade agreements are less about tariffs than about provisions labeled "non-tariff barriers to trade." These are all about who can sell what to whom, and who can or can't stop them. The "what" mostly isn't about shirts, bananas or toaster ovens, but items we never imagined could or should be for sale. The "barriers" in question are current laws that assume that goods and services essential to all of us shouldn't be privately owned, unsafe, or priced out of range of those who need them.

I'm here to talk about the Trans Pacific Partnership. NAFTA and CAFTA's ~~whose~~ primary adverse effect on Maine was widespread industrial job loss, jobs which likely won't return. But the TPP threatens all Mainers in ways beyond lost jobs, threats that under previous trade pacts were technically possible, but mostly hypothetical.

If the TPP passes, many protections we take for granted will be at risk because the TPP will permit foreign investors to sue governments for the right to provide products we may regard as dangerous, despite whatever public health or environmental laws are on our books. Or to privately own and operate, and charge what they please, for services we believe should be public. The enabling mechanism is through what's termed investor-state dispute settlement provisions.

**A quick cross-border detour:** If you ask Bangor's Salvadoran sister city residents what free trade means, they will answer simply: "The big fish eat the little fish." And they know that their countries south of the border are the little fish. So in the past it's been the Bolivian town of Cochabamba whose water rights the Bechtel Corporation bought, and then charged townspeople fees for collecting rainwater from their own roofs. It's been peasant farmers sued by Monsanto for saving and planting last year's seeds. It's been the Salvadoran government spending millions of dollars to defend itself in an international trade court against claims for damages in the hundreds of millions by both U.S. and Canadian mining corporations: El Salvador's infraction: Denying mining permits to these companies on environmental grounds, even as previously mined communities feature rivers that have turned orange and ground waters toxic.

**Now back to the US of A:** If the TPP passes, we will get a non-hypothetical taste of what our little fish trading partners have had to contend with for years. That's because in the past it's been U.S. corporations that have largely been doing the suing in the unelected, unaccountable, corporation-friendly international tribunals that arbit these disputes. In contrast, the TPP will empower close to 19,000 corporations located in non-little fish countries – Australia, Canada, Japan, Malaysia among others -- to sue the U.S. and by extension our local and state governments, as well, in these same business-friendly courts.

I just mentioned that a mining company in Canada, which is not a member of the Central America Free Trade Agreement nevertheless sued El Salvador CAFTA. How? The Pacific Rim Corporation headquartered in British Columbia simply set up a warehouse in Reno, Nevada expressly for the purpose of having a U.S. subsidiary through which to sue a Central American country. In like manner, non -TPP countries including, for a pertinent example, China, can do the same as long as they have a subsidiary in other TPP countries like for a pertinent example, Vietnam.

So if the TPP passes, get ready for a an aggressive surge of international trade tribunal assaults on many of the goods and services you never even thought to worry about, brought by foreign corporations headquartered all around the globe.

Those goods include adequately inspected food, unadulterated medicine, non-toxic children's toys, safe bridges, non-carcinogenic consumer products, non-contaminated drinking water, and whatever else you may have assumed consumers shouldn't have to stay up at night worrying about.

Those services include public education, fire departments, water supplies, sanitation services, roads, libraries, parks, tax collection and whatever else you may have imagined should belong to a community and not to private companies.

The Citizens Trade Campaign notes that 50 cases were brought by corporations against governments in the first 30 years of the existence of ICSID (the International Commission on Settlement of International Disputes). But in the last four years, ICSID has heard ~~that~~ 50 cases each year with pending claims totaling 25 billion dollars. These are not trivial sums. The TPP's passage will insure that this spate of cases will become an avalanche.

The cases will be decided by tribunalists who are a rotating panel of private sector attorneys, not bound by any conflict-of-interest rules, who often prosecute such cases when they are not hearing them, and whose verdicts permit no appeal. Often even the threat of loss in these trade tribunals are sufficient to have governments capitulate to corporate demands.

The devil in the details of this problem is even more alarming than I've outlined, but is too lengthy for oral testimony presentation. So I've included a four page summary just of concerns associated with the investor-state threat, not the entire TPP, provided by the Citizens Trade Campaign.

To close I'd just remind us all what Jim Hightower said about trade agreements negotiated in private between corporate lobbyists and government trade reps, excluding advocates for labor rights, affordable medicines, public health and safety, or environmental hazards. He said, "If you're not at the table, you're probably on the menu."

Thanks very much for listening.

## **INVESTMENT CHAPTER: Expanded List of Policies Exposed to Attack by 9,200 Foreign Firms Newly Empowered to Use ISDS Against the U.S.**

- **Contrary to administration claims that the TPP's Investment Chapter would limit the uses and abuses of the controversial ISDS regime, much of the text replicates, often word-for-word, the most provocative terms found in past U.S. ISDS-enforced pacts.** Worse, the TPP would expand the controversial ISDS regime that elevates individual foreign investors to equal status with the 12 sovereign governments signing the deal. Many fixes and reforms included in a 2012 leaked draft version of the Investment Chapter have been eliminated. The final TPP text does include some new verbiage seemingly designed to counter the growing political blowback against ISDS. While the tone is different in some provisions, in practice the TPP's binding legal language does not constrain ISDS tribunals from making ever-expanding interpretations of the rights countries owe foreign investors and thus the compensation they can be ordered to pay foreign firms.
- **Contrary to Fast Track negotiating objectives, the TPP would grant foreign firm greater rights that domestic firms enjoy under U.S. law and in U.S. courts.** One class of interests – foreign firms – could *privately enforce* this public treaty by **skirting domestic laws and courts** to challenge U.S. federal, state and local decisions and policies on grounds not available in U.S. law, and do so before extrajudicial tribunals authorized to order payment of unlimited sums of taxpayer dollars. Under the TPP, compensation orders could include the “expected future profits” a tribunal surmises that an investor would have earned in the absence of the public policy it is attacking.
- **TPP would expand U.S. ISDS liability by widening the scope of domestic policies and government actions that could be challenged. For the first time in any U.S. free trade agreement:**
  - **The provision used in most successful investor compensation demands would be extended to challenges of financial regulatory policies.** The TPP would extend the “minimum standard of treatment” obligation to the TPP Financial Services Chapter's terms, allowing financial firms to challenge policies as violating investors' “expectations” of how they should be treated. The “safeguard” that the USTR claims would protect such policies repeats an ambiguously written WTO provision that has not been accorded significant deference in the past.
  - **Pharmaceutical firms could use the TPP to demand cash compensation for claimed violations of WTO rules on creation, limitation or revocation of intellectual property rights.** Currently, WTO rules are not privately enforceable by investors.
- **With Japanese, Australian and other firms newly empowered to launch ISDS attacks against the United States, the TPP would *double* U.S. ISDS exposure. More than 1,000 additional corporations in TPP nations, which own more than 9,200 subsidiaries here, could newly launch ISDS cases against the United States.** Currently, under ALL existing U.S. investor-state-enforced pacts, about 9,500 U.S. subsidiaries for foreign firms have such powers. Almost all of the 50 past U.S. ISDS-enforced pacts are with developing nations with few investors here. That is why the United States has managed largely to dodge ISDS attacks to date. But, the TPP would subject U.S. policies and taxpayers to an unprecedented increase in ISDS liability at a time when the types of policies being attacked and the number of ISDS case are surging. Just 50 known cases were

launched in the regime's first three decades combined while about 50 claims were launched in *each* of the last four years.

- **The TPP also would newly empower more than 5,000 U.S. corporations to launch ISDS cases against other signatory governments on behalf of their more than 19,000 subsidiaries in those countries.** (These are firms not already directly covered by an ISDS-enforced pact between the United States and other TPP governments.)
- **U.S. negotiators succeeded in pressuring other TPP nations to empower foreign investors to bring certain sensitive contract disputes with TPP signatory governments to ISDS tribunals, instead of resolving such matters in domestic courts.** This includes disputes with the federal government about natural resource concessions, government procurement projects for construction of infrastructure projects and contracts relating to the operation of utilities. **TPP ISDS tribunals would not meet standards of transparency, consistency or due process common to TPP countries' domestic legal systems or provide fair, independent or balanced venues for resolving disputes** (Section B). **Contrary to claims that the process was "reformed":**
  - **TPP tribunals would still be staffed by three private sector attorneys allowed to rotate between acting as "judges" and as advocates for investors** launching cases. Such dual roles would be deemed unethical in most legal systems.
  - **The TPP text has no requirement for tribunalists to be independent or impartial.** Rather, the text relies on weak impartiality rules set by the arbitration venues themselves.
  - **The text does not include new conflict of interest rules for tribunalists.** TPP negotiators punted a so-called "Code of Conduct" for ISDS tribunalists to a side agreement to be created and put in place before the pact goes into effect (Article 9.21.6). Whether such rules will be effective with respect to tribunalists' direct conflicts of interest is an open question. It seems improbable that Congress and the public will get to evaluate the rules and how enforceable they will be before votes to approve the pact. However, even if the Code of Conduct were to stop the outrageous practice of lawyers with direct financial interests in the companies and issues involved being allowed to serve as "judges," the TPP text does not address the bias inherent in the ISDS system and underlying the business model of lawyers engaged in this field: ISDS tribunalists have a structural incentive to concoct fanciful interpretations of foreign investors' rights and order compensation to increase the number of investors interested in launching new cases and enhance the likelihood of being selected for future tribunals.
  - **The provisions on expedited dismissal of "frivolous" cases replicate the language included in U.S. pacts since the Bush II administration with respect to timelines for such claims and tribunals' authority to order claimants to pay costs for dismissed cases.** The only new term makes explicit a factor (that a claim is "manifestly without legal merit") that is inherent in the standard for expedited dismissal that has been included in past U.S. pacts and in the TPP: that "a claim submitted is not a claim for which an award in favour of the claimant may be made..."
  - **There is no system of outside appeal on the merits of a decision. Nor is an appellate body established within TPP.** The text retains tribunalists' full discretion to determine how much a government must pay an investor. This can include claims for the "expected future profits" the tribunal surmises would have earned in the absence of the policy under attack. ISDS tribunals have ordered billions in compensation under existing U.S. pacts alone for toxic bans, land-use policies, financial stability measures, forestry rules, water services, economic development policies, mining restrictions and more. Pending claims under U.S. pacts total more than \$25 billion.

- **There is no “exhaustion” requirement – that foreign firms seek redress in domestic legal and administrative venues before resorting to ISDS.** Instead, foreign investors can forum shop.
- **Even when governments win, under TPP rules they can be ordered to pay for the tribunal’s costs and legal fees, which average \$8 million per case.**
- **TPP does not include the promised “reforms” of the substantive foreign investor rights underlying egregious past rulings.**
  - **The TPP retains the “Minimum Standard of Treatment” and “Indirect Expropriation” language from past U.S. pacts that grants foreign investors “rights” to not have expectations frustrated by a change in government policy.** Under the TPP, it does not matter if the changed policy came in response to a new financial crisis or health discovery or environmental catastrophe, *or if it applies to domestic and foreign firms alike.*
  - **There are no new safeguards that limit ISDS tribunals’ discretion to issue ever-expanding interpretations of governments’ obligations to investors and order compensation on that basis.** The text reveals virtually identical “limiting” annexes and terms that were included in U.S. pacts since the 2005 Central America Free Trade Agreement (CAFTA) that have failed to rein in ISDS tribunals. CAFTA tribunals have simply ignored the “safeguard” annexes that are replicated in the TPP and as with past pacts, in the TPP such tribunal conduct is not subject to appeal.
  - **The TPP includes an overreaching definition of “investment” that would extend the coverage of the TPP’s expansive substantive investor rights far beyond “real property,” permitting ISDS attacks over government actions and policies related to financial instruments, intellectual property, regulatory permits and more.** Proposals to narrow the definition of “investment,” and thus the scope of policies subject to challenge, that were included in an earlier version of the text that leaked have been eliminated.
  - **The lack of robust “denial of benefits” provisions would allow firms from non-TPP countries and firms with no real investments to exploit the extraordinary privileges the TPP would establish for foreign investors.** This includes firms from non-TPP countries that have incorporated in a TPP signatory country. Thus, for instance, one of the many Chinese state-owned corporations in Vietnam and Malaysia (that also have U.S. investments), could “sue” the U.S. government under this text. Language limiting investors to those that have “substantial business activities” is not defined, and tribunals have been willing to consider very minimal investments in host states as conferring nationality for the sake of gaining treaty protections.
- **Proposals included in leaked earlier drafts to extend even the TPP’s weak general exceptions for environmental and health policies to the Investment Chapter were rejected.** Instead of real safeguards to stop attacks on nations’ environmental, health and other regulatory policies, the TPP text replicates the same self-cancelling provision included in past U.S. pacts, although with more policy types listed. The provision, which limits the rule of construction to only environmental and other policies that *already are consistent* with the agreement, makes the measure meaningless. A safeguard is only needed to protect policies that would otherwise violate the agreement’s rules. The relevant provision (Article 9.15) reads “Nothing in this Chapter shall be construed to prevent a Party from adopting, maintaining or enforcing any measure **otherwise consistent** [emphasis added] with this Chapter that it considers appropriate to ensure that investment activity in its territory is undertaken in a manner sensitive to environmental, health or other regulatory objectives.”

- **The only meaningful new ISDS safeguard included in the final TPP text is a carve-out for tobacco-related public health measures that allows countries to elect to remove such policies from being subject to ISDS challenges, either in advance or once a policy is attacked.** Leading health groups, pro-free-trade former New York City mayor Michael Bloomberg and TPP nations like Malaysia pushed for years for more expansive terms. These proposals would have prevented all TPP challenges to tobacco-related health policies, including by other governments and would have excluded tariff cuts on unprocessed tobacco and tobacco products that would result in the lowering of the price of cigarettes. The final tobacco provision makes clear that government-to-government challenges to tobacco control measures are allowed as is tariff elimination on tobacco and tobacco products. But even with these unfortunate limitations, the final provision is considerably better than past ISDS tobacco control exception proposals. It provides an example of how a meaningful trade pact safeguard against ISDS attacks could be structured. That said, because the TPP's Investment Chapter includes a Most Favored Nations provision, a tobacco company could demand the better investor rights provided in other ISDS-enforced investment agreements the regulating country has enacted. (Indeed, the TPP tobacco language was motivated in part by various subsidiaries of Phillip Morris using the ISDS clauses of various countries' ISDS-enforced agreements to attack Australian and Uruguayan tobacco control policies.) However, even with those not insignificant caveats, this real carve-out from ISDS liability for various forms of health-related tobacco control policies makes apparent how ineffective and meaningless the chapter's language advertised by the White House as protecting other health policies and the environment actually is (Article 9.15). The tobacco provision also begs the question why only tobacco control policies are excluded from ISDS attacks, given no other provision of the Investment Chapter nor the TPP's General Exceptions Chapter provides any meaningful safeguard or effective exception to stop ISDS attacks on other public health measures, from toxins bans to patent policies to pollution cleanup requirements. (For more on the TPP's tobacco-related provisions, see the text analysis from Action on Smoking and Health.)

Remarks for the Maine Citizen Trade Policy Commission hearing on the Trans-Pacific Partnership

From J. Gray Cox,  
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My name is Gray Cox. I grew up in Bar Harbor and teach at College of the Atlantic. I want to start by thanking you for providing this opportunity for us to gather and to speak. This is a dark time of year and in many ways a dark season in which to be living. But it is a delight to come in to this large, spacious, open room that is so full of light and have the opportunity to listen and share our concerns and views. It is the sort of thing we do here in Maine, in town meetings, public hearings, church groups, libraries and all kinds of other settings – come together to care for our communities.

I want to specially make mention of my gratitude for this opportunity tonight because this gathering represents precisely the kind of thing that defines us as Mainers and that threatened by the TPP and its mechanisms for undermining and supplanting our democratic practices in towns and states and even at the federal level.

The issues at stake here cross party lines. They invite us to stop thinking like Republicans and Democrats because of this. We need to think like Americans and Mainers. We have to think in terms of the whole BECAUSE this is a treaty that will change our whole relationship with the Pacific Rim AND, more importantly, with the systems of governance we have developed over the last 400 years in this land. I would like to begin my comments by reaffirming a comment made by Representative Sharon Anglin Treat in her December 1 “SUMMARY OF KEY ISSUES IN THE TRANS-PACIFIC PARTNERSHIP (TPP) AGREEMENT” (<http://www.maine.gov/legis/opla/CTPCSummaryTPPAnalysisST120115.pdf>) . The comment concerns the ways in which the proposed agreement will effectively give up the sovereignty of our federal, state and local governments and pass it on to a system of committees dominated by corporate interests.

As Rep. Treat notes:

“Negotiated in complete secrecy over a period of six years, the 12-country TPP is now in final form and cannot be changed. Congress can only vote to accept or reject it. Nonetheless, this agreement is a “living agreement” that additional countries can join in the future, and will put into place roughly 20 committees to manage trade in agriculture, government procurement, the Internet, food safety, financial regulation, and other topics covered in the deal. Some committees have narrow authority, but others are open-ended in scope. Like the negotiation process that created TPP, many of these ongoing committees, even those dealing with public health and food safety, will be subject to confidentiality provisions that will hamper scientific peer review of their activities and limit public and consumer oversight of their activities. And, unlike a state or federal law that can be repealed when new information comes to light or conditions change, trade agreements require the agreement of all parties

to commence negotiations to make changes, which as a practical matter will not occur.”

People who are advocating for this treaty and the transformations it will bring in our governance systems will tell you that it is about three things, three things that frame its importance and value. They will say it is, first, about whether we want to have a rational economic policy that follows modern economic theory in advancing our national economy as a whole by seeking benefits of trade in what is called “comparative advantage”. Second, they will tell you that it is about whether Pacific Rim economies in particular – and the world economy in general – are going to be dominated by the Chinese or by us. Third, they will tell you that it is about whether we want to pursue development as a free market, capitalist society or promote the government regulations and interventions of a socialist society.

Each of these three ways of framing the issue is fundamentally mistaken.

Regarding the first, the theory of comparative advantage, like the Newtonian physics that was believed at the time David Ricardo developed it, holds true in some limited circumstances but not in others – and it most especially does not hold true in our circumstances today.

The basic theory of comparative advantage suggests each country is better off if we each specialize – producing whatever our natural resources, capital and labor best fit us for. But, first, it is crucial to note that the comparative advantages are often to corporations not to average citizens. When the comparative advantage is that they have lower taxes or other costs because they lack health care, education, and workplace safety or because they have less regulation and can freely pollute or because they can bribe officials to grease the wheels of deals and avoid regulative enforcement . . . in these cases, these are only plutocratic, extractive comparative advantages, not democratic, sustainable ones.

The point about sustainability bears emphasis. Monoculture and other forms of specialization for the sake of comparative advantage are only beneficial when and if our overriding national aim is extractive and accumulative. If the aim is sustainability then each country is better off diversifying, and connecting locally, and regenerating and developing good relationships within its borders.

The theory of comparative advantage and the relentless pursuit of economic growth that is coupled with it is designed for an earlier age – a prior age when there was no need to worry about the carbon footprint of transport and the threats of climate change and the destruction of habitat around the world. Amongst the students at the college where I teach, there is enormous concern about climate change and its many implications. These young people are deeply concerned about our common future and the ways in which the issues of climate, now, in Naomi Klein’s memorable phrase, “Change Everything”. They are working here in Maine as well as in Bolivia, India and a host of other sites to develop local farming and alternatives to petrochemical based agriculture, alternatives to fossil fuels, alternative transportation systems, sustainable fisheries, resilient wildlife management, and school programs that provide action based service learning on these issues. And a large group of them has been taking part annually in the climate negotiations which have been dragging on since before they were born and which now, still, in Paris, are leaving us hanging, unsure of whether the negotiators will be able

to reach any meaningful agreement. The nations of the world have already agreed that science tells us that meaningful treaty will have to find a way to lead us leave 80% of the carbon fuels we have already discovered unused. We will have to change our economies in a fundamental direction in order to leave those petrochemicals in the ground. Finding a way to do that is a central challenge of our time. And the TPP is designed to encourage long distance economic trade and development that would move us in precisely the opposite direction. For that reason alone it should be opposed.

But sustainability is about much more than just climate. It is about securing the diversity and integrity of our country's economic system in ways that make it resilient in the face of change. On this score the doctrine of comparative advantage provides a myopic understanding of reality – it holds true only when we look at short run situations in which the basic social and ecological conditions for sustainability are already provided and can be presupposed. In today's turbulent world, are we better off specializing in making only whatever particular items we can make the most money with given the current international market conditions? Are we better off pursuing "comparative advantage" by giving up the ability to be self reliant in the production of food, fuel, and our other necessities – without which we can not survive let alone thrive? Just reframing the issue in these terms lets us hear the voices of Ralph Waldo Emerson, Thomas Jefferson, Sojourner Truth and a crowd of other proud and self reliant forbearers calling out: Self Reliance! We can only hope to survive as ourselves and thrive as ourselves when we do for ourselves! We should not allow any treaty to strip us of our abilities to provide for ourselves come what may. And we should not allow it to leave us naked and powerless to govern ourselves with local, state, and federal policies that promote just such economic security and freedom from dependence on far away suppliers and unstable international markets.

The question is not whether we will sacrifice comparative advantage for special interests of workers or environmentalists. The question is whether we will sacrifice economic security and sustainability for special interests of corporations.

What of the second point -- when advocates for the treaty argue that it will help prevent China from dominating the economies of the Pacific Rim and the world? We should reply that the issue is not which country will dominate some region of the world. The question is, which economic system will govern and dominate us. Will it be one of our own making? One we can remake as needed? To adapt to not only to new technologies but new cultural trends, changes in our population, and advances in our moral insight like those that came with Civil Rights in the 60's, the Women's movement in the 70's and the Americans with Disabilities in the 80's?

As Mainer's we should not be worried about whether China is selling more objects of plastic, metal and food stuffs in Vietnam than we are. We should be worried about whether we can produce and consume here, in Maine, the kinds of things we think that we and our children should have. Can we make Maine be the way life should be or not? That is the question. What power do we have over our own lives and communities – regardless of who is the top dog, currently, in whatever international trade competition you might care to bet on and speculate about.

And what of the third point in which the advocates for the treaty tell us that it is a question of whether we want to pursue development as a free market, capitalist society or promote the government regulations and interventions of a socialist society? This

simplistic contrast between Capitalism vs. Socialism is a false dichotomy. Every economy on this planet is a mixed economy with voluntary exchanges in markets of many different kinds AND with government playing a crucial role in framing the contexts of those markets – the rules of property, the public infrastructure that makes trade and economic growth possible and makes sure it promotes the public well being.

Every society is a mixed economy – a political economy. The question is, will it be controlled by a few or by the many. Our political economy in the United States is increasingly controlled by the few. It is the particular kind of oligarchy classified as a plutocracy – where the few who are most wealthy exercise the most way in how our political economy works. The TPP with outrageously centralized, undemocratic principles and processes for implementing them would push us even further in that very wrong direction.

I would here highlight a later section of the remarks of Rep. Treat referred to before. In the section on on the so called Investor State Dispute Settlement (ISDS) procedures which provide a “A PRIVATE LEGAL SYSTEM JUST FOR CORPORATIONS” she notes:

“The Investor-State Dispute Settlement (ISDS) procedures in TPP are of particular concern. ISDS allows foreign investors the right to sue governments for lost profits caused by regulations in offshore private investment tribunals, bypassing the courts or allowing a "second bite" if the investors do not like the results of domestic court decisions. Policies can be challenged under ISDS even if they apply to both foreign and domestic firms – in other words, even if they do not discriminate against trading partners. ISDS clauses in other trade agreements including NAFTA have been used repeatedly to attack environmental and public health measures. Even unsuccessful challenges take years to resolve, cost millions to defend, and have a chilling effect on the development of new legislation. The cost just for defending a challenged policy in an ISDS forum is \$8 million on average; Phillip Morris’s ISDS challenge to Australia’s tobacco regulations has already racked up litigation costs of over \$50 million for the Australian government, and the case is still in preliminary stages. • TPP would double the number of corporations that could use ISDS. More than 1,000 additional corporations in TPP nations, which own more than 9,200 subsidiaries in the U.S., could newly launch ISDS cases against the U.S. government. • The “reforms” to ISDS touted by the Obama Administration are largely cosmetic. ISDS tribunals would not meet standards of transparency, consistency or due process common to TPP countries’ domestic legal systems or provide fair, independent or balanced venues for resolving disputes. There is still no appeals mechanism; the arbitration panels would still be staffed by private sector lawyers paid by the hour and allowed to rotate between TPP ISSUES judging and advocating for investors; and problematic “minimum standard of treatment” and “indirect expropriation” language from past trade agreements is largely replicated. • The TPP investment chapter actually expands ISDS liability by widening the scope of domestic policies and

government actions that could be challenged: Financial regulations for the first time could be subject to “minimum standard of treatment” claims under the investment chapter. Pharmaceutical firms could demand cash compensation under the investment chapter for claimed violations of World Trade Organization rules on creation, limitation or revocation of intellectual property rights.”

The people of Maine, like those of the rest of America, fought and died in war after war to secure freedom for themselves and others – the freedom to govern themselves, and not be governed by the interests of foreign sovereigns and corporations. The first nations of the Wabnaki who were here first – and our still here now – have cherished the lands and waters of this region and the ways of life they developed here as independent, sovereign communities – and the others who have joined them in living here join them as well in cherishing those same values and seeking to secure them for all who live in this Dawnland of the Americas. The peoples of Maine have worked day in and day out, hard, from one season to another, year after year, down through generations – straining their backs and freezing their butts and pushing themselves hard to make a life for themselves and their children – the way they think life should be – not the way some international rule or corporate lawyer or committee of three in an ISDS thinks it should be. The people of Maine have done their duty paying taxes and going to town meetings and serving on Warrant Committees and wrestling with referenda driving down to Augusta and arguing with friends and working out shared solutions with political opponents in order to fashion a system of governance for our communities and our political economy that suits us and expresses how we think life should be. And if my mother was still alive to have her say about this I am sure that she would say that she would be damned before she would let some TPP come along to tell us how our life should be.

In closing, I want to thank you again for making this hearing possible and for carrying on this tradition of open, public dialogue and democratic discussion and policy making that is so treasured by us in Maine. This is a tradition that is so treasured that we will come to gatherings at the end of long work days, sometimes driving great distances or through harsh weather to get to them, spend hours hearing each other out (even when it is sometimes painful to do so), and spends even more hours talking about it all afterwards and preparing for the next meetings. All of us, regardless of political party, treasure this tradition and the way of life that it has made possible. It makes us who we are. It defines us as people. I want to thank you all for representing it so well and for allowing us to carry it on in this gathering this evening in this open spacious place so full of light. Thank you!

**Alcohol, Tobacco, public health...and trade treaties.**

Submission to Maine Citizen Trade Policy Commission, Bangor, Maine Dec. 12, 2015

Dr. Martha Spiess

Thank you Senator Volk and Representative Saucier and the members of the Maine Citizen Trade Policy Commission for holding this hearing.

A few months ago, after this Commission discussed the possibility of carving out tobacco and alcohol from trade agreements (two products that cause substantial harm to public health) I gave testimony during a public hearing from my perspective as a veterinarian as to how trade treaties can undermine governments' health policy.

“These treaties are designed to make goods *cheaper* as taxes are lowered,  
more *accessible* as market restrictions are eliminated,  
And *more desirable* to consumers as they are advertised and otherwise promoted.”G-O/Jer.

To follow up, please find Comments attached which were submitted Dec. 9, 2015 by the Center for Policy Analysis on Trade and Health (CPATH). ***They point out how the much proclaimed “carve out” of tobacco by the TPP falls far short of protecting health policy,*** and also outline a helpful set of Public Health objectives for U.S. Global Trade Agreements.

I look forward to learning of your further deliberations and of the Commission's efforts  
-to restrict the application of harmful trade treaty rules in Maine, and  
-to pursue alternative treaty models that have the potential to improve, rather than threaten, public health in relation to tobacco and alcohol consumption.

# CPATH ♦ Center for Policy Analysis on Trade and Health

*Bringing a Public Health Voice to Trade and Sustainable Development*

## **Public Health Comments**

### **Investment Hearing**

#### **Trading Views: Real Debate on Key Issues in the TPP**

#### **U.S. House of Representatives Committee on Ways and Means**

**Dec. 2, 2015**

Comments submitted Dec. 9, 2015

Joseph E. Brenner MA and Ellen R. Shaffer PhD MPH, Co-Directors  
Center for Policy Analysis on Trade and Health (CPATH)

### **Overview**

On behalf of the Center for Policy Analysis on Trade and Health (CPATH), we appreciate the opportunity to comment on public health concerns regarding the investment provisions of the Trans-Pacific Partnership Agreement (TPP). The investment chapter includes rules for enforcing the terms of the agreement, including through the Investor-State Dispute Resolution System (ISDS), which has been used to contest a wide range of public health policies. The TPP's proposed "exception" from ISDS disputes in the case of tobacco control measures is limited at best.

Public health measures authorize local, state and national governments to identify, monitor and promote the conditions that achieve and maintain healthy individuals, communities and populations. These range from protection from tobacco and other hazards, to sustainable economic systems that increase income equality, democratic political inclusion and social justice.<sup>1 2</sup>

Trade agreements establish countries' mutual rights and obligations with regard to trade. Matters of concern to public health include: tariffs; intellectual property rules on access to affordable medicines and to information, copyrights, and advertising; services ranging from banking to health care, water supply, and distribution of alcohol products; government procurement for grants and contracts; agriculture; and internet access and information privacy. These agreements can provide a basis for altering the implementation of domestic U.S. laws and policies, as well as those of our trading partners. Trade rules that advance corporations' ability to operate within uniform and predictable rules can foster sustainable economic development, democracy, and peace. They can also conflict with or subordinate policies that prioritize people's health.

The TPP and other trade deals should safeguard and improve the economic well-being of Americans and our trading partners, promote the health of our communities, and advance economically and socially just, democratically controlled, and environmentally sustainable outcomes.

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<sup>1</sup>Institute of Medicine. The future of public health in the 21<sup>st</sup> century. National Academies Press, Washington, DC. November, 2002. <http://www.iom.edu/Object.File/Master/4/165/0.pdf>

<sup>2</sup>World Health Organization. Constitution of the World Health Organization.

Rather, the TPP prioritizes commercial gain at the expense of people's health, including protection from deadly tobacco products, and undermines democratic sovereignty to make decisions to safeguard and improve our health. It expands the rights of transnational corporations to protect their profits over the rights of democratically elected governments and the public. These include the right to challenge the implementation of domestic laws and regulations in international trade tribunals.

Previous trade agreements have prohibited parallel importation (reimportation of pharmaceuticals to increase their affordability)<sup>3</sup>, and weakened the ability of local, state and national governments' procurement contracts to specify standards for medical and financial privacy, quality and performance, local economic development, and environmental protection.

Congress can't amend the TPP, but can only vote yes or no on the whole package, due to "Fast Track" rules. The text on tobacco control and other key public health concerns therefore requires particularly careful analysis. These concerns are also relevant to other complex, multi-national trade agreements being negotiated by the U.S. Trade Representative (USTR), including the Transatlantic Trade and Investment Partnership (TTIP) with the European Union, and the Trade in Services Agreement (TISA).

### **Investor-State Dispute Resolution**

Trade agreements negotiated by the United States with other nations provide foreign governments and corporations with internationally enforceable rights. These rights increasingly supersede the rights and ability of domestic governments at the local, state and federal levels to regulate in the interests of the public and of public health.

State-to-state disputes arising from World Trade Organization (WTO) agreements are enforced by financial fines and trade sanctions in the case of violations. For this reason, they have proven to be the most effectively enforced international agreements. The WTO is set as the unequivocal arbiter of trade rules for its 162 member countries. Countries that believe their companies are being barred from trade by another country for reasons that violate WTO rules can file a dispute with the WTO. Disputes among nations are resolved by panels appointed by the WTO. The panels are not accountable to national governments or courts. The panels can authorize countries to impose trade sanctions, financial penalties and the boycott of products against other countries, as compensation for violations or for failure to comply with trade panel decisions.

Nations have successfully brought challenges before trade tribunals claiming that public health measures violate trade rules. Health and quality standards and labeling requirements have sometimes been construed by the WTO as barriers to trade. From a public health perspective, standards for labeling genetically modified foods or protecting dolphins from becoming snared in commercial fishing nets are important protections for human and animal health, and the environment. But businesses have asserted that these standards constitute barriers to trade.

Chapter 11 of NAFTA provides an "investors' rights" provision that allows individual foreign corporations (referred to as investors) to directly sue any of the three participating national

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<sup>3</sup> Australia-U.S. Free Trade Agreement, Article 17.9.4.

[http://www.ustr.gov/sites/default/files/uploads/agreements/fta/australia/asset\\_upload\\_file469\\_5141.pdf](http://www.ustr.gov/sites/default/files/uploads/agreements/fta/australia/asset_upload_file469_5141.pdf)

governments. Companies can sue for the loss of current or future profits, even if the loss is caused by a government agency's prohibiting the use of a toxic substance. Prior to NAFTA, regional trade agreements only permitted country-to-country enforcement by governments. This was a major elevation of the rights of corporations, and an important blow to national sovereignty. Subsequent regional and bilateral agreements negotiated by the US include this investor's rights provision. Objections by the Intergovernmental Policy Advisory Committee to the USTR, composed of state and local public officials, contributed to keeping this provision out of the U.S.-Australia Free Trade Agreement.

The tobacco industry has used both WTO country-to-country dispute procedures, and investor-state mechanisms, to protest and delay tobacco control measures including graphic warning labels and plain packaging.

The following investor-state trade dispute cases illustrate the negative implications for health. As is typical of such cases, the health argument did not substantially prevail. The Methanex case, an exception, nevertheless extended exposure to a known health hazard:

- **Closure of a Toxic Waste Disposal Site**

In a landmark environmental case filed under NAFTA Chapter 11, a NAFTA tribunal awarded the U.S.-based Metalclad Company \$16.7 million in its suit against Mexico. The state of San Luis Potosí had refused permission for Metalclad to re-open a waste disposal facility, in the face of a geological audit showing the facility would contaminate the local water supply and resulting opposition by the local community. Metalclad claimed that this local decision constituted an expropriation of its future potential profits and successfully sued Mexico.

- **Eliminating Toxic Gasoline Additive**

The Methanex Corporation of Canada sued the United States for approximately \$1 billion, because the state of California banned the use of methyl tertiary butyl ether (MTBE), a gasoline additive. Though introduced to reduce air pollution, MTBE was found to be carcinogenic when it leaked into the water supply. Methanex produces methanol, a component of MTBE. Methanex ultimately lost its case, because the trade panel cast doubt on whether the state intended to discriminate against Methanex as a foreign corporation. However, due in part to the possible sanctions resulting from this case, MTBE remained in use within California for years as the case proceeded. The U.S. Dept. of Justice spent countless hours defending the case. Other states were meanwhile chilled from taking protective measure on MTBE.

### **Tobacco Control and Protection of Public Health**

Tobacco use continues to be the leading preventable cause of death in the United States and worldwide, and is the only legal substance that, when used as intended, kills people, causing 6.3 million deaths a year.<sup>4</sup> Cigarette smoking is responsible for about one in five deaths annually<sup>5</sup> and a major contributor to the global pandemic of tobacco-related non-communicable diseases.

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<sup>4</sup> Centers for Disease Control and Prevention. Smoking-Attributable Mortality, Years of Potential Life Lost, and Productivity Losses—United States, 2000–2004. *Morbidity and Mortality Weekly Report* 2008.

<sup>5</sup> U.S. Department of Health and Human Services. *How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable Disease*. Atlanta: U.S. Department of Health and Human Services, Centers for

Countries continue to tackle this public health crisis with sound policies supported by a robust body of scientific evidence designed to curb smoking and combat deceptive industry practices. Such regulations include bans on flavored cigarettes, increases in tobacco taxation, restrictions on tobacco advertisements, and placement of graphic warning labels on cigarette packages. Each has been contested in recent trade agreements and by trade-related challenges. Tobacco companies have accelerated their use of trade rules to attempt to delay and reverse tobacco control measures in the U.S., Australia, Uruguay, and Norway.<sup>6</sup>

U.S. bilateral agreements with Singapore and Peru also eliminated tariffs on tobacco and tobacco products.

The Doggett Amendment to the Foreign Service Act, passed by Congress in 1997, banned the use of government monies from the Commerce, Justice, and State Departments to promote the sale or export of tobacco overseas or to seek the removal of any nondiscriminatory foreign-country restrictions on tobacco marketing. However, it is subject to annual renewal, and compliance is up to the USTR and other Agencies. Unfortunately, the Doggett Amendment has not been honored since 2001. The U.S. has negotiated eliminating tariffs on tobacco products as well as leaf in bilateral and regional agreements, including the U.S. Singapore Agreement, CAFTA, and now the TPP. It is time for a change.

According to the Pan American Health Organization: “Transnational tobacco companies...have been among the strongest proponents of tariff reduction and open markets. Trade openness is linked to tobacco consumption.”<sup>7</sup>

### **Tobacco Industry Challenges**

The industry has exercised trade rights in order to challenge and undermine the authority of the U.S. Food and Drug Administration (FDA) Center for Tobacco Products to oversee and regulate tobacco products, and to ensure compliance with the Family Smoking Prevention and Tobacco Control Act of 2009.

Curtailing these loopholes is a priority for securing and expanding measures at the local and state levels to reduce environmental exposure to the toxic effects of tobacco smoke and residue, and to regulate nicotine and tobacco products.

**In the U.S.:** The Family Smoking Prevention and Tobacco Control Act of 2009 banned the sale of certain flavored cigarettes. This provision was enacted to reduce teen smoking, given evidence that youth smokers are more than three times more likely to smoke flavored cigarettes as adults. One year later, Indonesia—the world’s largest producer of clove cigarettes—alleged that the law was inconsistent with U.S. trade obligations under the WTO’s 1994 General Agreement on Trade and

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Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2010.

<sup>6</sup> Sud S, Brenner JB, Shaffer ER. *Commentary: Trading Away Health: The Influence of Trade Policy on Youth Tobacco Control*. *Journal of Pediatrics*. Online: Feb. 10, 2015. DOI: <http://dx.doi.org/10.1016/j.jpeds.2015.01.016>

<sup>7</sup> D. Woodward, N. Drager, R. Beaglehole, D. Lipson. *Trade in Health Services: Global, Regional and Country Perspectives*.

Tariffs (GATT). GATT mandates that member nations cannot discriminate between “like products”, and since the U.S. law did not prohibit the sale of menthol cigarettes, Indonesia declared that the law was unfair and biased.

In April 2012, a WTO dispute settlement panel ruled in favor of Indonesia, agreeing that menthol cigarettes are “like” clove cigarettes, and that the United States violated provisions of the General Agreement on Tariffs and Trade (GATT) by discriminating between the two products. The U.S. had to decide among several options to comply with the ruling: (a) revise the Family Smoking Prevention and Tobacco Control Act to also ban the sale of menthol cigarettes; (b) revise the law to permit the sale of clove cigarettes; (c) pay a fine to Indonesia equaling the amount of trade lost, estimated at \$16 million per year; or (d) yield trade concessions to Indonesia for other goods or services.

In 2006, tobacco control legislation in Uruguay mandated: increasing warning labels from 50% to 80% of cigarette packages; placement of one of six selected health images on every package; and prohibiting the use of “brand families.” in which the same brand name is used across multiple product lines (e.g., Marlboro Red, Marlboro Green, etc.). In the years after enactment of these anti-smoking laws, 30-day prevalence rates of tobacco use among adolescents decreased by 8% annually, and per person cigarette consumption decreased by 4.3% annually.

In 2010, however, the Swiss operational hub of Phillip Morris filed suit at the World Bank, claiming that the government’s regulations violate a 1991 bilateral investment treaty between Uruguay and Switzerland, which granted internationally enforceable rights to corporations to file trade charges directly against a nation. The Swiss-based PM contends that Uruguayan policies intrude upon PM’s intellectual property rights and exceed that which is reasonable to protect the public’s health. Per the terms of the 1991 trade agreement, the dispute is being arbitrated by a tribunal of international trade experts housed at the World Bank, who ruled in July 2013 that it had jurisdiction to hear the case.

Through existing bilateral and regional trade agreements, to which the United States is a partner, PMI could challenge a host of tobacco control efforts in California, such as: reducing exposure to second-hand smoke, clean indoor air rules; restrictions on retail distribution networks for tobacco products; and advertising, promotion, sponsorship, and marketing restrictions.

In addition, the industry is actively contesting at every level of jurisdiction the right to enact and implement graphic warning labels and other marketing restrictions. A court ruling on July 11, 2012, overturned a New York City law requiring graphic warning labels. The Philip Morris attorney commented that the power to regulate is reserved to the federal government. But four of the five largest U.S. tobacco companies are suing the federal government saying the warnings violate their free speech rights. Tobacco industry use of trade rules to challenge federal authority to ensure compliance with the Tobacco Control Act of 2009 could have a significantly adverse effect on states.

In 2013, Australia’s highest court upheld Australia's cigarette plain-packaging laws that will require tobacco companies to remove branding and sell tobacco products in generic green packets. The High Court rejected a legal challenge by tobacco companies which argued that the value of their trademarks would be destroyed if they could no longer display their distinctive colors, brand designs and logos on packs of cigarettes. The issue of plain-packaging, however, is being challenged at the international level through intellectual property and other trade rules in existing trade agreements.

Tobacco control efforts at the state and local levels in the U.S. are vulnerable to tobacco industry challenges under existing trade rules.

**Trans-Pacific Partnership Agreement** The Trans-Pacific Partnership Agreement (TPP) provided a critical opportunity to curtail these actions by the tobacco industry and to reduce tobacco-related deaths. Local, state, and national decision-makers joined in public statements by public health and medical associations delineating the threats of TPP provisions to tobacco control measures, and calling to carve out tobacco and tobacco control measures from the entire web of provisions that have ensnared tobacco control measures through the jurisdiction of trade agreements.

This carve-out demand was tabled formally to the TPP by the Malaysian trade delegation. The USTR responded by circulating two complex but widely discredited alternative proposals. Neither the full carve-out, nor either US proposal, appears in the final TPP.

### **The "Exception" for Tobacco Control Is Flawed**

The Exceptions chapter of the TPP, in 29.5, states that any single TPP country could individually elect to opt out of having its tobacco control laws and regulations subjected to ISDS trade challenges by corporations.

Despite claims to the contrary, this does not conclusively protect nations' tobacco control measures from trade challenges by tobacco companies. Nor would it necessarily prevent the types of cases Uruguay and Australia are facing. There are serious loopholes, though they are different from the loopholes evident in earlier proposed schemes.

Why is this the case? Like the product it sells, the tobacco industry has learned to inflict damage on the public's health by using the corporate dispute mechanisms in trade agreements exactly as intended.

Setting up the protection as an election for individual countries leaves the door open to back-door pressure by the tobacco industry and chambers of commerce to allow ISDS cases to proceed.

Rather than acting as a group of 12 nations to exclude tobacco companies from using ISDS, each country would have to muster the political will to take on the tobacco industry's clout and message machine, and make it a priority for officials to decide to "opt out" of the trade dispute system in the case of tobacco control rules. In practice this is an open invitation to Big Tobacco to sharpen its arrows to ensure that no country executes the election to safeguard public health and protect tobacco control measures.

In addition, many tobacco control measures are promulgated by local and state officials and legislatures. These bodies would have no role or authority in the face of an ISDS challenge. No recourse would be available to state and local officials or the public in the event of an unpopular decision at the federal/national level not to exercise the "election to deny" a tobacco-related trade challenge.

Further, if a country elects to deny the use of the TPP's trade dispute mechanism in the face of a threatened challenge to a particular tobacco control measure, the election itself could be construed as

tantamount to an admission that the country's measure does in fact violate a trade rule in some way. This could then strengthen the basis for a tobacco company charge through another agreement that includes a corporate investor-state dispute system, or a state-to-state charge through a WTO agreement.

This is a realistic picture of some of the flaws in the TPP's hastily drafted exception provision.

On the positive side, the description of tobacco control measures covered appears to be close to comprehensive, and offers a good basis for discussion for a future proposal linked to an actionable implementation mechanism.

### **Other Tobacco-Related Provisions**

Regarding other tobacco-related provisions in the TPP, we note these comments by Action on Smoking and Health:

**"Tariffs:** Tobacco is treated like any other product in terms of tariff reduction. For the most part, this means that tobacco tariffs are reduced to zero, which produces a windfall of tobacco profits—unless there is a later compensating increase in domestic excise taxes. This explicit promotion of tobacco exports appears to violate the Doggett Amendment, a congressional limit on authority of U.S. agencies to promote tobacco sales.

**"Other chapters:** Tobacco is still treated like other products in the rest of the TPP, which signals that governments are still not recognizing that tobacco is unique in international trade (we want less, not more, and these same governments have agreed to this in the FCTC and other international instruments, such as the SDGs and the NCD summit). The failure to approve the full exemption will have consequences for tobacco control. For example, the chapter on regulatory coherence requires Parties to set up mechanisms for "interested persons" to provide input into regulatory oversight. This creates a direct conflict of law with FCTC Article 5.3, which requires Parties (11 of whom are also TPP Parties) to limit government interaction with the tobacco industry."

### **Conclusions: Promote Democratic, Transparent, and Accountable Trade Agreements**

In order to advance the promises of the 21<sup>st</sup> century for sustainable technological and economic development policies that protect and promote health, CPATH recommends the following Public Health Objectives for Global Trade Agreements:

#### **Public Health Objectives for U.S. Global Trade Agreements**

1. **Assure democratic participation by public health and transparency in trade policy:**
  - a. Open all proceedings and documents of trade negotiations and trade advisory committees to the public; and
  - b. Appoint to all three tiers of trade advisory committees representatives of organizations that work to assure equitable access to affordable health-related services and products, and promote the health of individuals, communities and populations, who can provide formal advice to USTR from the public health and health care community to USTR; and
  - c. USTR to consult with all relevant committees of the House and Senate in the development, negotiation, implementation, and administration of trade and negotiating objectives.
2. **Develop mutually beneficial trade relationships with trade partners that create sustainable economic development** in an increasingly interdependent world.

3. **Recognize the legitimate exercise of national, regional and local government sovereignty to protect population health**, and ensure that countries do not weaken or reduce, as an encouragement for trade, sound policies that contribute to health and well-being and democracy, including laws on public health, the environment, labor, food safety, human rights and internet freedom.
4. **Exclude tariff and nontariff provisions that address vital human services** such as health care, water supply and sanitation, food safety and supply, and education, including licensing and cross-border movement of personnel in these fields.
5. **Exclude tobacco and tobacco products**, which are lethal, and for which the public health goal is to reduce consumption, from tariff and nontariff provisions of the TPP, including advertising, labeling, product regulation and distribution.
6. **Exclude alcohol products**, which present serious hazards to public health. Policies designed to reduce the harm caused by alcohol products should not be subject to compromise in exchange for other trade benefits.
7. **Eliminate intellectual property provisions related to pharmaceuticals from the TPP, and from TTIP negotiations**, as these are more appropriately addressed in multilateral fora, **and promote trade provisions which enable countries to exercise all flexibilities provided by the Doha Declaration on Public Health**, including issuing compulsory licenses for patented pharmaceuticals, parallel importation, and other measures that address high prices and promote access to affordable medicines.

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AGENCIES

CHELLIE PINGREE  
CONGRESS OF THE UNITED STATES  
1<sup>ST</sup> DISTRICT, MAINE

December 9, 2015

Senator Amy Volk, Co-chair  
Representative Robert Saucier, Co-chair  
Maine Citizen Trade Policy Commission  
State House Station #13  
Augusta, ME 04333-0001

Dear Senator Volk and Representative Saucier,

Thank you for the opportunity to offer my feedback on the Trans-Pacific Partnership (TPP). I appreciate that you are collecting public input on a trade agreement that would have many consequences for Maine and its economy.

I have grave concerns with the TPP, which, if passed, would become the largest free-trade agreement in history. I fear that its efforts to remove “non-tariff barriers to trade” will hamper our ability to enact protections in a number of different areas—including worker protection, public safety, and the environment—by allowing foreign companies to sue if those regulations hurt their profits. Our country needs to be able to respond to the emerging needs and issues of our citizens without this threat of foreign litigation.

I am also skeptical of the TPP’s benefits to the American economy. When the North American Free Trade Agreement was passed 20 years ago, there were many similar arguments that it would grow American jobs. The opposite has been true in Maine, with thousands of jobs being sent overseas over the past two decades. Having reviewed the language of the TPP, I believe that it would have an even more devastating impact.

Finally, I have been troubled by the lack of transparency in the process that has led to this agreement. Negotiations were held in secret without input from the public. In Congress, I voted against giving the President fast-track authority to negotiate this agreement and am extremely disappointed that we will not be able to propose amendments when it comes to a vote.

While I believe international trade is an important area of opportunity for Maine businesses, I do not think the TPP is the right path forward. Thank you again for the opportunity to comment. Please keep me posted of your findings.

Sincerely,

A handwritten signature in black ink that reads "Chellie R" followed by a long horizontal line.

Chellie Pingree  
Member of Congress

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December 10, 2015

Dear Maine Citizens Trade Policy Commission,

I am writing to express the Sierra Club's concerns about the environmental implications of the Trans-Pacific Partnership (PPP). Our new report, "Dirty Deal: How the Trans-Pacific Partnership Threatens our Climate" (available at [www.sierraclub.org/sites/www.sierraclub.org/files/uploads-wysiwig/dirty-deal.pdf](http://www.sierraclub.org/sites/www.sierraclub.org/files/uploads-wysiwig/dirty-deal.pdf)) details these concerns.

Among other conclusions, our report finds that the TPP:

- Would empower fossil fuel corporations to attack climate policies in private tribunals;
- Would lock in dirty fossil fuel production by expediting natural gas exports;
- Would increase climate-disrupting emissions by, for example, shifting U.S. manufacturing overseas and encouraging wider production of crops like oil palm that drive deforestation; and
- Would impose new limits on government efforts to combat climate disruption.

First, the TPP investment chapter would give foreign investors, including some of the world's largest fossil fuel corporations, expansive new rights to challenge climate protections in unaccountable trade tribunals. Fossil fuel corporations, such as ExxonMobil and Chevron, have used such rights under past trade and investment agreements to challenge policies. Targeted policies have included a natural gas fracking moratorium in Canada, a court order to pay for oil pollution in Ecuador, and environmental standards for a coal-fired power plant in Germany.

The TPP would expand these privileges to more than 9,000 companies in the United States, roughly doubling the number of companies that could use this "investor-state dispute settlement" system to challenge U.S. policies. That includes, for example, the U.S. subsidiaries of BHP Billiton, one of the world's largest mining companies, whose U.S. investments range from coal mines in New Mexico to offshore oil drilling in the Gulf of Mexico to fracking operations in Texas.

While the Office of the U.S. Trade Representative claims to have included "safeguards" in the TPP, our report demonstrates that these so-called safeguards are far too weak to protect climate and environmental policies challenged by corporations in private tribunals.

Second, the TPP would require the U.S. Department of Energy to automatically approve all exports of liquefied natural gas (LNG), a fossil fuel with high life-cycle greenhouse gas emissions, to all TPP countries including Japan, the world's largest LNG importer.

By expediting U.S. LNG exports, the TPP would facilitate increased fracking, leading to greater air and water pollution, and increased health risks; increase the world's dependence on a climate-disrupting fossil fuel; and encourage construction of new fossil fuel infrastructure that would lock in greenhouse gas emissions for years to come.

Third, the TPP would force U.S. manufacturers to compete directly with companies in low-wage countries like Vietnam and Malaysia, encouraging U.S. manufacturing to set up operations abroad. This “offshoring” of U.S. manufacturing would not only cost us jobs in the U.S., but also increase climate-disrupting emissions. This is because production in Vietnam is more than four times as carbon-intensive, and production in Malaysia is twice as carbon-intensive, as U.S. production. This shift in manufacturing from the United States to countries on the other side of the Pacific Ocean would also increase shipping-related greenhouse gas emissions.

The TPP would further expand climate-disrupting emissions by eliminating tariffs on cash crops like oil palm, encouraging wider production in countries such as Malaysia, where oil palm expansion has played a leading role in destroying tropical forests that capture carbon. Increased oil palm production also would fuel an industry that is already rife with human rights and labor abuses.

Fourth, the TPP would impose new limits on climate policies, including renewable energy programs that encourage local job creation, energy and carbon labeling programs, and government contracts that require energy to come from renewable sources.

Government officials charged with promoting the TPP typically ignore these threats to our climate, claiming instead that the pact’s environment chapter would “preserve the environment.” However, the chapter includes no provision that would protect climate and environmental policies from the myriad threats posed by other parts of the TPP. And while the TPP environment chapter mentions a range of conservation issues, the actual environmental obligations are generally weak and in some respects actually take a step back from environmental rules included in all trade pacts since 2007.

The Sierra Club believes that a new model of trade that protects communities and the environment is urgently needed — one that overturns the polluter-friendly model of the TPP.

Sincerely,

Glen Brand  
Chapter Director