

September 19, 2013

Defending Water for Life in Maine
Chris Buchanan
273 Manchester Road
Belgrade, ME 04917
(207) 495-3648
chris@defendingwater.net

Good evening Chairwoman Treat, Chairman Jackson, and fellow members of the Citizen Trade Policy Commission,

My name is Chris Buchanan, and I work as an organizer for Defending Water for Life in Maine, ensuring water is protected as a right for people and nature, and also as the statewide coordinator of Stop the East-West Corridor, a coalition of Maine citizens and indigenous people who are working to stop the East-West Corridor proposed by the Cianbro Corporation. Both the Transpacific Partnership (TPP) and the Transatlantic Trade and Investment Partnership (TTIP) free trade agreements would cause irreparable damage to, and further loss of local control over Maine's water. In addition, we feel that these trade agreements in partnership with the construction of the proposed East-West Corridor (EWC) would effectively be the death knell of Maine's future small business sector, traditional land use practices, local, sustainable economic activity in general, intact ecosystems, and effective environmental protection. The weight of the potential impacts of these agreements is crushing; combined with the EWC it is disastrous. Today, I urge you to use your respected reputation to recommend that neither the TPP nor the TTIP be put under "fast track," and that the U.S. does not join either trade agreement.

Water, Maine's Invaluable Gift

In February of 2010 this Commission worked with the Water Resources Planning Committee to create a report called "The Potential Impact of International Trade Agreements on Groundwater Withdrawals." The study was thorough and well informed. Today I will jump off from there to highlight how the Commission should continue to advocate for groundwater protection, and raise the Commission's awareness about new threats to groundwater since the report was published.

In the 2010 report, a few messages were clear during the public hearing process that Defending Water for Life will reiterate including: 1) to continue to carve water out of international trade agreements; and 2) we are very concerned about dispute resolution through tribunals, especially since we are already concerned about dispute resolution through domestic law considering the weight of corporate power in regulatory permitting and settled law. The third message, "the State would be better positioned to protect groundwater if groundwater were placed within the public trust," may not hold up under international trade law, although it is still an important and worthwhile step. Therefore, Defending Water for Life further recommends that this Commission consider exploring water protection by asserting local self-governance of water, as a civil right. In short, passing a law that says that

people and nature have the fundamental right to clean, potable water. Although it may be legally challenged, that lawsuit would serve a strategic purpose of exposing how little control the State government, and people in Maine, actually have to protect our health, safety, and welfare. For more information about this idea please visit www.celdf.org or contact me directly.

Additional threats to Maine's groundwater that were less prevalent in 2010 come from increased industrial pollution of fresh water for fuel production, as well as the proposed EWC which not only would pollute water, but expedite water mining in currently remote areas, and facilitate a fresh water pipeline for private bulk sales. While fresh water supplies worldwide have been in crisis for a while, here in North America our groundwater reserves are rapidly being polluted and threatened. The use of fresh water for horizontal drilling and hydraulic fracturing (fracking) of shale deposits to extract natural gas in New Brunswick, Quebec, New York, Pennsylvania, Ohio, and many other states, and crude oil in North Dakota's Baaken region, put a tremendous amount of pressure on Maine's fresh water.

In 2011, 27,000 new shale gas wells were drilled for gas fracking, according to the U.S. Energy Information Administration (EIA). To extract natural gas, an average of 2 million gallons of fresh water are used per frack job, according to the voluntary industry reporting database FracFocus.org. It is estimated by The Energy Collective that an average of 5 million gallons are used per each well, meaning that in 2011 about 135 billion gallons of fresh water were used for gas fracking. To extract oil in North Dakota, companies used 5.5 billion gallons of fresh water in 2012 alone, according to the North Dakota State Water Commission. And according to the Pacific Institute, it takes 3 liters of water to create one liter of bottled water. Truly, fresh water is blue gold. As supplies diminish over time, whoever controls water will wield power over the rest of us. The bottom line is that these free trade agreements concentrate more power into transnational corporate hands, and that poses a tremendous risk to all of us in Maine, the battlefield where these water wars will unfold.

The East-West Corridor, A Free Trade Conduit

In our view, this project is a construction arm of the regional free trade plan envisioned by the Atlantica Group and others who seek to increase infrastructure to expedite movement of goods and services to and from major ports, like Halifax or the proposed port on the Strait of Canso called the Melford Terminal.

The EWC would be a privately owned and operated limited access toll highway, communications corridor, and utilities corridor that would link the Canadian provinces of Quebec and New Brunswick. As a private Corridor, after construction it would avoid Maine regulations and allow for Canadian weight limits, and tandem trailers. Tolls would be set by the owners to appease investors. In the 2008 Conceptual Feasibility Study completed for Cianbro, the Louis Berger Group explored rates of \$100 to \$200 per tractor-trailer truck and \$25 - \$100 per passenger car for the full trip, assuming up to 50% of the debt would be taken on by

taxpayers to make it a profitable investment. Therefore highway users would be only a certain kind of company that could afford access.

Further, our research on the highway portion, especially the assumption of 50% public subsidy, very optimistic estimates of increases in global container shipping, and increasing fuel costs generally, lead most of us in STEWC to conclude that the highway alone is not feasible for investors. However, pipelines of all kinds are feasible, and currently bring a high rate of return to lease holders. Simply, Maine is in the way of most efficient Canadian import and export routes to the Atlantic. Therefore, Maine will remain under pressure at least for fuel and water pipelines long into the future. It seems that by being such a Canadian linkage, one may assume that disputes over control, what moves along the Corridor, etc., may end up in international tribunals.

In addition to bypassing local control and having such limited accessibility to Maine companies, the picture of what the EWC could bring to Maine is depressing. Industrial wind developments, increased dumping of out-of-state waste, water mining, wood extraction (especially torrefied wood pellets which are highly desired in Europe), gravel (also in high demand in Europe), and mineral mining by transnational corporations who are not invested in Maine's long term health and viability to support life here, bolstered by protections provided by international trade laws, would be the bleak future.

In conclusion, and to repeat myself: The impact of these new free trade agreements would be crushing; the impact of the EWC alone with already existing free trade law would be crushing; and the combined impact of the EWC, the TPP, and the TTIP would be game over for life affirming existence in Maine. Please do your best to prevent "fast-track," and please do your best to advocate for all us by recommending that the U.S. does not participate in these new international trade laws.

Sincerely,

A handwritten signature in cursive script, appearing to read "Chris Buchanan".

Chris Buchanan

Enclosed (2): STEWC brochure; STEWC DVD

SEP 19, 2013
Room 214
Cross Office
Building

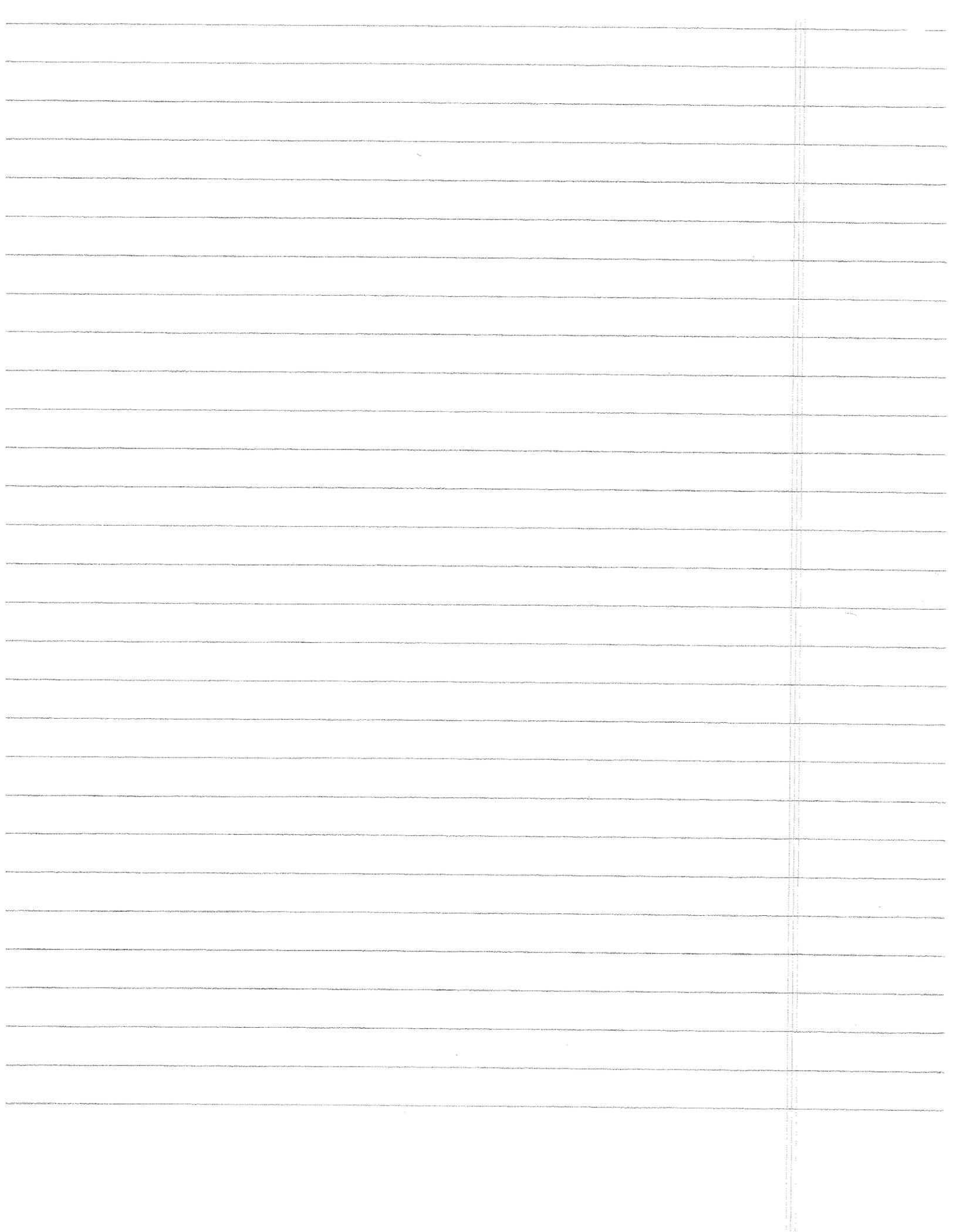
Dear Maine Citizen Policy Commission,

Thank you for giving me the opportunity to speak today. My name is Mike Poland. I am an hourly paper mill worker at the Sappi Somerset Plant in Skowhegan, Maine. I am representing USW Local # 4-9, the Maine Fair Trade Campaign and Maine Forest Workers.

I have been doing some research on previous trade agreements such as NAFTA and agreements with China. These agreements have devastating to Maine's Paper and Forest Products Industry. U.S. Department of Labor statistics show that over 2000 jobs were lost in this sector from 1997 to 2003. I know that the loss goes beyond this because the list does not include Moose Head Furniture of Greenville, Forster Manufacturing of Wilton and Newton Hardwoods of Madison. The effects on the local communities have been devastating as well.

It would be bad to pass TPP Fast Track not knowing what is in the agreement since this agreement and the previous ones have been put together in secrecy with no Senate or Congressional oversight. Would any of us in this room sign a contract or an agreement without knowing what was in the contents. There are also no provisions for Human Rights and Environmental issues in these agreements.

One of the countries included in the TPP is Vietnam. At this time Vietnam has over 250,000 forest products workers and more than 2000 wood processing plants.



in operation. They are the second largest manufacturer of furniture on the U.S. market. There is a possibility that if Maine does not have into this agreement that it could be the end of the Maine Forest Products industry.

Vietnam imports about 70% of their raw wood. It would be too bad to see Maine become only a raw wood supplier instead of keeping those value added jobs in the state by processing raw wood into products right here at.

Canada and Mexico are included in the TPA agreement and could mean more job losses from the Paper and Forest Products industry

Respectfully submitted

Michael A. Poland (USW Local #4-9 Skowhegan, ME)

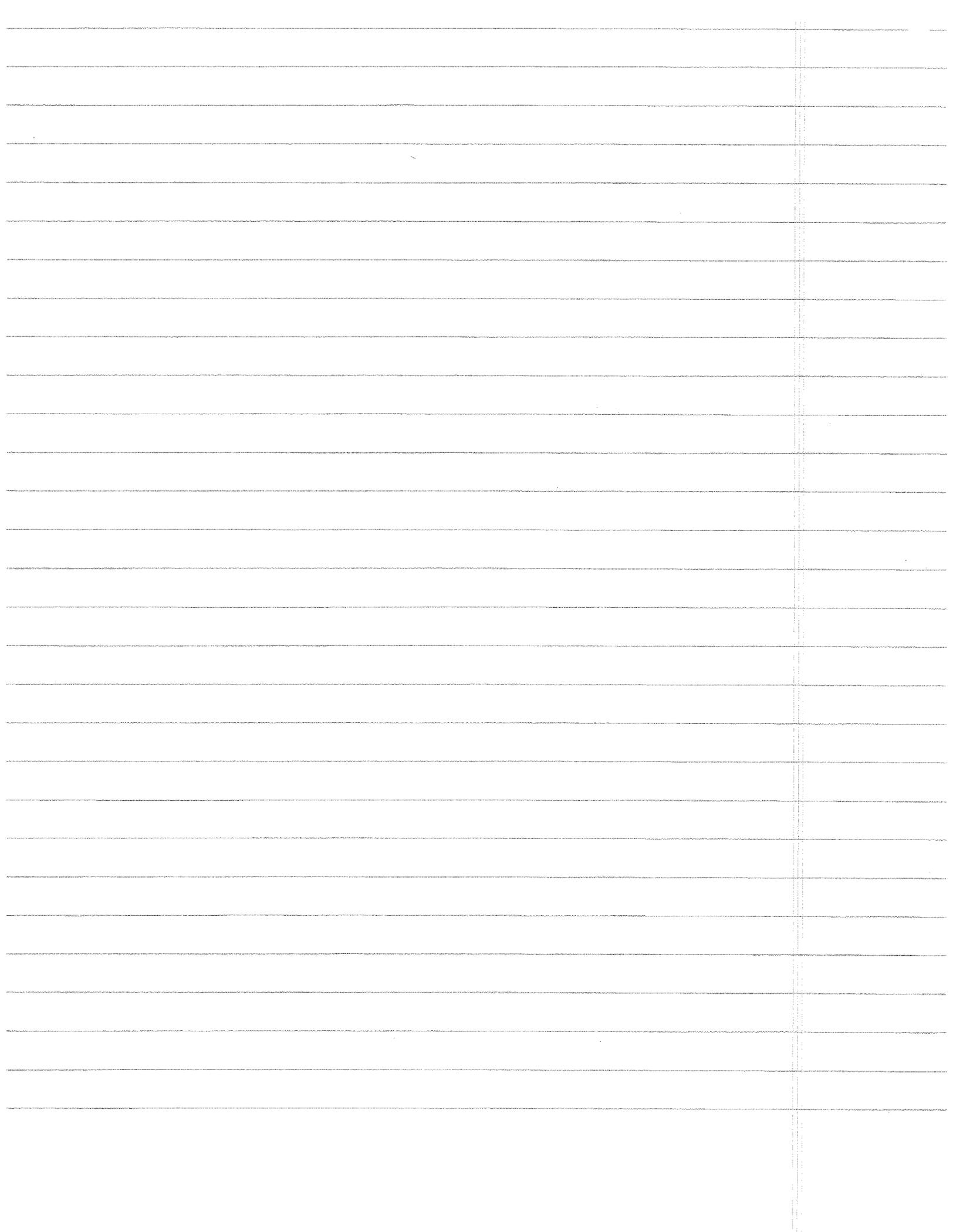
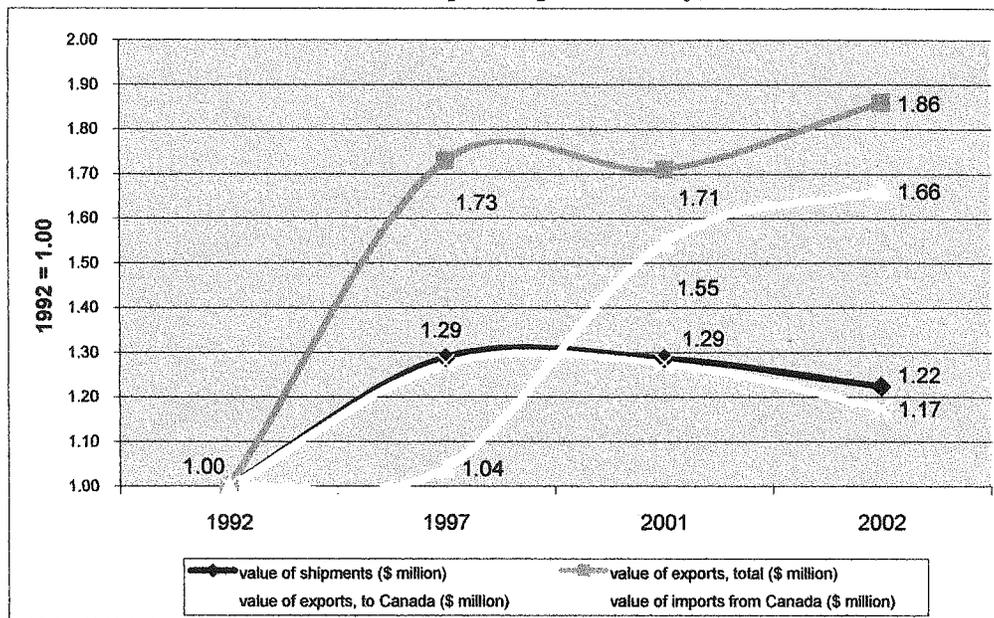


Figure 14
Trends in Maine's Pulp & Paper Industry, 1992 = 100



As was true for the wood products industry, certain paper companies petitioned the Department of Labor for Trade Adjustment Assistance. Table 8 lists the petitions that were approved.

Table 8
Paper Companies Eligible for Trade Adjustment Assistance

Company	Location	Workers	Date	Reason
Great Northern Paper	E. Millinocket	197	2/3/2003	Customer imports increased; not identified Canada/Mexico
Mead Paper	Rumford	157	02/12/99	Increased aggregate U.S. imports from Canada/Mexico
Kimberly Clark	Winslow	115	08/27/97	Increased company imports from Mexico
Tree Free Fiber L.L.C.	Augusta	115	02/23/98	Increased customer imports from Mexico
Chinet Company (The)	Waterville	89	01/28/00	Increased customer imports from Canada
S.D. Warren Company	Westbrook	35	6/12/2003	Customer imports increased; not identified Canada/Mexico
Nexfor Fraser Papers	Madawaska	14	6/25/2003	Customer imports increased; not identified Canada/Mexico
Volk Packaging	Biddeford	8	03/21/02	Increased customer imports from Canada
Totals		730		

Source: same as Table 6 above.

In the paper industry, Maine lost approximately 730 jobs as the result of increased imports and

Table 5
Wood Products Companies Eligible for Trade Adjustment Assistance

Company	Location	Workers	Date
Georgia Pacific	Baileyville	283	01/19/99
International Paper	Passadumkeag	263	09/25/01
International Paper	Milford	250	09/25/01
Saunders Brothers, Inc.	Westbrook	90	12/3/2002
Houlton International Corp.	Houlton	90	6/27/2003
Alltrista Consumer Products	Strong	85	6/26/2003
Solon Manufacturing	Skowhegan	65	03/19/02
Georgia Pacific	Baileyville	55	01/09/02
Shermag Corporation-DBA Woodtek	North Anson	50	10/17/01
Sherman Lumber Company	Sherman Station	40	11/29/2002
Irving Forest Products	Ashland	37	01/12/01
Solon Manufacturing	Solon	34	03/19/02
H.G. Winter and Sons, Inc	Kingfield	27	1/27/2003
Totals		1,369	

Source: http://www.doleta.gov/tradeact/taa/nafta_search_form.cfm.

Based on the investigations conducted by the U.S. Department of Labor, it appears that over 1,300 Maine jobs were lost either because of increased Canadian imports or because of shifts of production to Canada or Mexico.

Interviews with representatives of several Maine wood products companies illustrate the varying impacts of increased trade with NAFTA partners, primarily Canada.¹⁷ Some have increased both their imports from Canada and exports to Canada. Others have seen increased Canadian investment in Maine facilities. One, the manufactured housing industry that imports much of its lumber from Canada has, paradoxically, been hurt by the U.S. effort to protect domestic softwood lumber producers. Tariffs on Canadian lumber increased costs for Maine producers while the free trade in manufactured housing itself has enabled Canadian producers to capture nearly one half of Maine's market.

In the interviews with officials of the wood products industry, several points were repeated consistently:

- ✓ It is virtually impossible to distinguish between the effects of NAFTA and the effects of the cheaper Canadian dollar as factors contributing to increased Canadian imports;

¹⁷ See Appendix e. for a list of those interviewed.

Competing Proposals for Tobacco in the TPPA

Maine Citizen Trade Policy Commission
September 19, 2013



Robert Stumberg
Georgetown University Law Center
Harrison Institute for Public Law

Agenda

1. Introduction: TPPA threats to tobacco control
2. Competing proposals in TPPA negotiations
3. Why the US proposal is not legally significant
4. How a carve-out avoids litigation
5. Confusion about the previous US position (2012)

Intersecting frameworks: TPPA Threats to Tobacco Control

Tobacco - FCTC measures

6. Price & tax measures

- 2a. Increase consumption taxes
- 2b. Restrict duty-free sales

Product contents

9. Regulate or ban contents
10. Disclose contents

11. Packaging & labeling

- 1a. Prohibit misleading
- 1b. Provide warnings

13. Advertising

1. Ban tobacco ads
2. Restrict tobacco ads
4. Eliminate cross-border ads

General

3. Protect regulations from commercial interests

Trade rules - TPPA is WTO-plus

Zero tariffs

Least trade-restrictive

Right to use trademarks

Prohibit limits on services

Provide stakeholder participation

Trade promotion v. Tobacco control

Tobacco - FCTC measures	Trade - TPPA Chapters / WTO Rules				
	Goods, zero tariffs	Intellect. property	Services	Regulatory coherence	Investment
6. Price & tax measures 2a. Increase consumption taxes 2b. Restrict duty-free sales	X				X
Product contents 9. Regulate or ban contents 10. Disclose contents	X				X
11. Packaging & labeling 1a. Prohibit misleading 1b. Provide warnings		X			X
13. Advertising 1. Ban tobacco ads 2. Restrict tobacco ads 4. Eliminate cross-border ads			X		X
General 3. Protect regulations from commercial interests				X	X

4

Revised US Proposal - Treatment of Tobacco

1. Zero tobacco tariffs
2. Health exception - tobacco insert
3. Dispute settlement - consultation insert

5

Revised US Proposal - Health Insert

“... measures referred to in [the health exception] include measures ‘necessary to prevent or reduce tobacco use or its harms.’”

Not legally significant because ...

1. Health relevance is already “self evident”
2. Health relevance does not establish “necessity”
There are three stages:
 - First, scope of health measures
 - Second, balancing factors including contribution
 - Third, availability of less-restrictive alternatives
3. Necessity alone does not satisfy an exception
There are two additional restrictions:
 - No arbitrary measures
 - No unjustifiable discrimination
4. General exceptions do not cover investor rights

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Revised US Proposal - Consultation Insert

“...before a Party initiates a challenge through TPP dispute settlement to another Party’s tobacco regulatory measure, the health authorities of the concerned Parties shall meet to discuss the measure.”

Not legally significant because ...

1. The dispute chapter already:
 - Requires Parties to consult on “any matter”
 - Requires Parties to consult when requested
 - Requires Parties to make experts and regulators available
2. The US insert is redundant except:
 - Health authorities must consult with each other
 - and discuss whether a measure is “appropriate”
3. The US insert omits legal significance:
 - No report, no transparency
 - No impact on a dispute: no deference, no presumption, no ability to block a dispute

7

US inserts compared to Malaysia’s carve-out

1. The US health insert relies on the health exception --
 - Four stages of litigation with six tests and balances
 - Multi-million costs that countries bear 80% of the time, even when they are successful
2. The US consultation insert is redundant, omits legal content
3. The purpose of a carve-out is to avoid litigation
 - A simple carve-out leaves little to litigate
 - Any questions are decided at the beginning of a dispute
 - Example:
“This agreement does not apply ...
... to measures as applied to tobacco.”

8

Previous US proposal - May 2012

... allow health authorities in TPPA governments to adopt regulations that impose origin-neutral, science-based restrictions on specific tobacco products/classes in order to safeguard public health

Summary of shortcomings ...

- “Health authorities” - does not cover licensing, tax or customs authorities
- “Regulations” - does not cover legislation
- “Science-based” - is a higher burden of proof than the necessity test
- “Origin-neutral” - does not avoid de facto discrimination, the reason the US lost the clove cigarette dispute
- “Products/classes” - does not cover regulation of services like advertising, packaging, distribution, etc.

9



Contact information

Robert Stumberg, Professor of Law
stumberg@law.georgetown.edu
202-662-9603

Harrison Institute for Public Law
Georgetown University Law Center
600 New Jersey Avenue, NW
Washington, DC 20001

LD 2048 Continues Maine's Past Success in Protecting Kid's Health from Toxic Chemicals

LD 2048 builds on Maine's successful track record by using a science-based process to select the 3 to 5 priority chemicals in consumer products that deserve attention. Information will be gathered on the use of those few priority chemicals from product makers. Any proposed restrictions on priority chemicals must come back to the Legislature for a final decision.

Past Actions by Maine Legislature on Priority Chemicals:

Priority Chemical	Use Restricted in Consumer Products (Date Maine Law Passed)	Children's Health Concern
Mercury	Thermometers, manometers (2000) Thermostats (2001) Switches, Relays, Instruments (2003)	Damage to brain development: learning, memory, fine motor skills ¹
Arsenic	Pressure-treated wood in play structures, rails, and decking (2003)	Cancer: skin, bladder, lung Lowered intelligence ²
PBDEs (flame retardants)	Foam cushions in couches, chairs (2004) Plastic in TVs, computers, mattress covers, upholstered furniture (2007)	Damage to brain development: learning, behavior; Hormone disruption: thyroid ³
Lead	Paint on homes, toys, furniture (1973) Plastic packaging (1989) Plastic in toys, child care articles, lunch boxes; metal in children's jewelry (2008)	Damage to brain development: lowered intelligence, learning and behavior problems ⁴

Environmental Health Strategy Center Feb. 2008 www.preventharm.org

¹ National Research Council. 2000. **Toxicological Effects of Methylmercury**. National Academy of Science. Washington DC.

² Agency for Toxic Substances and Disease Registry. 2005. **Toxicological profile for arsenic**. U.S. Department of Health and Human Services, Public Health Service; Wasserman GA, Liu X. 2004. **Water arsenic exposure and children's intellectual function in Arai hazar, Bangladesh**. *Environmental Health Perspectives* 112:1329-1333.

³ Birnbaum LS, Staskal DF. 2004. **Brominated flame retardants: cause for concern?** *Environmental Health Perspectives* 112:9-17; Rice DC, Reeve EA, Herlihy A, Zoeller RT, Thompson WT, Markowski VP. 2007. **Developmental delays and locomotor activity in the C57BL/6/J mouse following neonatal exposure to the fully-brominated PBDE, decabromodiphenyl ether**. *Reproductive Tox.*

⁴ Lamphear BP, Hornung R, Khoury J, Yolton K et al. 2005. **Low-level environmental lead exposure and children's intellectual function: An international pooled analysis**. *Environmental Health Perspectives* 113:894-994; Koller K, Brown T, Spurgeon A, Levy L. 2004. **Recent developments in low-level lead exposure and intellectual development in children**. *Environmental Health Perspectives* 112:987-994.

3 to 5 Priority Chemicals will be selected for Further Scrutiny under LD 2048

Mercury, lead and deca-BDE are likely to be named priority chemicals. Perhaps 1 or 2 new priority chemicals will be designated by January 2011, after stakeholder input. That's what Maine can do with existing state resources, according to DEP Commissioner Littell.

Candidates for Possible Future Priority Chemicals:

Toxic Chemical	Uses in Consumer Products that Expose Children	Children's Health Concern
Phthalates	In plastic toys, child care articles Baby lotion, shampoo, cosmetics NOTE: Human exposure is pervasive. ⁵	Birth defects: male genitals Cancer risk: testicles Hormone disruption: testosterone ⁶
PFCs (perfluorinated chemicals)	Some stain resistant coatings on fabric, furniture, and carpeting NOTE: PFCs are present in 100% of humans tested. One-third of bird eggs exceeded toxic threshold. ⁷	Low birth weight, organ damage Cancer risk: bladder, breast, testicles, pancreas, liver Long-lived, builds up in food web ⁸
Bisphenol A (BPA)	Plastic baby bottles and the linings of infant formula cans NOTE: BPA exposure to newborn babies that use the above products approaches or equals the level of harm demonstrated in lab animals. ⁹	Damage to brain development Cancer risk: breast, prostate Birth defects: reproductive organs Diabetes risk: insulin resistance Disrupts hormones: estrogen, others ¹⁰

Environmental Health Strategy Center

Feb. 2008

www.preventharm.org

⁵ U.S. Centers for Disease Control and Prevention. 2003. **Second Annual Report on Human Exposure to Environmental Chemicals**, National Center for Environmental Health Pub. No. 02-0716.

⁶ Swan SH, Maine KM, Liu SL, Stewart et al. 2005. **Decrease in anogenital distance among male infants with prenatal phthalate exposure**. *Environmental Health Perspectives* 113:1056-1061; U.S. Department of Health and Human Services, National Toxicology Program, Center for the Evaluation of Risks to Human Reproduction. 2006. **Monograph on the Potential Reproductive and Developmental Effects of Di(2-ethylhexyl)phthalate (DEHP)**. NIH Pub. No. 06-4476.

⁷ Goodale W et al. 2008. **Contaminants in Maine Bird Eggs**. Biodiversity Research Institute. March.

⁸ Perfluorooctanoic Acid Review Panel. 2006. **Science Advisory Board Review of EPA's Draft Risk Assessment of Potential Human Health Effects Associated with PFOA and Its Salts**. U.S. Environmental Protection Agency. EPA-SAB-06-006.

⁹ Exposure levels cited in U.S. Food and Drug Administration, Letter from Stephen Mason, Acting Commissioner for Legislation to Representative John Dingell, House Committee on Energy and Commerce. February 25, 2008.

¹⁰ Murray TJ, Maffini MV, Ucci AA, Sonnenschein C, Soto AM. 2007. **Induction of mammary gland ductal hyperplasias and carcinoma in situ following fetal bisphenol A exposure**. *Reproductive Toxicology* 23(3):383-90; Ho SM, Tang WY, Belmonte de Frausto J, Prins GS. 2006. **Developmental exposure to estradiol and bisphenol A increases susceptibility to prostate carcinogenesis and epigenetically regulates phosphodiesterase type 4 variant 4**. *Cancer Research* 66(11):5624-32; Hunt PA, Koehler KE, Susiarjo M, Hodeges CA, Hagan A, Voight RC et al. 2003. **Bisphenol A causes meiotic aneuploidy in the female mouse**. *Current Biology* 13:546-53; vom Saal FS, Hughes C. 2005. **An extensive new literature concerning low-dose effects of bisphenol A shows the need for a new risk assessment**. *Environmental Health Perspectives* 113:926-933.

Maine's Virtual Elimination of Mercury in Products

The State of Maine has passed a series of laws to phase out the use of mercury in consumer products in favor of safer alternatives, and to require manufacturers to assume responsibility for the recovery of mercury at the end of the useful life of the product. The chart below details Maine's policy history to protect public health and the environment from the harmful effects of the use and disposal of mercury products.

Year Enacted	Mercury-Added Products subject to Phase-Out or specified Policy Action	Law Reference and Notes
1998	Report required on policy options for reducing mercury from products	PL 1997, c. 722
2000	Disposal ban and labeling required for any mercury thermostat, thermometer, electrical switch, instrument, relay & lamp	PL 1999, c. 779
2001	Fever thermometers Manometers School use of bulk elemental mercury Elemental mercury except for limited uses	PL 2001, c. 373 Mercury use reporting also required
2001	Dentists must provide patients with info on mercury amalgam fillings and alternatives	PL 2001, c. 385
2002	Thermostats	PL 2001, c. 620
2002	Automotive light switches Manufacturers responsible for recycling of mercury components at end of vehicle life	PL 2001, c. 656
2003	Instruments and measuring devices Switches and relays, with exceptions	PL 2003, c. 221
2003	Dental amalgam separators required	PL 2003, c. 301
2006	Button cell batteries	PL 2005, c. 509
2006	Manufacturers responsible for recycling of mercury thermostats at end of life	PL 2005, c. 558
2009	Vehicle wheel weights of lead or mercury	PL 2009, c. 125
2009	Manufacturers responsible for recycling of compact fluorescent lamps at end of life	PL 2009, c. 272

Source: <http://www.mainelegislature.org/ros/LOM/LOMDirectory.htm>, (accessed January 30, 2011). To access individual laws from the website, select the year of the Public Law (PL) and then the chapter (c.) number.

MAINE AS A LABORATORY FOR SAFER CHEMICAL REFORM

State-level chemical policy was first proposed through *An Act for a Healthy Massachusetts: Safer Alternatives to Toxic Chemicals* in 2004 [1], inspired by the state's successful Toxics Use Reduction Act of 1989 [2]. Maine passed the Kid Safe Products Act in 2008, the first and most comprehensive state chemical policy [3]. Similar reforms became law in Washington [4], California [5, 6], and Minnesota [7]. The table below summarizes the major elements of state comprehensive chemical policy.

Maine traced its comprehensive reform to a 2006 Executive Order issued by Governor John Baldacci [8] that created the Governor's Task Force to Promote Safer Chemicals in Consumer Products. The final Task Force report documented the failure of TSCA to protect the health of Maine people and businesses and recommended comprehensive chemical policy reforms [9]. In 2008, the Maine Legislature passed the Kid Safe Products Act by an overwhelming bipartisan margin [10], despite unending opposition from the chemical industry. The Maine law declared: "It is the policy of the State, consistent with its duty to protect the health, safety and welfare of its citizens, to reduce exposure of children and other vulnerable populations to chemicals of high concern by substituting safer alternatives when feasible."

The Maine law regulated toxic chemicals in children's products, which are broadly defined as any consumer product containing a chemical of high concern that when used or disposed of will likely expose a child or fetus to that chemical. *First*, under the law, the state must publish a list of chemicals of high concern that have been identified by an authoritative government entity as a carcinogen, reproductive or developmental toxicant, or an endocrine disruptor; persistent, bioaccumulative and toxic; or very persistent and very bioaccumulative. In June 2009, Maine published its list of about 1,750 chemicals of high concern [11].

Second, the state must consider exposure potential and designate priority chemicals, taking into account whether the chemical has been found present in humans, the home environment, the natural environment or in a consumer product used in the home; or whether EPA has identified the chemical as a high production volume chemical, or the chemical has been banned in another state. In December 2010, Maine named its first two priority chemicals: bisphenol A (BPA), which is widely used in polycarbonate plastic and epoxy resins [12], and, as a chemical class, nonylphenol (NP) and nonylphenol ethoxylates (NPE), used in certain cleaning products [13].

Third, manufacturers must report on their use of priority chemicals in products they sell in the state. They must submit information on the amount and purpose of the

chemical and product sales and, if asked, on safer alternatives, exposures and environmental releases. For example, manufacturers of infant formula, baby food, toys, child care articles and tableware must report on their BPA use [12] and makers of cleaning products, cosmetics, personal care products, and home maintenance products must report their use of NP and NPE [13].

Fourth, the law authorizes the state to require manufacturers of products containing a priority chemical to assess the availability of effective safer alternatives at comparable cost. For example, manufacturers of infant formula and baby food must submit an assessment of alternatives to the use of BPA in the epoxy resin linings of metal cans and jar lids by January 1, 2012 [12]. If a satisfactory study is not completed, the state may contract for an independent third-party alternatives assessment and bill the product makers for the full cost [14].

Fifth, the Kid Safe Products Act authorizes the state to prohibit the sale of a product containing a priority chemical if it demonstrates that a vulnerable group is exposed and that a safer alternative is available at a comparable cost to the consumer [15]. Manufacturers and distributors of reusable food and beverage containers containing BPA, such as baby bottles, sippy cups, sports water bottles, thermoses and other reusable food and beverage containers made of polycarbonate plastic, will be prohibited from selling those products in Maine after January 1, 2011.

Table 1 – Summary of Comprehensive State Chemical Laws

Policy Element	CA	ME	MN	WA
Type of products subject to regulation	Consumer	Consumer	Children's	Children's
Lists chemicals of concern based on hazard characteristics	NO	YES	YES	YES
Designates priority chemicals based on exposure potential	YES	YES	YES	YES
Requires reporting on priority chemical use	NO	YES	NO	YES
May require assessment of safer alternatives	YES	YES	NO	NO
May prohibit sale if alternatives available and exposure occurs	YES	YES	NO	NO
Applies health-based risk standard to decide on use restrictions	NO	NO	NO	NO
Manufacturers pay fees to offset program costs	NO	YES	NO	NO
Other policy provisions	Requires chemical data collection	May require additional chem. info	Limited to HPV chemicals	Requires report on policy options

Source: See laws in California [5, 6], Maine [3], Minnesota [7], and Washington state [4].

HPV = refers to high-production volume chemicals, as identified by EPA

List of References:

1. *An Act for a Healthy Massachusetts: Safer Alternatives to Toxic Chemicals of 2004*, H-2275/S-1285, 187th Gen. Court.
2. Toxics Use Reduction Act of 1989, Mass. General Law 21I, <http://www.mass.gov/dep/toxics/toxicsus.htm>.
3. Maine, Laws of 2007, Chapter 643, *An Act to Protect Children's Health and the Environment from Toxic Chemicals in Toys and Children's Products*, (2008), 38 Maine Rev. Stat. Ann. §1691 et seq. http://www.mainelegislature.org/legis/bills/bills_123rd/chappdfs/PUBLIC643.pdf.
4. Washington, Laws of 2008, Chapter 288, *Children's Safe Products Act*, 70 Rev. Code Wash. 240.010 et seq., <http://apps.leg.wa.gov/documents/billdocs/2007-08/Pdf/Bills/Session%20Law%202008/2647-S2.SL.pdf>.
5. California, Statutes of 2008, Chapter 559, *AB 1879, Feuer*, Health & Safety Code §25252 et seq., http://www.leginfo.ca.gov/pub/07-08/bill/asm/ab_1851-1900/ab_1879_bill_20080929_chaptered.pdf.
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7. Minnesota, Laws of 2009, Chapter 37, Art. 1, Sec. 47, *H.F. No. 2123*, Minn. Stat. §116.9401 et seq., <https://www.revisor.mn.gov/data/revisor/law/2009/0/2009-037.pdf>.
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Protect Your Family's Health: Join the Maine Campaign for BPA-Free Food

To protect the healthy development of babies and children, we must end exposure to BPA in our food supply. Our campaign will:

1. **Celebrate** the success of ending use of BPA in plastic baby bottles, sippy cups, and infant formula cans;
2. **Ask** Maine state agencies to phase out BPA in baby food and toddler food containers under the Kid Safe Products Act; and
3. **Ask** all candidates running for the Maine Legislature in 2012 to support closing a loophole that allows BPA use in most canned foods.

Learning disabilities, prostate cancer, breast cancer. These are just a few of the concerns with BPA (also known as bisphenol A), a widely used, man-made chemical that wreaks hormone havoc early in life.¹ Over five billion pounds of BPA are produced every year by Dow Chemical, Bayer, Sunoco and other toxic chemical makers.²

Concern about the health threats of BPA has grown ever since BPA was discovered polluting the bodies of 93% of all Americans.³ Most people are exposed to BPA by eating canned foods.⁴ BPA leaks out of the can linings, contaminating the food or beverage inside. Metal lids on glass jars also leach BPA into our food.

BPA exposure could be slashed by two-thirds if food packaging were BPA-free.⁵

Let's follow the pathway to health that gets BPA out of our food supply!



2010 Baby Bottles & Sippy Cups

BPA use ended after moms demanded safety and nine states banned it. In 2011, Governor LePage tried to repeal Maine's BPA ban, saying that all women had to worry about was "little beards." Maine lawmakers upheld the ban by a 145 – 3 vote!



2011 Infant Formula

Manufacturers switched to BPA-free containers in response to concerned mothers, health scientists, Congress and state regulation. Maine required BPA use reporting, which confirmed complete success!



2012 Baby Food

Maine agencies must now end the use of BPA in baby food jar lids. Gerber eliminated BPA and Earth's Best pledged to be BPA-free by October 2012. But laggards like Beech-Nut and Shaw's Wild Harvest violated Maine law by failing to report their continued BPA use!



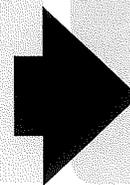
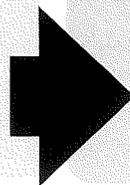
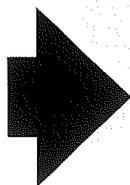
2013 Toddler Food

Maine agencies must stop the use of BPA in canned foods that are marketed to preschoolers. The food giant Campbell's, for example, uses Dora the Explorer to sell canned foods containing BPA to young kids!



2014 All Foods

The Maine Legislature must close the loophole that allows BPA use in most canned foods. When pregnant women eat canned foods, their babies are exposed. Everybody deserves BPA-free food!



Help Get BPA Out of Our Food Supply!

What You Can Do

1. **Collect** signatures for a voter-initiated rulemaking to force the LePage Administration to end BPA use in baby food and toddler food
2. **Write** a letter to the editor
3. **Testify** at the public hearing (this summer)
4. **Help** educate candidates for the Maine Legislature about why we must get BPA out of our food supply
5. **Share** this with your friends

To get involved, contact:

Emma Halas-O'Connor at ehalasoc@preventharm.org
or 207-699-5799. www.cleanandhealthyme.org

BPA and the Kid Safe Products Act

In 2008, the Maine Legislature passed a landmark law to ensure that the products we purchase and use are free from toxic chemicals. The Kid Safe Products Act requires manufacturers to tell us what priority chemicals of high concern are in their products. The State can require safer substitutes when they're available and affordable.

In 2010, BPA was named the first priority chemical under the Kid Safe Products Act. By October 2011, mandatory reporting revealed that 8 toy makers use BPA in plastic parts (including many PlayMobil figures and Chicco rattles). Infant formula companies confirmed their successful phase-out of BPA. Most baby food manufacturers reported BPA use late or not at all, in violation of Maine law. (See <http://www.preventharm.org/Content/491.php> for more info). The ban on BPA use in plastic baby bottles, sippy cups and reusable food and beverage containers took formal effect on January 1, 2012.

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CONSUMER TIPS:

How can I protect my family from BPA?

GET involved in the Maine Campaign for BPA-Free Food!

LOOK for the words “BPA free” on labels of food containers

SELECT locally grown fresh and frozen foods, rather than canned or jarred foods, when practical

AVOID products made from polycarbonate plastic, sometimes labeled ‘PC’, when practical

MINIMIZE handling of cash register receipts (many use BPA for thermal printing)

REDUCE use or contact with epoxy resins (most are made with BPA)

Maine's BPA-Free Foods Campaign is a project of the



Alliance for a Clean & Healthy Maine

A collaboration of

Environmental Health Strategy Center
Environment Maine
Learning Disabilities Association of Maine
Maine Labor Group on Health
Maine Council of Churches
Maine Organic Farmers and Gardeners Association
Maine People's Resource Center
Maine Women's Policy Center
Natural Resources Council of Maine
Physicians for Social Responsibility/
Maine Chapter
Planned Parenthood
of Northern New England
Toxics Action Center

Friends of the Earth, U.S.

Sinister partners: transatlantic trade agreement & toxic chemicals

Jun. 21, 2013 / Posted by: Bill Waren



Chemicals are the sinister and little-recognized partners of radiation in changing the very nature of the world—the very nature of life.

— Rachel Carson.

On July 8, in Washington, D.C., trade negotiators from the United States and the European Union are expected to open the first round of talks for a Trans Atlantic free trade agreement (TAFTA) or as it is formally known, the Transatlantic Trade and Investment Partnership (TTIP). The United States is pushing for a transatlantic deal that not only integrates the trade policies of the U.S. and E.U., but also deregulates their economies.

Because tariffs are already relatively low between the U.S. and Europe, TAFTA negotiations will instead focus on regulatory “barriers” to transatlantic trade and investment.^[1] This may result in dangerous deregulation of environmental and public health safeguards – including those related to toxic chemicals, and will likely have a chilling effect on any future efforts to enact similar protections. Specifically, the E.U.’s more precautionary approach to chemicals management system should not be “harmonized down” to low U.S. standards.

As Mark Schapiro explained in a 2007 story in Harper’s: “Whereas U.S. regulators are forced to find scientifically improbable definitive evidence of toxic exposure before acting, [Europe’s] REACH [regulation] acts on the basis of precaution. European authorities consider the inherent toxicity of a substance and, based on an accumulation of evidence, determine whether its potential to cause harm is great enough to remove it from circulation. Unlike [the U.S.’s Toxic Substances Control Act^[2]], REACH places the burden of proof on manufacturers, who must demonstrate that their chemicals can be used safely.”

TAFTA threatens effective chemicals regulation

The U.S. Trade Representative has already targeted REACH^[iii], Europe's chemicals regulation program. The 2013 USTR report on Technical Barriers to Trade identifies many provisions of the REACH system as trade barriers.^[iv] The United States also raised objections to REACH at the time the program was developed^[v], as well as more recently in the World Trade Organization Committee on Technical Barriers to Trade^[vi] and in other fora. Advocates for U.S. companies argue that registration, data gathering, and notification requirements under REACH impose higher costs on chemical products imported into the E.U., and detailed analyses have been prepared that, in effect, lay out the argument for why major elements of REACH are illegal trade barriers under international trade law.^[vii]

In addition, the High Level Working Group report, the official document laying out the negotiating objectives for the transatlantic trade deal, proposed so-called "WTO-plus" provisions for the chapter on technical barriers to trade (TBT), which covers toxic chemicals regulation. The WTO TBT chapter does not have even a modest exception for environmental and public health measures^[viii], and many TBT challenges to environmental and health measures before WTO tribunals have been successful (for example challenges related to dolphin safe tuna labels, country of origin meat labeling, and a ban on clove cigarettes).^[ix] To go beyond the WTO TBT provisions, to "TBT-plus" is frightening in its implications.

All this would strongly encourage the downward harmonization of E.U. toxic chemicals regulation, moving toward the lowest common regulatory denominator – namely, the U.S. Toxic Substances Control Act. TSCA has been characterized by the President's Cancer Panel as perhaps "the most egregious example of ineffective regulation of chemical contaminants."^[x] Similarly, the bi-partisan compromise bill introduced in May by U.S. Senators Lautenberg and Vitter, that allegedly makes some improvements in TSCA, falls far short of the European standard for safeguarding the public from dangerous toxic chemicals.

The failure of the U.S. chemical regulatory system

Regulation of toxic chemicals by the federal government in the United States, particularly TSCA, is widely regarded as a failure. The most significant gaps in TSCA are not filled by other federal laws regulating toxic chemicals, such as the Federal Food, Drug, and Cosmetics Act; the Federal Insecticide, Fungicide, and Rodenticide Act; The Clean Air Act and the Clean Water Act; the Consumer Product Safety Act; and the Occupational Safety and Health Act. These other laws, for the most part, merely regulate the release of chemicals into the environment.

Only TSCA purports to regulate chemicals through the production and distribution cycle. The Act authorizes the Environmental Protection Agency to monitor chemicals to identify products and the use of products that may be a threat to public health or the environment. But many chemicals are not covered by TSCA if they are regulated by other federal laws. In addition, TSCA generally restricts EPA's authority by requiring the agency to employ the regulatory tool that is least burdensome on industry.

Among the many factors rendering TSCA ineffective are the grandfather problem, the burden of proof problem, the judicial review problem, and the secrecy problem:

- *The grandfather problem.* Over 62,000 chemicals were "grandfathered" at the time TSCA was enacted. Chemicals sold on the market prior to 1979 are exempt from the Act's primary provision for testing and safety review. As a result, most of the chemicals on the U.S. market today have never been tested.

- *The burden of proof problem.* TSCA requires the EPA to bear the burden of proof showing that a chemical is unsafe, rather than putting the burden on chemical companies to show that their products are safe. The U.S. Environmental Protection Agency is only allowed to regulate chemicals on the market before 1979 if it can meet a high evidentiary threshold demonstrating an “unreasonable risk to human health.” The U.S. act, therefore, perversely discourages industry from innovating to develop safer chemicals. And, any safety measures imposed must be the “least burdensome” and take into consideration the costs to the chemicals company.
- *The judicial review problem.* U.S. courts generally will not challenge an agency’s regulatory decision unless the decision is “arbitrary and capricious,” but TSCA requires a tougher standard of judicial review of agency action. If the courts find that EPA has not demonstrated that its administrative action is supported by “substantial evidence,” they are required under TSCA to strike down EPA rules requiring the development of chemical test data, determinations of safety, or restrictions on the use of chemicals. Given the difficulty in meeting the “unreasonable risk” and “substantial evidence” tests, it is not surprising that EPA has banned only five chemicals under the provisions of TSCA. Even such highly hazardous chemicals as asbestos have escaped prohibition.
- *The secrecy problem.* The U.S. Environmental Protection Agency’s own Office of the Inspector General admitted that given the strictures of TSCA, the EPA is “predisposed to protect industry information rather than to provide public access to health and safety studies.” TSCA provisions protecting the industry’s “trade secrets” stand in the way of effective safety testing of chemicals.

Because of the failure of TSCA, state governments have stepped into the breach to regulate toxic chemicals. Between 2002 and 2010, 18 states enacted 71 chemical safety laws. California, Maine, Minnesota, and Washington State have adopted comprehensive chemical policy reforms.

Illusory TSCA reform

So egregious are the shortcomings of TSCA that even the chemicals industry has called for “reform,” but the industry’s idea of reform falls far short of what is needed. An alleged “compromise” bill, the Chemical Safety Improvement Act (CSIA), S. 1009[xi], was introduced in the U.S. Senate with the industry’s support by the late Democratic senator from New Jersey, Frank Lautenberg, and Republican Senator David Vitter of Louisiana.

As introduced, the CSIA does not provide a framework for effectively protecting people and the planet from toxic chemicals. The bill replicates many of the worst provisions of TSCA, and its provisions for broadly preempting state regulation of toxics and limiting personal injury lawsuits are substantially worse than the status quo. For example:

- *Preemption of state law.* Under CSIA, section 15 (a), (b), current and future state law regulating toxic chemicals would be broadly preempted. Preemption is particularly disturbing because more progressive environmental laws in California often set a national standard for chemical safety; it is often not economic for firms to manufacture and market different products for the huge California market than for the rest of the country.
- *Toxic tort suits severely limited.* As 34 prominent legal scholars have noted, CSIA “takes the extraordinary step of making safety determinations by EPA admissible in any federal or state court and dispositive [or conclusive] of whether a chemical substance is safe.” CSIA section 15 (e) would provide sweeping immunity from tort liability for the chemicals industry “even when subsequent evidence calls into question the agency’s reasoning.”
- *Overwhelming administrative burdens on EPA in assessing new chemicals.* Under the CSIA, the U.S. Environmental Protection Agency would continue to be overwhelmed by the task of

assessing the risks of thousands of new chemical submissions, especially given that most submissions will lack complete health and safety data.

- *Chemicals in the market before testing.* CSIA would likely allow chemicals to be manufactured before they are tested or determined to be safe. EPA, also, would be required to justify any calls for safety testing.
- *Weak safety standard.* CSIA section 3(16) provides a weak safety standard: not a true health-based standard. It would essentially replicate TSCA's requirement that EPA demonstrate an "unreasonable risk" to human health before the agency could act. EPA would be required to balance economic costs against public health benefits in a way that could survive judicial review of whether EPA's decision was supported by "substantial evidence."
- *Value of human life discounted.* In effect, an administratively burdensome cost-benefit analysis could be required by CSIA before EPA imposes risk management measures, particularly as TAFTA comes into play with a regulatory coherence chapter based on the Trans Pacific Partnership model as expected. Cost-benefit calculations should not be used in this way to value corporate profits over public health, and to allow economists literally to "discount" the value of a human life, by estimating the present value of lifetime earnings or by similar attempts at quantitative measurement of the immeasurable.

What is left out of CSIA is as disturbing as what it includes. For example:

- *Failure to fix the burden of proof problem.* The EPA would still be required to meet a high burden of proof in order to restrict use of any one of the 84,000 chemicals already on the market. An effective approach, by contrast, would put the primary burden of proof on the manufacturer to demonstrate the safety of a chemical or its use. CSIA fails to hold companies responsible for demonstrating the safety of chemicals, or ensure that safety assessments meet an appropriate set of minimum standards based on the best science and assessment methodologies available. The bill also fails to require that companies pay for the assessment of their products' safety.
- *Failure to adequately fix the secrecy problem.* With few exceptions, CISA section 14 continues to protect "confidential business information" related to chemicals and chemical identities. Health professionals would still be denied information about "secret chemicals" necessary to identify and treat people who have been injured.
- *No effective environmental justice provisions.* The bill does not adequately address issues of environmental justice for especially vulnerable groups including children, the elderly, women of childbearing age, workers exposed to chemicals, and communities of color and low-income communities subject to multiple exposures.
- *No nanotechnology provisions.* CSIA fails to expand the EPA's authority over nanotechnology, as was provided in earlier legislative proposals by Senator Lautenberg. Nanotechnology is a powerful emerging technology for taking apart and reconstructing nature at the atomic and molecular level. And, the field is being commercialized largely outside of public view or debate, with few regulations to protect workers, the public and the environment. Nanotechnology poses novel and poorly understood risks to human health and the environment. If there was ever an area where the precautionary principle should apply, it is this one.

With Senator Lautenberg's death, it is hard to handicap the prospects for U.S. Senate passage of CSIA this year. Action in the Republican-controlled House of Representatives is even less predictable. This raises the question of why the chemicals industry is pushing so hard for CSIA at this time.

Some observers have speculated that Republican and chemical industry support for at least the appearance of TSCA reform is influenced by their desire to see a transatlantic trade deal. In other words, U.S. negotiators and pro-TAFTA corporations like Dow, Eastman and other big U.S. chemical companies[xii] must at least provide a “fig leaf” of reforming U.S. toxic chemical regulation, if the industry is to achieve its goal of harmonizing standards across the Atlantic, and thereby substantially weakening REACH.

The superiority of the E.U. system of chemicals regulation

In marked contrast to TSCA's reputation, the E.U.'s REACH program for chemicals regulation, while not perfect, is widely admired by environmentalists and public health advocates. REACH regulates not only manufacturers and importers, but also so-called “downstream users.” As Mark Schapiro explains, “REACH also extends to the endless array of consumer goods that utilize these compounds; thus, tens of thousands of ‘downstream users,’ from construction companies to tennis-shoe manufacturers and fashion houses, will be forced to find out and report what chemicals are in their products and what effects they have on human health and the environment.”

REACH stands for Registration, Evaluation, and Authorization of Chemicals: it is a comprehensive system[xiii] for the regulation of new and existing chemicals administered by the European Chemicals Agency in Helsinki.[xiv]

Registration means that a manufacturer or importer must register any chemical entering the E.U. market in amounts over one ton per year.[xv] A registration dossier must be prepared by the chemical company that includes hazard data and risk assessments.

Evaluation is performed by the E.U. Chemicals Agency, which makes thorough annual assessments of chemicals flagged as high risk, based on the registration data. There are two types of evaluation. Dossier evaluation requires the E.U. Chemicals Agency to review all testing proposals submitted at registration. A small percentage of registration dossiers are audited for full legal compliance. Under substance evaluation, the E.U. member states and the European Commission agree on an annual list of chemicals to be assessed in depth to determine if new control measures are required.

Authorization requires that chemicals of very high concern, such as carcinogens, mutagens, persistent bioaccumulative toxins, and endocrine disruptors, must be authorized for entry into the market. Authorization will be granted if the risks are under “adequate control” or, if there is no safer alternative, on socio-economic grounds even if adequate control is impossible. Chemical companies, however, must attempt to find safer substitutes for substances of very high concern.

The superiority of REACH in protecting public health and the environment is put in stark relief by comparing it to TSCA.[xvi] For example:

TSCA rarely requires companies to do more than submit available safety information, while REACH requires chemical companies to accept responsibility for gathering data and conducting risk assessments. TSCA does not generally require chemical companies to **develop** information about new or existing chemicals. Most often, companies are merely required to submit information that is already available. Under the European REACH system, chemical companies must submit and **develop** information on the effects of both new and existing chemicals on human life and the environment.

TSCA provides minimal testing and safety review, even for particularly hazardous chemicals, while REACH has a comprehensive system for testing and safety review. TSCA does not generally require

companies to test new chemicals. Worse, TSCA exempts thousands of chemicals from the law's primary provision for testing and safety review, if they were on the market prior to 1979.

TSCA provides that EPA, by issuing a test rule, can require development of information about such particularly hazardous chemicals on a case-by-case basis, but the TSCA's test rule provision and its data-gathering requirements are so expensive and time consuming that EPA has great difficulty in promulgating test rules through the formal administrative process and relies primarily on voluntary efforts by chemical companies to gather more risk data on suspect chemicals. The vast majority of chemical in use in the United States have never been tested by the government to determine their effect on human health and the environment.

Under REACH, European regulators look at the inherent toxicity of a chemical and systematically accumulate of evidence about its safety to determine whether it should be allowed in the marketplace.

TSCA generally requires EPA to demonstrate that chemicals on the market before 1979 will cause unreasonable risk, while REACH requires chemical companies to demonstrate the safety of both new and existing chemicals. As noted above, the U.S. Environmental Protection Agency may only regulate pre-1979 chemicals by meeting an almost impossible showing that they pose an "unreasonable risk" to human health, while also showing safety measures are the "least burdensome" on chemical companies. REACH generally treats new and existing chemicals the same and puts the burden of proof on companies to show that chemicals are safe.

TSCA imposes no specific requirements on downstream users, while REACH requires them to them to develop and keep available information about how a chemical has been used for at least 10 years. For example under REACH, manufacturers, construction companies, and other downstream users must prepare a chemical safety report for use outside conditions described in an "exposure scenario" or any use that a supplier advises against.

TSCA does not specifically impose requirements on finding safer alternatives for chemicals, while REACH requires an analysis of possible safer alternatives to chemicals of "very high concern." Under REACH, chemical companies are required to attempt to find safer substitutes for chemicals of high concern under the "authorization" process.

TSCA allows chemical companies to claim protection for "confidential business information" covering almost all information provided to EPA, while REACH places limits on what kinds of information may be claimed as confidential. Under TSCA, EPA is limited in its ability to share data provided by chemical companies. REACH provides greater disclosure. For example, a company may not claim confidentiality for information about a chemical's safe use or a chemical's trade name.

Why we should care about the transatlantic trade deal threat to chemicals regulation?

Ineffectively regulated toxic chemicals exact a devastating cost on human health and ecosystems. Therefore, the threat that TAFTA presents to the E.U. system of chemicals regulation, and ultimately to any future reform of the U.S. system based on the REACH model is cause for significant concern.

The effect of TAFTA's chapter on technical barriers to trade could be profound as it would likely limit regulators' access to the tools they need to effectively regulate the roughly 85,000 chemicals in commerce and to effectively protect human health and the environment. A growing body of scientific evidence is demonstrating that many chronic illnesses on the rise in the industrialized world are linked to exposure to toxic chemicals, including many cancers, learning disabilities, asthma,

Alzheimer's and Parkinson's disease, and fertility problems.[xvii] For example, 216 chemicals are associated with increases in breast cancer, including 73 found in consumer products or food. Among the many chemicals suspected of causing learning and developmental disabilities are organophosphate pesticides, such as melaththion. Everyday solvents such as methanol and trichloroethylene (TCE) are associated with Parkinson's disease. Endocrine disruptors, such as BPA found in plastic and the linings of cans and other food packaging, interfere with hormones and may be associated with adverse health impacts including infertility, early puberty and breast cancer, just to name a few.

The effects on wildlife could be similarly profound.[xviii] For example, synthetic chemicals are causing hormone disruption in animals as diverse as alligators, polar bears, and some species of fish, impacting their ability to reproduce. PFOS (Perfluorooctanesulfonic acid) used in stain repellants is a cancer-causing chemical that has been found in European dolphins, tuna, and birds like the common cormorant. The list goes on.

Neonicotinoid pesticides are a key factor in the global die-off of bees, which threatens not only their survival but also a vast array of plants and commercial crops that depend upon bees for pollination. Neonicotinoid pesticides have been restricted by the E.U, and this important regulation is potentially at risk from TAFTA. [xix]

Lisa Archer, director of the food and technology program at Friends of the Earth, U.S., sums it all up: "The transatlantic free trade agreement will give chemical companies and other multinational companies the ultimate weapon, via a secretive, undemocratic process, to destroy the progress we have made over the last decade in the E.U. and in states across the U.S. to protect human health and the environment from toxic chemicals—the stakes couldn't be higher. It's time for politicians on both sides of the Atlantic to stand up and oppose this fundamental attack on our health, our environment and our democracies."

This post is a "first cut" analysis, and will be refined, expanded, and corrected in a definitive issue report to be released later this summer. If you have comments, concerns, or corrections to suggest, please contact Bill Waren at wwaren@foe

SELECTED ENDNOTES

[i] According to a European Commission statement on the launch of U.S.-E.U. trade talks: "In today's transatlantic trade relationship, the most significant trade barrier is not the tariff paid at the customs, but so-called "behind-the-border" obstacles to trade, such as, for example, different safety or environmental standards for cars." European Commission, European Union and United States to Launch negotiations for a Transatlantic Trade and Investment Partnership, 13 February 2013, available at, <http://trade.ec.europa.eu/doclib/press/index.cfm?id=869>. See *generally*, Final Report of the U.S.-E.U. High Level Working Group on Jobs and Growth, February 11, 2013, available at <http://www.ustr.gov/about-us/press-office/reports-and-publications/2013/final-report-us-eu-hlwg>.

[ii] 53 U.S. C. §§ 2601–2629, available at, <http://www.law.cornell.edu/uscode/text/15/chapter-53>

[iii] Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC, available at, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32006R1907:EN:NOT>

[iv] U.S. Trade Representative, 2013 Report Technical Barriers to Trade, available at, <http://www.ustr.gov/sites/default/files/2013%20TBT.pdf>.

[v] The Congressional Research Service reports that: 'The U.S. Government was actively engaged throughout the development of REACH. The Bush Administration expressed concerns about its trade implications for U.S.-produced chemicals. Specific concerns included, increased costs of and time lines for testing chemicals exported to the EU; placement of responsibility on businesses (as opposed to governments or consumers) to generate data, assess risks, and demonstrate the safety of chemicals; possible inconsistency with international rules for trade adopted by the World Trade Organization (WTO); and the effect of the legislation on efforts to improve the coherence of chemical regulatory approaches among countries in the Organization for Economic Cooperation and Development (OECD). Some U.S. chemical industry representatives believe that REACH is "impractical." Industry has expressed objections to the proposed list of "high concern" chemicals, some of which are essential building blocks for the manufacture of other chemicals.' Linda-Jo Schierow, Chemical Regulation in the European Union: Registration, Evaluation, and Authorization of Chemicals, Congressional Research Service, March 1, 2012, p.3, available at, <http://www.fas.org/sgp/crs/row/RS22673.pdf>

[vi] USTR, 2013 Report TBT, supra, p. 62-64

[vii] Lawrence Kogan, Is REACH a Trade Barrier? Chemical Watch, Global Business Briefing, December 2012-January 2013, pp 20-21, available at, http://www.koganlawgroup.com/uploads/CW53_December12_Kogan.pdf; Lawrence Kogan, REACH Revisited: A Framework for Evaluating Whether a Non-Tariff Measure Has Matured into an Actionable Non-Tariff Trade Barrier, American University International Law Review, Vol. 28, No. 2, September, 2012, available at, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2149756.

[viii] The TBT agreement contains no exception for environment and public health measures. It might be argued that the article XX exception in GATT should apply to the TBT, but there is no holding to that effect. The TBT contains only some precatory, somewhat self-cancelling, and presumably non-binding language in the preamble: "... *Recognizing* that no country should be prevented from taking measures necessary to ensure the quality of its exports, or for the protection of human, animal or plant life or health, of the environment, or for the prevention of deceptive practices, at the levels it considers appropriate, subject to the requirement that they are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on international trade. ..." available at, http://www.wto.org/english/tratop_e/envir_e/issu4_e.htm

[ix] The WTO Appellate Body found that the U.S. dolphin safe labeling program violates the WTO TBT agreement. *US-Tuna II*, available at, [http://www.worldtradelaw.net/reports/wtoab/us-tunamexico\(ab\).pdf](http://www.worldtradelaw.net/reports/wtoab/us-tunamexico(ab).pdf) Plaintiffs have recently succeeded in a WTO TBT challenge to U.S. measures related to country of origin labeling.. *US-COOL*, available at, http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds384_e.htm. The Clove cigarettes case is available at http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds406_e.htm.

[xiv] European Chemicals Agency homepage, available at <http://echa.europa.eu/about-us:jsessionid=5F4EA8A4BC2F2065FB6F57EBBA78FE06.live1>

[xv] Chemical Registration and Inspection Service, REACH registration process, http://www.cirs-reach.com/reach/REACH_Registration_Process.html.

[xvi] U.S. Government Accountability Office, Chemicals Regulation: Comparison of U.S. and Recently Enacted European Union Approaches to Protect against the Risks of Toxic Chemicals, August 2007, available at , <http://www.gao.gov/new.items/d07825.pdf>

[xvii] See generally, Safer Chemicals Healthy Families, health report, Chemicals and Our Health, available at, <http://healthreport.saferchemicals.org/>,

[xviii] See generally, WWF, Chemical Contamination in the Mediterranean,: The Case of Swordfish, 2006, available at <http://www.wwf.fi/mediabank/1092.pdf>, and WWF, Causes for Concern: Chemicals and Wildlife, December 2003, available at, <http://www.wwf.eu/?10921/WWF-report-highlights-new-chemical-concerns;>

[xix] Tom Philpott, Europe Bans Bee-Harming Pesticides; US Keeps Spraying, Mother Jones, May. 3, 2013, available at, <http://www.motherjones.com/tom-philpott/2013/05/eu-ban-bee-harming-pesticides-puts-pressure-us-epa>; Lisa Archer, Worst bee die-off in 40 years, Friends of the Earth, U.S. Blog, Posted May. 14, 2013, available at: <http://www.foe.org/news/archives/2013-03-worst-bee-die-off-in-40-years#sthash.Z4Mjppch.dpuf>.

- See more at: <http://www.foe.org/news/archives/2013-06-sinister-partners-transatlantic-trade-agreement--tox#sthash.01bZUKNQ.dpuf>

Baskut Tuncak, Staff Attorney Chemicals Program

Baskut Tuncak is a staff attorney and chemist with the Environmental Health Program at the Center for International Environmental Law (CIEL). Focusing on developing laws and institutions that enable the transition to safer chemicals, Baskut is engaged in the negotiation of international treaties and agreements for chemicals management, in particular the Stockholm Convention on Persistent Organic Pollutants (POPs) and the Strategic Approach to International Chemicals Management (SAICM). Baskut is also engaged in the development of national and regional laws for chemicals management in the European Union, United States and in the Global South. His practice frequently overlaps with international laws for human rights, financial institutions, and previously worked on trade and intellectual property issues out of CIEL's Geneva office. Specific issues of focus in chemicals management include hormone (endocrine) disruption, mining and other extractive industries, and chemicals in products.

Before joining CIEL, he spent several years as synthetic chemist with small pharmaceutical and synthetic biology companies, specializing in DNA synthesis for medicine, alternative energy, and other applications.

Baskut serves as vice-chair of the American Bar Association Committee on "Pesticides, Chemicals Regulation and Right-to-Know," chair of the IPEN working group on Endocrine Disrupting Chemicals, and director of the Association of Plant Breeding for the Benefit of Society. In addition, he serves in various advisory roles to both governmental and non-governmental initiatives. Baskut is based in Washington, D.C. and licensed to practice law in the District of Columbia.

Recent publications include:

- [Paths to Global Chemical Safety: The 2020 Goal and Beyond](#) (co-author) (March 2013)
- [Driving Innovation: How stronger laws help bring safer chemicals to market](#) (Full version). See also [[Executive Summary](#)] [[Resume en Francais](#)] (February 2013)

Recent media coverage:

- [The Not So Super COP](#), Chemical Watch Business Briefing (June 2013)
- [New Research Links Chemical Regulation with Market Innovation](#), Forbes (Feb. 2013)

Mr. Tuncak can be reached at btuncak@ciel.org.



Center for International
Environmental Law

Transatlantic Trade and Investment Partnership (TTIP): Preserving State Authority

State of Maine Citizen Trade Policy Commission
Public Hearing
Sept. 19, 2013

The Center for International Environmental Law (CIEL) is a nonprofit organization that uses the power of the law to protect the environment, promote human rights, and ensure a just and sustainable society. For over twenty years, CIEL has worked with partners around the world to support a positive trade agenda, where increased market access does not undermine environmental protections or human rights. Below we present a summary of a more detailed analysis, including references, which is available on our website and the website of the Citizen Trade Policy Commission.¹

The current system for regulation of chemicals in the United States is wholly inadequate to meet the challenge posed by the modern chemicals economy. The rate of cancer and other adverse effects continues to increase among Americans, especially among children, the increase of which cannot be explained by lifestyle choices or genetics alone. The amounts of synthetic chemicals in our bodies have also increased and are among the highest in the world. Absent greater regulatory action, they will continue to increase. This is an international public health problem

¹ CIEL, *Testimony before U.S. House of Representatives, Committee on Energy and Commerce, Sub-committee on Commerce, Manufacturing, and Trade, Hearing on The EU-US Free Trade Agreement: Tripping over the Regulatory Barriers* (July 24, 2013), available at: http://ciel.org/Publications/Muffett_Statement_24July2013.pdf

that *remains unsolved*. Public health is one of the core responsibilities of a government to its citizens, and this responsibility is not being met with regard to chemicals.

For years, absent necessary action at the federal level, Maine and other states have led efforts in the United States to protect people and the environment from hazardous chemicals. It is imperative that the U.S. does not impede the existing right of states to protect their citizens and future generations from environmental threats, including those presented by over one thousand chemicals of concern in commerce that have been identified by states across the country, including Maine.

The limited information on TTIP, particularly from the United States, makes assessments of its eventual impact inherently speculative. While TTIP *could* offer an opportunity to increase protections in the U.S. and the EU, experience with other trade agreements, industry submissions on TTIP, and the parties' explicit goal of reducing perceived regulatory barriers to trade, make it far more likely that TTIP will hinder progress on chemical safety and potentially move us backward. Of particular concern is this risk that TTIP will be used to weaken the stronger chemicals standards that already exist in some U.S. states and in the EU.

To reduce this risk, TTIP must respect and protect the right of citizens in the United States and Europe, through their governments, to choose their own levels of environmental protection and to set the standards needed to achieve those levels.

- TTIP must avoid measures likely to delay or dilute the creation of new rules for the protection of human health or the environment, including stronger chemicals laws.

- TTIP should not include provisions for mutual recognition for the chemicals sector and other sensitive sectors that reduce domestic regulatory control in crucial public health and safety matters.
- TTIP must not elevate the narrow interests of private corporations above the public good through provisions for investor-state dispute resolution.
- TTIP should not preempt or impede the rights of state and local governments, or of governments outside the United States and E.U., to adopt new initiatives on toxic chemicals and other environmental threats, including their right to choose higher levels of protection for their citizens, and to innovate new and better approaches to achieving that protection when the federal government is unwilling or unable to do so.
- TTIP should not impede regulatory efforts to address emerging threats, such as nanotechnologies, endocrine disrupting chemicals or hydraulic fracturing, which have profound implications for our health and environment.
- Finally, TTIP must be negotiated in an open, transparent and participatory manner that safeguards the universal and fundamental public interest in the outcome of the negotiations. In recent years, the United States has conducted trade negotiations with a secrecy and lack of transparency wholly inconsistent with basic principles of good governance in a constitutional democracy. Secrecy in trade negotiations is inconsistent with the public's right to informed, meaningful participation in a public policy dialogue of profound national consequence on both sides of the Atlantic.

To protect the environmental health and safety of consumers, workers and children around the world, what is needed is not *free* trade agreements, but *better* trade agreements. Agreements that see public protection not as a competing goal but the highest goal, and leverage the power of

markets to serve the global good. Agreements that enhance trade by strengthening and advancing environmental health and safety standards rather than viewing them as irritants to be reduced and eliminated.

CIEL looks forward to participating in open, transparent and inclusive dialogues with states and the Federal Government on whether and how such an agreement can be achieved.

Testimony to Maine CTPC Public Hearing- 9.19.13

Sarah Bigney, Maine AFL-CIO

Good evening, my name is Sarah Bigney and I am here as a representative of the Maine AFL-CIO.

It is a delight to be back with you, as many of you may remember I was honored to serve on this Commission a few years ago. Thank you for your service on this important issue. It takes a special kind of person to voluntarily dive into the weeds of international trade policy.

The Maine AFL-CIO is a federation of over 160 local unions representing nearly 30,000 workers and retirees from across Maine, from shipbuilders to nurses, from bus drivers to paper makers, and hundreds of other industries and workplaces. Our members, these Maine workers, are very disturbed by the negotiations happening for the TPP. First and foremost, the secrecy and lack of transparency is incredibly alarming.

We know the NAFTA has failed us. It has resulted in immense job loss in Maine and across the U.S. It has driven down wages, working conditions, and environmental standards across the board.

And yet we have watched our Congress pass dozens of free trade agreements modeled exactly after NAFTA. Panama, Colombia, South Korea. All of the CAFTA countries. The list goes on.

We're not opposed to trade. But we are opposed to rigged deals that benefit multi-national corporations while leaving the rest of us behind. That's exactly what the NAFTA model has done and will continue to do until we create a fundamentally different trade model that benefits workers and increases wages, that creates jobs, and that protects resources like our air and water.

All we have is broken promises from past trade agreements. The American people were told that the South Korea Free Trade Agreement would be a job creator for the U.S., but it has not been. Our trade deficit with South Korea rose 30% in the first year, meaning job loss, not job creation. Imports from South Korea are up and exports to that country are down.

I have had the privilege to sit and talk with people who have been personally impacted by free trade. With Gaylene and Wendell who lost their jobs in Ashland when the saw mill shut down and moved just across the border to Canada. I am here for Mike, and Debbie, who lost their jobs at the paper mill in Jay when the company shut it down, as meanwhile new paper mills come online regularly in China, where there are no worker safety protections, and nobody stopping the mills from dumping chemicals into the river. I have sat with women my age and younger who came to speak with me leaving their shift at the maquila in Nicaragua, a place where they work incredibly long hours and they do not earn a wage on which they can support their families. I've walked the land of a corn farmer in El Salvador who has no way to provide for his family since CAFTA because cheap, subsidized corn is dumped on their market from the U.S., and sells for less than he can buy the seed and fertilizer to grow it.

These rigged trade deals have created a global race to the bottom, with disregard for worker's rights, food safety, or the environment.

In addition to these problems, we are now seeing more and more cases of governments and companies suing using trade rules to undermine local laws that are designed to protect our communities. This Commission has been speaking out loudly against these investor state provisions for a decade. You must not let up your efforts to combat these anti-democratic provisions that usurp local control from our towns, states, and our nation. Congress should not approve another free trade agreement that includes these investor state provisions.

This model is failed- and from all we know (because we aren't allowed to know anything) the TPP is based in this failed model.

We cannot support any trade deal that does not fundamentally change these rules.

These are the rules, the rule book of the global economy. The rules are rigged to benefit and even incentivize multi-national corporations to profit from moving production from country to country to find the lowest wages and environmental standards.

Specifically, we know the countries involved with the TPP have a problem with respecting labor. One of the fundamental rights of workers is the freedom of association- the right to form a union at their workplace.

Vietnam is currently being marketed as the "low-cost labor alternative" for corporations who feel that Chinese sweatshop workers are overpaid.

The U.S. State Department noted in 2010 that independent labor unions, and even opposition political parties, are illegal in Vietnam — with dissidents who've attempted to form both currently behind bars. The oil-rich Sultanate of Brunei is hardly any better; there is virtually no union activity in Brunei, nor any legal basis for collective bargaining or strikes.

The most important thing right now is the process we as a country will chose to use to decide future trade policy.

Trade Promotional Authority, commonly known as Fast Track, is an absolutely unfair and undemocratic method for the President to use to gain approval for future trade deals like the TPP. As you know, Fast Track would prevent debate and block any amendments from coming forward. It is a bad form of decision making, and unfair to the American people.

I ask the Commission to work closely with Maine's Congressional Delegation to ask them to vote against Trade Promotional Authority that limits debate, rushes the process, and forces future trade policy decisions to be made without public input and discussion.

Testimony to the Maine Citizen Trade Policy Commission
September 19, 2013

Senators, Representatives and Honorable Members of the Commission,
My Name is Cynthia Phinney. I am the President of the Maine Fair Trade Campaign and am pleased to be able to speak to you this evening. I served on the Commission as a representative of labor for the first several years of the Commission's existence, so I know the commitment that it represents in terms of both time and the wide array of topics you need to grapple with. So I thank you for serving and for being here tonight.

Our organization is a coalition of groups working for Fair Trade in Maine. Our members are labor organizations, community organizations, environmental groups, social groups, food and agricultural organizations among others.

As I'm sure you are aware, the Trans Pacific Partnership Free Trade Agreement is being negotiated in secret. Only a limited number of people are allowed to see the text and they are not allowed to share what they read. While our elected Congress people and Senators are now allowed to see the text, they cannot leave the room with any notes and may not discuss the contents of what they have seen with anyone, including their staff. What we know about its contents is only what has been leaked, but what we've heard concerns us deeply.

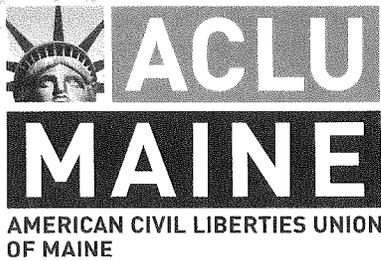
What we understand we can expect in this agreement is investor/state provisions on the same model as NAFTA and similar trade agreements. This is the model that allows companies to sue governments if they feel that a law or regulation creates a "barrier to trade", or in other words if it would impinge on potential profit. And these suits as I'm sure you already know are heard by trade tribunals, behind closed doors, outside of our justice system. They are not bound by precedent and do not need to make public the reasons for their rulings. These provisions allow bodies outside our country to intimidate or overturn the work of our elected legislative bodies, and can cost governments great expense defending against such suits.

Some of you on the Commission may remember when Christina Sevilla from the USTR office came to address the Commission. One of the questions we asked her at that meeting was whether these kinds of provisions might put Maine's anti-sweatshop purchasing rules at risk. She told us no, but when questioned about what made her conclude that she was not able to cite any actual protection – only that she said that wouldn't happen.

But in the years since, even though that law has not been attacked, we have seen many such attempts to use the Trade agreement to overturn or escape regulations. A company in Quebec, Lone Pine, was upset about a temporary moratorium on fracking beneath the St. Lawrence. Even though their headquarters is located in Canada, they also have an address in Delaware. So their company was able to use the provisions in NAFTA and has announced an intent to sue for \$250 million. Similarly, Ely Lily has sued for \$500 million, again using the NAFTA provisions that we expect to be mirrored in the TPP.

Although I did not see it on the CTPC website, we did see an article online stating that the Commission unanimously backed a resolution urging the federal government to reject the President's request for Fast Track authority when bringing the TPP to Congress for approval. We applaud this action by the Commission. A document of a thousand or more pages that has been negotiated in secret and then given to Congress with a limit of the time they have to discuss and debate it and offering them the option only of an up or down vote makes a mockery of what we elected them to do.

I know you will hear important testimony today on some specific topics that this trade agreement could or would affect. Thank you again for taking the time to understand and respond to these issues.



121 Middle Street, Suite 301
Portland, Maine 04101
T/ (207) 774-5444
F/ (207) 774-1103
www.aclumaine.org

TESTIMONY OF ANNA ACKERMAN

Submitted to Maine's Citizen Trade Policy Commission

September 19, 2013

Senator Jackson, Representative Treat and members of the Citizen Trade Policy Commission, greetings. My name is Anna Ackerman, and on behalf of the American Civil Liberties Union of Maine and its hundreds of members throughout the state, thank you for inviting the ACLU to testify before the Citizen Trade Policy Commission this evening.

The ACLU of Maine believes the Trans-Pacific Partnership Agreement (TPP) raises significant concerns about citizen's freedom of expression, due process, innovation, and the future of the internet's global infrastructure. Although TPP has been branded as a trade agreement, only five of the twenty-nine draft chapters cover traditional trade matters, according to Ben Beachy, the research director for Public Citizen's Global Trade Watch.¹ The remaining chapters could rewrite a broad range of domestic policy that affects our daily lives. If agreed to, TPP will impact the way Congress intervenes and acts on behalf of the American people it represents.

While the ACLU believes that the First Amendment can be served by effective intellectual property protections that provide artists, writers, scientists, innovators and creators with the incentive to innovate and create, any IP enforcement regime must be crafted carefully and after full public deliberation.² This is not the case with TPP. Senator Ron Wyden, chairman of the Senate Finance Committee's international trade subcommittee, has himself been denied access to any text pertaining to the negotiations of this multilateral trade agreement.

Senator Wyden is not the only one who has been barred from viewing the details of TPP negotiations. The majority of Congress is being kept in the dark, and consumer and advocacy groups are also completely shut out of the conversation. However, according to Senator Wyden, "U.S. corporations like Halliburton, Chevron, PHRMA, Comcast, and the Motion Picture Association of America are being consulted and made privy to details of the agreement." The secretive nature of TPP negotiations is the antithesis of democracy.

¹Beachy, Ben and Lori Wallach. "Obama's Covert Trade Deal." 2 June 2013.
<http://www.nytimes.com/2013/06/03/opinion/obamas-covert-trade-deal.html>

²Fulton, Sandra. "The Biggest Threat to Free Speech and Intellectual Property That You've Ever Heard Of." ACLU Washington Legislative Office. See attached.

TPP also raises concerns about free speech and privacy online. We are concerned that an overly broad policy to police copyright infringement would increase potential for the takedown of non-infringing content as well. We are also apprehensive about any provision that would create legal incentives for internet service providers to increase surveillance of Internet activity in search of suspected copyright infringement, which would violate the privacy of users.

The ACLU does not believe that domestic intellectual property law can or should be changed through international agreements. While the administration insists that TPP will not change substantive U.S. law, signing the agreement would likely make it more difficult for Congress to update copyright laws while keeping in compliance with new international obligations.

We are very concerned that the President is circumnavigating constitutional checks and balances by wrongly asserting fast-track authority in order to negotiate the agreement without Congressional oversight. The United States Trade Rep is negotiating TPP without meaningful public consultation, and negotiations have been placed on an artificial fast-track. Shielding proposals and agreed-upon language from the public until after negotiations have concluded and the agreement is finalized is inconsistent with democratic principles.

Thank you.



The Biggest Threat to Free Speech and Intellectual Property That You've Never Heard Of

August 29, 2012

By [Sandra Fulton](#), ACLU Washington Legislative Office at 3:22pm

As we have seen in the failed attempts of [SOPA/PIPA](#), and the [floundering Anti-Counterfeiting Trade Agreement](#), intellectual property (“IP”) laws are often poorly constructed, hastily proposed and ultimately both ineffective and potentially abusive.

Now, the latest threat to free speech in guise of IP reform is a multilateral trade agreement currently being negotiated (in secret) by the [Office of the United States Trade Representative](#) (“USTR”). That agreement—the [Trans-Pacific Partnership](#), or “TPP”—would reportedly include dramatic changes to intellectual property laws, changes that could potentially permit the patenting of plants, animals, and medical procedures.

And, while some of the proposed changes run contrary to enacted federal law, the USTR is not only pushing for TPP, it is doing its best to avoid congressional oversight. For instance, they recently rebuffed a request from the staff director on the Senate Finance Committee's international trade subcommittee to review documents pertaining to the negotiations. [Senator Wyden, chairman of the subcommittee, wrote:](#)

[M]y office is responsible for conducting oversight over the USTR and trade negotiations. To do that, I asked that my staff obtain the proper security credentials to view the information that USTR keeps confidential and secret. This is material that fully describes what the USTR is seeking in the TPP talks on behalf of the American people and on behalf of Congress. More than two months after receiving the proper security credentials, my staff is still barred from viewing the details of the proposals that USTR is advancing.

USTR later gave in a bit and allowed the Senator himself to view the documents but still refused the staffer's access.

Prominent senators aren't the only ones being kept in the dark. Consumer and advocacy groups are also totally shut out of the negotiations, while certain interested corporations have a preferred seat at the table. As Senator Wyden further explained:

The majority of Congress is being kept in the dark as to the substance of the TPP negotiations, while representatives of U.S. corporations – like Halliburton, Chevron, PHRMA, Comcast, and the Motion Picture Association of America – are being consulted and made privy to details of the agreement.

Aside from the cloak and dagger nature of the negotiations, some of the most troubling aspects of the TPP are significant expansions of patent protections. While we tend to hear a lot about how IP regulations will affect online content, leaked versions of TPP would require the signatory countries to permit the patenting of plants and animals as well as diagnostic, therapeutic and surgical methods of treatment of humans or animals—all without explicit limits on enforcement. Current U.S. law forbids the enforcement of surgical patents against medical practitioners for good reason. We do not want doctors wondering if they'll be risking a patent infringement suit every time they want to try a new surgical technique.

While the ACLU believes that the First Amendment can be served by effective IP protections that provide artists, writers, scientists and other innovators and creators with the incentive to innovate and create, any IP enforcement regime must be crafted carefully and after full public deliberation. Expect to hear much more about TPP in the coming days. We'll be digging into the leaked draft, and will continue to raise concerns with the USTR and Congress about both the secrecy of the negotiations and the substantive problems in the agreement. The patent laws must yield to the First Amendment, and it seems likely that the opposite has been true in the USTR's efforts on TPP.

Learn more about intellectual property: [Sign up for breaking news alerts](#), [follow us on Twitter](#), and [like us on Facebook](#).

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**To: Senator Troy Jackson
Representative Sharon Anglin Treat
Members of the Citizen Trade Policy Commission**

**From: Becky Smith, Government Relations Director, Maine
American Heart Association, Founders Affiliate**

Jessa Barnard, Associate General Counsel, Maine Medical Association

Tina Pettingill, Maine Public Health Association

Date: September 19, 2013

RE: Trans-Pacific Partnership (TPP) Trade Agreement

Attached you will find the statement of Campaign for Tobacco-Free Kids, American Cancer Society Cancer Action Network, American Heart Association, American Lung Association and American Academy of Pediatrics. This statement opposes the weakening of the tobacco provisions in the proposed PTT.

The Maine Medical Association and the Maine Public Health Association would like to add our voices to this statement as well.

Tobacco use is the #1 cause of preventable death in Maine, the United States and around the world. Tobacco use costs Maine over \$600 million in health costs each year. Our adult smoking rate is at 22.8%--higher than the national average of 18%. Although we have made strides in our high school smoking rate, we have stagnated at 15%. This is unacceptable.

We need every tool available to reduce our rates of tobacco use. This includes strong international agreements. The tobacco industry is using lawsuits, or the threat of lawsuits, to combat effective public health measures around the world. Their lawsuits, combined with the \$8.4 billion they spend in the US for advertising (including \$40.9 million in Maine) are making it much harder for those of us who spend every day trying to keep kids from starting to use tobacco.

For the sake of our friends and neighbors here in Augusta around the world, we need to be a leader and do what we can to reduce tobacco use.

FOR IMMEDIATE RELEASE: August 19, 2013

CONTACTS:

Peter Hamm, Campaign for Tobacco-Free Kids, 202-296-5469

Lauren Walens, American Cancer Society Cancer Action Network, 202-661-5763

Retha Sherrod, American Heart Association, 202-785-7929

Gregg Tubbs, American Lung Association, 202-715-3469

Jamie Poslosky, American Academy of Pediatrics, 202-724-3308

USTR Abandons Plan to Protect Tobacco Control Measures under Trans-Pacific Partnership Trade Agreement

Statement of Campaign for Tobacco-Free Kids, American Cancer Society Cancer Action Network, American Heart Association, American Lung Association and American Academy of Pediatrics

WASHINGTON, DC – It is disappointing that the United States Trade Representative (USTR) has retreated from a proposal to the pending Trans-Pacific Partnership (TPP) trade agreement that would have made it more difficult for tobacco companies to challenge domestic tobacco control measures under the terms of international trade agreements. The U.S. is negotiating the TPP with 11 other countries, with the next round of negotiations scheduled for August 23-30 in Brunei.

Previously, USTR in May 2012 had announced it would propose new language to the TPP that would have created a “safe harbor” protecting national tobacco control measures from being challenged under the agreement. USTR stated at the time that the proposal would “explicitly recognize the unique status of tobacco products from a health and regulatory perspective.” Our organizations have urged – and continue to urge – USTR to move forward with this proposal and ensure nations can take effective action to reduce tobacco use, which is the number one cause of preventable death in the U.S. and around the world.

Instead, USTR is abandoning this proposal and has announced that it will offer language explicitly reaffirming that tobacco control measures are included in a provision of the General Agreement on Tariffs and Trade (GATT) that recognizes nations’ authority to enact health and safety measures. This is the first time tobacco would be singled out as being included in the public health exception to the GATT. However, this language is far weaker than USTR’s original proposal, would not cover lawsuits initiated by tobacco companies and would not provide nations that adopt strong tobacco control measures with the protection they need from tobacco industry challenges.

The new USTR proposal does not recognize tobacco as a uniquely harmful product or provide a safe harbor for nations to regulate in order to reduce tobacco use, as the initial proposal would have done. The new proposal states the obvious – that tobacco control measures involve public health – and then directs public health officials from the countries that are party to the trade agreement to consult each other before launching tobacco-related trade challenges.

The end result is that the Obama Administration's strong commitment to reducing tobacco use in the United States will remain vulnerable to international trade challenges, and other trading partners will remain vulnerable to such challenges as well.

The tobacco industry and its allies in government increasingly use trade and investment agreements to challenge legitimate tobacco control measures, and have done so specifically against laws adopted in the U.S., Australia, Uruguay, Ireland, Norway and Turkey. Indonesia filed a World Trade Organization challenge to a U.S. prohibition on fruit- and candy-flavored cigarettes. Tobacco companies and several countries have filed trade challenges to Australia's law requiring that cigarettes be sold in plain packaging, while Philip Morris International has used an investment agreement to challenge Uruguay's tobacco control laws, including its requirement for large, graphic health warnings. These costly challenges are aimed not only at defeating tobacco control measures, but also at discouraging governments from enacting them in the first place.

It is doubtful that the new USTR proposal would put a stop to these industry challenges. This proposal also disregards the global consensus that nations must act to reduce tobacco use pursuant to the world's only public health treaty, the Framework Convention on Tobacco Control (FCTC), and more recently the United Nations Political Declaration on Noncommunicable Diseases. To date, 177 countries are parties to the FCTC treaty, obligating them to implement measures to reduce tobacco use.

Unless nations take strong action, tobacco will kill one billion people worldwide this century. This is a missed opportunity for the United States to lead the fight against this global epidemic.

Statement for the CTPC Public Hearing Thursday, September 19, 2013
A perspective of peace on the Trans-Pacific Partnership

A great thing working against peace is a competitive structure of acquisition and control of the world's natural resources, labor and production systems, and economic and trade policies.

Those being controlled and manipulated don't want this.

And those holding on to control use terrible means to maintain it.

The talk is about the market, but the reality is manipulative and military dominance.

Eleven nations are seeking a negotiation called **Trans Pacific Partnership (TPP)** while at the same time, it is quite clear to the global public that the United States is implementing a "pivot" to surround China with naval ships and align installations and resources militarily.

There are many unanswered questions about this surrounding of China while at the same time developing a huge trade agreement that does not include China.....these are not things that make for peace.

Comments about Global Trade Policies

These trade agreements are indeed issues that affect peace in our world. If nations cannot work together making decisions about commerce and other matters, it bodes poorly for getting to a peaceful world.

If so-called trade agreements are establishing iron-bound policies about the economics of nations, about whether a state can have buy-local programs, or prioritize its own farming and other production, these are matters that affect the nature of wars and of peace possibilities.

---One premise in trade agreements is that food should be treated like any other good or commodity subject to market forces and covered by the same trade rules as tin or tires. As a result, millions of peasants have been losing their livelihood and have been forced off the land. The Agreement on Agriculture would transform food and seeds to commercial units. Due to factory farming, the US lost 38,310 small farms between 1995 and 2002. (Public Citizen) The only beneficiaries are the global commodity-trading companies. And they write the rules.

600-plus corporate advisors from the largest financial, insurance, healthcare, manufacturing, big Agriculture and Pharmaceuticals, oil and gas corporations, the Business Roundtable and the U.S, Chamber of Commerce have "security clearance" to the negotiating documents. Our own congress members cannot participate. Senator Wyden, Senate Trade Sub-Committee Chair (who has security clearance to nuclear secrets) had to file legislation for the right to see the text over which he has oversight.

---The mechanism called "investor-state" enforcement allows firms to skirt domestic court systems and directly sue governments for cash damages over alleged violations of new rights. The complaints are judged by private sector attorneys, and there is no appeal.

A corporation sues when governments enact laws or regulations which interfere with the corporation's expected profits. Over \$350 million in compensation has been paid to corporations under existing U.S. agreements. More than \$14 billion is in pending claims just under United States trade agreements. These include payments over toxic bans, land-use policies, forestry rules, etc. (David Swanson, davidswanson'sblog, July 2013)

---Under NAFTA, Ethyl Corporation challenged a Canadian ban on gasoline additive MMT because it would "indirectly expropriate their anticipated profits". Canada was forced to pay Ethyl \$13 million in damages, drop its ban on the additive MMT, a known toxin, and publically proclaim that MMT is "safe" in direct contradiction to the view of its national environmental protection agency.

---Also, Mexico had to pay \$ 16.7 million to Metalclad Corporation because the Mexican state of San Luis Potosi prevented future profits by not allowing a toxic waste disposal site, claiming that the environmental zoning law forbidding the dump constituted an effective seizure of the company's property. Metalclad had taken over the facility and the Governor of the state refused to allow Metalclad to reopen because environmental assessment revealed the site to be atop an ecologically sensitive underground alluvial stream.

You could say that trade agreements are a lawyer's paradise. Any agreement ratified by nations, such as the Colombia/United States Free Trade Agreement, calls for major policies. In particular – and this is true of all agreements harking back even before NAFTA – there is in effect a process by which a corporation can sue a country for any law or regulation implemented which it claims interferes with its *potential* for making a future profit. This claim, presented by corporate lawyers will be decided by three lawyers designated out of an approved pool. It will not be determined by anyone who was ever elected or who has any accountability to the governments involved. If the tribunal, which is what the three lawyers are called, decides a country is wrong, i.e. interfering with the potential profit, it can require the government of the country to change its laws and/or pay a fine.

---(Public Citizen) Leaked TPP documents indicate an expansion of the investor-state model already in force. There will be more rights for thousands of corporations. They even challenge essential financial sector regulation. For example, if the United States considers it wise and beneficial to reinstate the Glass-Steagall act which separates the economic privileges of banks and investment firms, the TPP as now drafted will allow the possibility to strike that down.

Another thing about the Trans Pacific Partnership, even though Congress must vote to approve it, Congress has not seen the agreement, and will not have read it at the time it is called to vote. Most of the regulations in some twenty-nine parts have been kept secret.

These are not things that make for peace. These are things that hand over authority for country policy to corporations.....not corporate personhood, but corporate nationhood, says David Swanson.

Because this is all complex, and because there is some interesting history which helps the perspective, copies are attached of one of the most accurate and succinct pieces I've seen, focusing at the point after the 2003 WTO Ministerial meeting collapse in Cancun. The meeting failure is a rather hopeful moment because many nations of the South refused to capitulate to demands, ridicule, manipulations and other tactics (from the US and the European Union primarily). The nations of the South – not without their own imperfections and issues – realized that they had to refuse to submit to what countries of wealth demanded. And they refused. This was the same year that a Korean farmer, who had traveled to

Cancun with the Korean citizens contingency, committed suicide with the declaration "WTO kills farmers."

The paper ends hopefully, and from a Peace perspective this looks more like the kind of world which allows people to take positions and have opinions and work things out within bodies such as the WTO which meet to address concerns – with some fairness.

However, what we know since 2003 is that 1) the WTO became nearly defunct in 2006 because countries stood up for their rights and the powerful countries would not accept that.

2) The United States in particular, but with Canada and the EU and others, has indeed pursued its objectives through a whole series of bi-lateral and multi-lateral trade agreements, each one developed by and for the corporate interests, each one a lawyers guild, each one structured to reach into the United States or into Vietnam or into Maine or Mexico, to control laws and regulations that achieve corporate objectives.

Some failed. The Free Trade Area of the Americas failed to become fact because the resistance was so powerful. The Multi-lateral Agreement on Investments (MAI) failed, but its issues have been picked up in other trade agreements.

In brief summary, it can be said that if you want fair trading opportunity or if you want peaceful opportunities between nations, it is best to oppose the entire package and to urge our Congressional delegation to vote against it. This isn't about one item like making sneakers or growing potatoes. It is not about seafood or farming or mining. It over-reaches all of these matters. The TPP will probably require that the US must receive seafood from Vietnam and from Malaysia that doesn't meet U.S. safety standards. (The FDA only inspects 1% of imported seafood now.) High levels of contaminants have been found in Vietnam's seafood. Any U.S. food safety rule on pesticides, labeling, or additives that is higher than international standards could be challenged as an "illegal trade barrier." Without the food protection requirements that we hold significant, these trade regulations therefore undermine our own seafood industry. And the TPP will probably limit labeling the source of the fish products.

These issues are seen as significant to the well-being of individuals and their countries, and that is why we speak to it.

The second paper included is a very brief commentary on TPP, with two notes I inserted from my sources, and the reminder that a "No" vote is essential.

What the Trans Pacific Partnership agreement is addressing is in twenty-nine different sections, and only five of them are about trade. Furthermore, because of the way these agreements are brought to our nation, it is the Congress which must vote to approve them, and if they do that, the agreements are as fixed in law as our constitution.

Written by Grace Braley, Portland, gbraley55@gmail.com -- September 19, 2013

The Biggest Trade Deal You've Never Heard Of

Commentary by Kristen Beifus, YES Magazine, Summer, 2013

NHK Broadcasting, Japan's equivalent of the BBC, contacted me last month, wanting a statement on the American public's reaction to the TransPacific Partnership (TPP) negotiations.

A supersized NAFTA, the TransPacific Partnership is a free-trade agreement whereby countries give foreign corporations rights and privileges to encourage investment and global business. The TPP was a major issue during Japan's recent national elections, when thousands took to the streets in protest. It was hard for the Japanese journalist to believe me when I explained that there is little awareness of the TPP here in the United States, because our media has hardly covered the subject.

The corporate powers granted in the TPP can override domestic laws on environmental health and safety, and labor and citizens' rights. Not only that, but multinationals can claim that those domestic laws hamper free trade and sue member countries for millions of dollars. The TPP is in many ways an attempt to revive the stalled expansion of the World Trade Organization.

----notes GB ---- After years of citizens crowding WTO meetings to closure for a number of years in different countries, as Trade Ministers walked out abruptly each time, refusing to do what the handful of wealthiest nations were pressuring to achieve, the WTO was finally stalled in 2006, when officials announced that negotiations to expand the WTO's scope and jurisdiction called the Doha round, were suspended indefinitely.----

At present, the TPP talks include 12 Pacific Rim countries: Canada, the United States, Mexico, Peru, Chile, New Zealand, Australia, Singapore, Malaysia, Brunei, Vietnam and, most recently, Japan. Thailand and the Philippines have expressed interest, and other countries would be allowed to join the TPP at any time.

Although trade deals have potentially huge effects on the economy, environment, and food sovereignty of communities throughout these 12 countries, the TPP negotiations are being held in secret between unelected government officials and representatives from more than 600 of the world's most powerful corporations. The United States has plenty of interests clamoring for the trade advantages of the TPP, while developing countries like Vietnam see the TPP as an opportunity for economic development. But the AFL-CIO, one of the few non-corporate and non-governmental entities that have access to the text of the agreements, does not support the TPP in its current form because of implications for labor and human rights.

The talks are scheduled to finish by October of this year. Meanwhile, negotiators are lobbying Congress to grant "Fast Track" authority for the TPP. That would mean Congress couldn't revise the agreements and could only vote "yes" or "no" to the United States joining the TPP.

Leaked documents show how extensive the reach of the TPP would be. It is shaping up as a corporate takeover of public policy that would impact safe food, sustainable jobs, clean water and air, access to life-saving medicines, education, even our very democracy. After 20 years under NAFTA we know the likely impacts for people and the environment.

----notes GB----Clean Air case: Under WTO, Venezuela challenged the US Clean Air Act regulation that required cleaner gas than Venezuela was producing and exporting. The claim was that the US rule was biased against foreigners and a WTO panel ruled against the US law in 1997. Since then the US has been buying dirtier gasoline, to the deterioration of air quality. In this way, the WTO can have the power to undermine or overrule legislation of any country challenged.----

In March, Citizens Trade Campaign organized a letter to Congress signed by 400 U.S. organizations outlining expectations for public involvement and calling for an end to Fast Track. It was signed by, among others, the Sierra Club, Doctors Without Borders, Public Citizen, the National Family Farm Coalition, and state trade justice groups including my organization, the Washington Fair Trade Coalition. Polls show the majority of Americans believe that offshoring jobs and NATA-style free trade deals have hurt the U.S. economy, so it's likely that Americans would be opposed to the TPP too – if they knew more about it.

The last round of TPP talks was held in May in Lima, Peru. An International Day of Action was carried out, International Fair Trade Day. TPPs-Border, a network of groups in the United States, Canada, and Mexico resisting the TPP, organized actions in May and beyond. Visit TPPxBorder.org.

-----Notes GB-----Sometime after October, the United States Senate will be asked to vote their approval for the TPP. Between now and then there is strong possibility of pressure for “Fast Track” approval which would mean that the Senate could neither amend nor hold up any part of the package, but would be pressured to vote for it in its entirety, largely unread by any Senator.

October 2, 2003

A lengthy piece on Cancun and the WTO, from 50 Years Is Enough. Please re-distribute this article, citing source. If you want on/ off this list: info@rightsaction.org.

For information about Rights Action's educational-activist speaking tour -- "From CANCUN to MIAMI, from the WTO to the FTAA" --, contact: info@rightsaction.org, 416-654-2074.

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ONE VERY BIG NO: The WTO Stalemate in Cancún, By Soren Ambrose

[50 Years Is Enough: U.S. Network for Global Economic Justice, 202-463-2265, 50years@50years.org, <http://50years.org>]

The World Trade Organization (WTO) is a paradoxical institution. It was founded on the ostensible notion of "free trade" improving living standards around the world, but its agreements serve mainly corporate interests in North America, Europe, and the developed Asia-Pacific region (Japan, Australia, New Zealand). Its structure holds out the hope of democracy and equal participation, but in practice it is the scene of tremendously coercive political and economic manipulation. The most frustrating irony is that for all the energy and resources spent on strategizing, analyzing, and negotiating at the WTO, for the majority of its member countries (and most of the non-governmental organizations and street protesters who plague it), the outcome at the Cancún summit (September 10-14) -- no agreement whatsoever -- was the greatest triumph they could have hoped for. No wonder politicians from India to Africa occasionally wonder just why their governments stay in the organization.

With the stalemate in September, Cancún looks destined to join Waterloo, Stalingrad, and Seattle as one of those place names that graduates to shorthand for a historic event. This event, the second of the five summits to end in failure, will likely be celebrated as the first time that developing countries -- the Global South -- united to refuse the economic aggression of the wealthy Northern countries, and in particular the United States, the European Union, and Japan.

A Whiff of Democracy

No one would confuse the WTO with a democratic institution. Its flaws, and in particular the unfair advantage that wealthy countries have in the negotiations, have been explored at length over its eight-year life. But some hope always flickered, particularly because the organization makes decisions through consensus of its 146-government membership. Practically speaking, apart from the United States government, which is becoming alarmingly adept at it, there is probably no single country that would feel able to alone face down the rest of the world to scuttle an agreement. But with sufficient mutual support, even a group of poor countries could stop the WTO.

This hint of democracy, of requiring the active consent of those who will be affected by an agreement, would be nearly unthinkable at, say, the World Bank or the International Monetary Fund (IMF), whose imposition of outlandishly destructive economic policies on indebted countries helped set the stage for the WTO. (Indeed, a week after Cancún, the two older organizations refused to consider, at U.S. insistence, a proposal to slightly increase African representation on their boards.) But to say that the WTO is the most democratic of the multilateral institutions is more a reflection of the lack of democracy in international structures than a tribute to the WTO.

The Peninsular Mentality: From Seattle to Doha to Cancún

Cancún was not a re-play of Seattle, where well-organized protesters both among the civil society groups inside the convention center and on the streets outside combined with government delegates embittered by the arrogance of the U.S. hosts to shut down the effort to begin a new round of negotiations. As it turns out, the leadership of the WTO did not learn much in Seattle, but they have made sure to hold their bi-annual summits in easily-controlled locations far from the turf of tenacious protesters (such as the forest activists of the Northwest U.S. who were more than happy to trek to Seattle and teach others their tactics). The November 2001 summit was held in Doha, Qatar, one of the principalities on the Arabian Peninsula where freedom of expression is sharply restricted, and the 2003 conference took place on a narrow, single-road peninsula consisting entirely of resort hotels just outside the city of Cancún, which is itself on the remote Yucatan Peninsula in Mexico.

The government delegates were, as a result, rarely disturbed by demonstrations of public opinion. The great bulk of those who came to Cancún to protest the WTO were kept in the city and off the exclusive peninsula, where access was controlled by a series of temporary metal barriers. But unless you were traveling in a large group or with banners and placards, you stood a good chance of getting to the resort area on the abundant public buses, since the authorities, mindful of interfering too much with business-as-usual in the most popular tourist destination in the world, did not want to shut out the hotel workers or the U.S. tourists that keep it raking in dollars.

The protesters who got to the inner gates encircling the convention center did banner-drops, mounted "street parties," and formed picket lines. They did not shut down the meetings, but they were instrumental in reminding the delegates that there was a world outside, one where the WTO is not very popular. In tandem with the mass protests downtown and guerilla media stunts inside the convention center, they provided the essential context for the different kind of resistance that broke the Cancún summit: the willingness of developing country governments to step up and say, simply, "no."

OUTSIDE: Demonstrations and a Death

Opponents of the WTO came to Cancún from at least 40 countries. The numbers were smaller than some predicted -- particularly those influenced by the inflated-expectations game now a familiar part of local authorities' fear and hype tactics at each "globalization" gathering. Many articles had predicted 50,000 protesters, with one or two doubling that number. But organizers on the ground always knew that such numbers were unlikely to materialize in Cancún, which is one of the most remote spots in Mexico. There are many flights, but more affordable means of transportation are scarce.

Indeed Cancún today is largely a product of contemporary globalization. Starting with a program funded by the World Bank 30 years ago, massive and lavish resort hotels, now numbering over 100, line the peninsula on the beautiful Caribbean coast. The hotel workers are mostly internal migrants who live in the city, many with intermittent or no power or water provision -- a sharp contrast to the unlimited supply on tap for the tourists. The workers receive daily wages roughly equivalent to the price charged for two 20-ounce bottles of water in the Hyatt, Marriott, or Ritz Carlton resorts.

There were approximately 10-15,000 people at the height of the protests, which came at the time of the conference's opening ceremony on Wednesday, September 10. The march that day was organized by Via Campesina, the international network of small-scale agricultural producers, and was both spirited and sober, conscious of the gravity of the plight faced by most of the farmers there, who are engaged in a losing battle with a rigged global trading system that keeps commodity prices artificially low, undermining non-corporate agriculture everywhere. Most of the marchers were from Mexico, naturally, but there were farmers from West Africa, Japan, the United States, India, South Korea, and many Latin American and Caribbean countries. The Korean delegation was particularly impressive -- nearly 200 people from the other side of the world, most of them farmers, along with a contingent from the Korean Confederation of Trade Unions.

The Koreans ended up surprising the other marchers by mounting a charge against the main barricade, erected some 10 kilometers from the convention center. The charge, with a battering ram reported to look like a dragon, certainly heightened the intensity of the action. But it was the action of a Korean farmer named Lee Kyun-Hae a few minutes later that claimed the headlines and set the tone for the rest of the protest actions in Cancún. Lee climbed the fence with a sign reading "WTO Kills Farmers" and stabbed himself in the chest, performing a "self-immolation." Such suicides have become common among small-scale farmers in Asia when they find they cannot maintain their livelihood, and are not unheard of among U.S. family farmers. By committing his suicide at the WTO summit, Lee put the corporate-biased agricultural policies of the WTO in the spotlight with undeniable pathos, a searing attack on the WTO's human impact that no one could ignore.

Lee's death ensured the demonstrations carried a gravity befitting their message, a tone which may otherwise have been lost in media reports focused on comparing the turnout to the numbers predicted by the authorities. Inside the convention center, activists made sure that Lee's sacrifice was heard by mounting an impromptu memorial service at the media center and taking over an auditorium to hold an unscheduled press conference.

Saturday's march ended up being smaller than Wednesday's, largely because most of the campesinos who had participated in the first action could not afford to stay so long in Cancún. But it was a well-organized expression of solidarity between students and farmers, North Americans, Koreans, and Mexicans. Its climax came when a group of women took wire-cutters to the barricade, followed by a group led by the Koreans who tied ropes to the crippled fence and pulled it down. The police, who had additional barricades a few hundred yards up the road, tolerated the action as a symbolic assault on the WTO. After the barricade fell, the crowd adrenaline was high, but the energy was turned inward, as the protesters turned away from the barricade, sat down, and observed a powerful tribute to Lee and the fight for justice for which he gave his life.

INSIDE: Taking the Message to the Delegates . . . and the Media

In addition to the protests going on in downtown Cancún and the smaller actions on the streets just outside the convention center, many activists penetrated meeting site itself -- all entirely legally. The WTO accredited some 980 non-governmental organizations to enter the convention center, though they were not allowed very close to the rooms where the actual negotiations took place. There were also well over a thousand reporters using the media center, which contained generous banks of computers, printers, fax machines, and DSL lines. Indeed, the media center constituted most of the area that the NGOs were allowed into. That overlap fostered dozens of interesting actions.

Only 200 NGOs were given passes to the opening ceremony, but about 30 of them made good use of the opportunity, standing with mouths covered by black tape as WTO Director General Supachai Pantichpakdi spoke, holding signs with messages like "WTO Obsolete" and "WTO Undemocratic." Security guards isolated but did not accost them, so they chose the moment of their departure, chanting "Shame! Shame!" as they filed out of the hall. That action, more than any of the officials'

comments, was what made the news.

A press conference on agriculture by the Deputy U.S. Trade Representative was interrupted twice the next day by activists denouncing the anti-farmer, pro-corporate policies of the U.S. government and the WTO. A few hours later, a notice was affixed to the video bulletin board scroll listing upcoming press conferences: "Because of an incident on September 11, NGOs will no longer be allowed to attend press briefings." This over-reaction failed to recognize that many of the activists, including at least two of those who interrupted the press conference, had media credentials (which carry more privileges). In any case, the rule was only applied at U.S. government briefings.

Some reporters accused the activists of being opportunists who were limiting the rights of government officials and journalists to free speech. But perhaps opportunism shouldn't carry such a negative connotation – these press conferences were very rare opportunities for citizens, even U.S. citizens, to get the attention of inaccessible policy makers like the U.S. Trade Representative. For that matter, it made the issues hard to ignore for the mainstream media, which has become gullible and incurious in this age of increasing corporate control and reluctance to challenge received wisdom.

Perhaps the most elaborate piece of street theatre inside the convention center occurred when a man wearing a mask of Robert Zoellick (US Trade Representative) and another man wearing a mask of Pascal Lamy (his EU counterpart) began to make a ruckus. "Can't you see who I am?" bellowed the pseudo-Zoellick, "I'm Robert Zoellick, U.S. Trade Representative!

Get out of my way!" Stopping in front of the media's computer banks, he exclaimed, "How are we going to get these fucking 21 countries [a reference to the group including Brazil, China, India, and South Africa that declared its total opposition to US/EU agriculture subsidies] to stop blocking our progress here at the WTO?! Don't they know that the way to make everyone richer is to buy our subsidized, genetically-modified foods?!" Pseudo-Lamy agreed, if not quite as boisterously. They were then confronted by a small crowd chanting "Stop betraying farmers' needs with US/EU corporate greed!" Their chants eclipsed the two trade barons' shouts and eventually forced them to melt to the ground.

FURTHER INSIDE: Power Politics at the WTO

The skits mounted in the media center were pretty close to what was going on, for real, elsewhere in the convention center. The Group of 21 countries, or G-21, held a press conference on the evening of Tuesday the 9th, with the foreign minister of Brazil, the deputy trade minister of China, and trade ministers from India, South Africa, Argentina, and Costa Rica on the platform to announce the group's existence and its determination to stick together throughout the conference. The meeting that led to the formation of the group occurred just a few weeks before at the WTO's Geneva headquarters, in response to the WTO Secretariat's release of an "official draft text" for the Cancún summit. That document was based almost wholly on a joint submission by the United States and the European Union, and was widely attacked for ignoring the concerns developing countries had been expressing since the Doha ministerial where the terms of the negotiating "round" were laid down. At the press conference, the G-21 circulated its proposed alternative declaration.

The attitude on display was more important than the content of the group's agenda, which was a fairly narrow one of insisting on cuts in Northern countries' agricultural subsidies and greater access to Northern markets. The speakers at the press conference dwelt more on their determination not to succumb to inducements or threats from the Northern governments designed to erode their unity; the group's de facto coordinator, Brazilian Foreign Minister Celso Amorim, said, "We will keep our unity, which will be tested repeatedly, starting from this very moment." They took comfort, he said, from knowing they have "the support of our producing classes and of world opinion in general." They also emphasized the significance of the constituency they represented – 63% of all farmers and 51% of the world's population.

The Northern negotiators were indignant: how could these countries issue an ultimatum, essentially saying they would let the whole summit collapse unless the European Union, Japan, and the United States relaxed their "trade barriers"? How could they be so intransigent – didn't they come to negotiate? And how could they be so demanding, without indicating what they were prepared to offer in exchange?

It's a wonder that no one on the Northern countries' delegations collapsed from vertigo brought on by the dizzying levels of hypocrisy and bad faith required to make such arguments. The U.S. and its allies were being tested by their own rules – for over two decades they have, through their control of the World Bank and the IMF and through trade negotiations, been demanding, successfully, that other countries liberalize their economies and open their markets to products from the North. And they always maintained that they did so not out of some selfish quest for private profit that would be repatriated to their countries, but because trade and investment liberalization are the characteristics of a modern economy, and would be the most effective ways to address the plight of the millions of impoverished people living in the developing world.

The seriousness of the challenge represented by the G-21 was made clear by the intensity of the campaign launched by delegates from the U.S. and the E.U. to discredit or split the group, and to bribe other countries to pledge not to join. Central American countries were offered increased trade quotas with the U.S. to either leave the G-21 or to pledge not to join. Colombia was reported to be wobbling from the start – not surprising, perhaps, given its complicated relationship with the U.S. But by the end of the conference the only switch that was acknowledged was the departure of El Salvador, its right-wing government sufficiently bribed or threatened as it faces its most serious challenge yet from the left in coming elections, and the addition of Nigeria and Indonesia. Population isn't everything, of course, but in adding up the numbers after that realignment, the G-20+ (as it came to be called with fluctuation in the ranks) certainly ended up representing over 60% of the world's population (the list on September 15 was: Argentina, Bolivia, Brazil, Chile, China, Colombia, Costa Rica, Cuba, Ecuador,

Egypt, Guatemala, India, Indonesia, Mexico, Nigeria, Pakistan, Paraguay, Peru, Philippines, South Africa, Thailand, and Venezuela).

It was clear at the opening press conference that the group saw its actions in a historical context, beyond the economic aims of their trade agendas. And it was clear that the leaders of the largest Global South countries perceived the global justice movement and the protests it has mounted as a key part of that context, and one it wanted to claim for its side. Amorim, the Brazilian foreign minister, concluded the session by declaring that “it might previously have appeared that the fight for social justice was going on outside the WTO meeting rooms, while we focused narrowly on specific issues. Now we hope you will see that we have brought the struggle inside.”

As the negotiations dragged on, and after the talks collapsed, U.S. officials blamed the G-20+, though seldom by name. According to people who saw his final press conference, the lead U.S. delegate, Robert Zoellick, was clearly driven to distraction by the collapse of the talks. His threats to shift the U.S. focus to bilateral trade treaties, such as those recently concluded with Morocco, Singapore, and Chile, seem likely to go forward, even though the E.U. and WTO officials say they further complicate the global system. In fact, the U.S. has already been adopting this strategy, moving forward in negotiations for sub-regional pacts like the Central American Free Trade Agreement and a Southern Africa Free Trade Agreement. (The Free Trade Area of the Americas [FTAA] is another matter -- with Brazil at the center of it, it more closely resembles the WTO talks than these smaller arrangements.) The U.S. has nearly unlimited leverage in those sub-regional and bilateral agreements, and can maneuver countries into giving in on more issues than are brought up at the WTO. **Chile, for example, pledged to abolish its capital controls**, which were long pointed to as the model for Southern countries wanting to exercise some control over “hot money” foreign investments that can be quickly pulled out of a country at the hint of panic.

Tempting as it may be to see the governments of the G-20+ as warrior-heroes facing down the evil empires of the North, we should not lose sight of the fact that they are all political formations too, many of them unsavory or at least as prone to self-serving, corrupt actions as our own. India’s fundamentalist-fascist government is not likely to become a progressive model as a result of being a leader in the G-20+, and China is not going to adopt a new conception of human rights. Indeed, it would be foolhardy to spend too much time trying to trace the history and character of the G-20+ or create a fan club, when the group itself may well shift form, split apart, or evaporate in the relatively near future. Toward the end of the Cancún meeting, there were rumors — still unsubstantiated — that certain countries in the G-20+, including Brazil and China, were eager to find a way to make some sort of deal.

A case could be made that the real mavericks, the ones who would not abandon their unity or their positions, were those in what became known as the G-32 or G-33 (let’s call it G-30+ for consistency). Drawn largely from the ACP group (Africa-Caribbean-Pacific, from a trade treaty between the E.U. and the more impoverished exporting nations), the G30+ was usually represented by Indonesia, and did have other overlaps with the G-20+. But the bulk of its membership was the poorest countries, particularly in Africa. In distinction from the G20+ groups that sought cuts in Northern subsidies and access to Northern markets, the G30+ was focused on “special products” — that is, identifying a range of agricultural commodities, perhaps different from country to country, that governments could protect without penalty (e.g. prohibiting the importation of rice in a country with rice farmers vulnerable to dumping of cheaper rice grown in the U.S.). It was also fully committed to resisting the “Singapore issues” that the E.U. and Japan wanted to force into the Cancun statement.

The G-30+ did not have the high profile of the other group, and had a less active media strategy. But in political terms its aims — maintaining unity in the face of intense pressure from the North — were similar, and its success at least as great. There were efforts to unite the two groups, and reports on the fourth day that a large group of African countries was close to joining the G-20+ as a bloc. Indeed, remarks made by the Argentinean trade minister at the G-20+ debut press conference — that the group gave equal priority to the “three pillars” of the Southern agricultural agenda, namely market access, elimination of Northern subsidies, and protection for farmers — seemed part of the campaign to lure the poorer countries over. In the end they were not persuaded in time, but it did not matter a great deal. The two groups were clearly cooperating strategically. The take-home idea from Cancún will be, as intended by both the G-20+ and the G-30+, that the South will not be easily broken in future trade negotiations at the WTO, and perhaps other fora as well. Even if all the “Gs” become obsolete in a matter of months, it is that specter that will haunt Zoellick and his E.U. counterpart, Pascal Lamy, from now on.

Anatomy of the Final Standoff

It is one of the measures of the distortions of global trade negotiations that in analyzing Cancún, few commentators have questioned the notion that one of the Southern-country blocs is responsible for the “failure” at Cancún. In the sense that they acted out of (previous) character, that’s true, but that strategy was basically to roll over and play dead. The implicit idea, made explicit by some, is that all of the Southern governments have simultaneously been captured by radicals; Deputy U.S. Trade Representative Josette Shiner even went on the PBS NewsHour with Jamaica’s chief negotiator Richard Bernal and said she thought the developing countries were getting poor advice from NGOs like Oxfam. Apart from the bold effrontery necessary to go on national television and accuse a high-ranking official from another government who is seated next to you of borrowing his positions and strategies from an NGO, Shiner seemed to be asking viewers to accept that every Southern country from Mali to China was also content to leave their strategizing and policy making up to Oxfam. It is hardly the first time that the Bush Administration has demonstrated a commitment to ideological positions so strong that officials accuse, and even seem to actually believe, that other countries could have no rational reason for opposing U.S. wisdom, but it never ceases to be breathtaking.

It's not that all the governments of the G-20+ and G-30+ were suddenly infected with anti-imperialist fervor. Most of them want to make trade deals with the U.S., E.U., and Japan – many of them are downright desperate to do so to get more hard currency. But the recognition that the WTO, and indeed the entire global economic system, is rigged to keep them in the role of suppliers of cheap labor and cheap commodities has finally become undeniable even for trade and commerce ministers trained at schools like the London School of Economics or veterans of places like the World Bank.

Whether one considers the collapse promising or distressing, it should be clear that the real obstructionists were the Northern countries. The U.S. took the lead in remaining unmoveable on agriculture concessions, and the European Union and Japan staffed the barricades on the “Singapore issues.” It was their unwillingness to give any ground, not the new refusal by the South to insist that they deal openly and fairly, that prevented progress toward an agreement. Although agriculture got the great bulk of the attention during the meeting, it was lack of common ground on the Singapore issues that led the Mexican hosts to declare the meeting over. And on those issues, the G-30+ were merely standing by the terms agreed to at the 2001 summit in Doha; it was the E.U. and Japan (and, oddly, South Korea, which swings between Northern and Southern identities) which took a new hardline position and refused to budge.

In Doha, under pressure to show support for the United States in the weeks after the September 11th attacks and send a “reassuring message” to the global economy, the countries of the South were reluctantly drawn into an ambiguous declaration initiating the “Doha development round” of negotiations – so named as an inducement to the South, which was told that the rich countries would allow the development needs of the poorer countries to weigh more heavily than the usual imperatives of corporate profit during this round of talks. In the run-up to Cancún, many commentators and Southern country officials were complaining that the North had not carried through on its promise; by the time they got to Cancún the cynicism of that pledge was old news, and hardly even mentioned.

Doha ended in a chaotic jumble, after several extensions of the final session (ultimately reaching 38 consecutive hours). Having exhausted their counterparts from smaller delegations and won a number of concessions, the U.S. and its allies finally had to make one concession, by accepting the Indian government's insistence that negotiations on the “Singapore issues” – the effort to agree on common rules for investment, competition policy, government procurement, and trade facilitation (customs procedures, etc.) – could go forward only if and when WTO member countries approved with “explicit consensus.” Such phrases, which have no precise legal definition, often turn out to be the key to trade agreements. The object is to come up with an expression that all parties think could be interpreted to mean what they want to hear. Usually the side with the best lawyers wins in the end, but in this case, “explicit consensus” turned out to be vital to the Southern position.

When the WTO was created in 1995, at the culmination of the “Uruguay round” of talks under the predecessor organization, the General Agreement on Tariffs and Trade (GATT), the U.S. and its allies successfully insisted on the inclusion of a number of issues which had been excluded from GATT talks. Notable among those were agriculture, the General Agreement on Trade in Services (GATS), which applies to commerce in everything from insurance to water provision to postal delivery and has yet to fully come into effect, and Trade-Related Intellectual Property Rights (TRIPS), or patents, which has been the source of the international debate on pricing of HIV/AIDS medications and other life-saving drugs that can be manufactured cheaply by producers of generics. That last controversy was temporarily resolved just before Cancún with an agreement between the pharmaceutical industry and the U.S., E.U., Brazil, South Africa and Kenya – an agreement widely, though not universally, denounced by HIV/AIDS advocacy groups.

The inclusion of each of those issues, which, with the exception of agriculture, had not been considered part of “trade,” in the new WTO was considered a significant concession by many developing countries. Government procurement, competition policy, trade facilitation, and investment were successfully put off until the first WTO summit, held in Singapore (hence the “Singapore issues”).

Almost no Global South countries declared themselves in favor of opening negotiations on any of those issues. Coming into Cancún, 70 countries joined in an unequivocal rejection of taking them up. During the course of the meeting that number swelled to 90. It seemed that no one could possibly argue that “explicit consensus” to go forward existed.

The World Development Movement, a British NGO, clearly knew better. The E.U. had made clear that it wanted all four issues to go forward, so the WDM made badge holders – the nylon necklaces that hold picture-identification credentials at meetings like the WTO's – with the phrase “explicit consensus” printed in English, French, Spanish, Arabic, and Hindi. They were widely distributed, and became the subject of a ban on the conference's fourth day. Security personnel were ordered to confiscate them at all entrances for several hours, until someone pointed out that the action would probably not pass a Mexican constitutional test. A WDM t-shirt, with the words “explicit” and “consensus” given simple dictionary definitions, was less common, perhaps because demand was so high: the Brazilian delegation was said to have ordered ten of them immediately.

The WDM folks weren't the only ones that arrived with props. From out of nowhere a document from the government of Niger (sound familiar?) which seemed to express interest in supporting the Singapore issues started circulating; it was soon revealed to be out-of-date and from a low-level bureaucrat. Then Togo, a tiny country with the longest-reigning dictator on the African continent, indicated it would support the new issues. The rest of the African countries repudiated Togo's stand.

The E.U. stuck by its position. Never addressing the question of “explicit consensus,” Pascal Lamy, together with his Japanese and Korean counterparts, insisted that a commitment to begin negotiations on the Singapore issues should be included in the final declaration. A last-minute offer by Lamy to drop the two more controversial issues, competition policy and investment, was not enough. The G-30+, and many other countries as well, saw the E.U. position as an unbearably arrogant

dismissal of clearly-articulated positions by a majority of WTO member countries. **After quick consultations with its African partners, the Kenyan delegation was the first to say that there could be no compromise with Lamy, and a member of the delegation was sent down the escalator to the media center to tell the throng of reporters "it's over."**

What's It All Mean?

The simplest assessment is that it means no changes in the status quo: the round is stalemated for now, though there will be attempts, however faint, to revive it in Geneva in the months to come. And it means the next WTO summit, set for Hong Kong in either late 2004 or early 2005, could be the last gasp of the Doha round. The WTO may become more of an administrative body, interpreting treaties and adjudicating disputes rather than hosting negotiations.

For Northern governments it can be taken a sharp repudiation of the coercive negotiating tactics they have used since Southern countries first entered the GATT. There have been calls from many parts of Europe for Lamy to resign. **A different perspective is offered by The Economist, the British weekly of the elite classes: for its editors, Cancún is the most vivid sign that Southern countries have been given too loud a voice in international fora.** It recommends following the lead of the Bush Administration, with its firm squelching of Africa's request for slightly expanded board representation at the World Bank and IMF.

For Southern governments it is positive reinforcement for the impulse to at last refuse the exploitation of the North. While there may well be occasions to regret emboldening Southern governments (like any government), for the balance of the world economy, world peace, world ecology, and the welfare of the people of the world, a more assertive South and more equitable power relations are necessities.

For people in both the North and South, it's good news. It means a greater chance for peace, fair trade, decent livelihoods, dignity, healthy food, a more sustainable ecology, and a global sense of solidarity.

For the global justice movement, Cancún takes its place in the honor roll of victories that includes Seattle and the freezing of the Multilateral Agreement on Investment (MAI) in 1997-98. Ironically, it was the attempt to revive the MAI in the form of the Singapore issues' investment provisions that sealed the fate of the Cancún talks.

Cancún should be publicized as a major victory for the global justice movement even though the result was not precisely a direct result of the movement's efforts. In fact, it is not too far-fetched to say that that is the reason it should be celebrated. The resolve of government negotiators in Cancún to stand up to the Northern plutocracy was undoubtedly created, in part, and significantly reinforced by the pressure mounted by the movement. From the policy wonks at organizations like Focus on the Global South, Third World Network, ActionAid and yes, Oxfam, to the vivid, courageous, and persistent street demonstrations proclaiming an abiding belief in "people before profits," the movement was indispensable to the triumph in Cancún. It is a rare occasion when we can join with government officials in celebration, but if the movement is able to sustain the momentum and the pressure, it may be the beginning of a positive shift in the way governments deal with social movements, with their own constituents, and with those who would exploit their people; it may even be the start of the political paradigm shift so many have been working for.

The Immediate Future

Lest the movement give into the temptation to euphoria, it should immediately be said that history would suggest that preparing for betrayals and buy-offs would be a good idea.

But it should also be said that there are other indications of a positive shift: in the same week as the Cancún meetings, Argentina was able to negotiate a new deal with the IMF to re-schedule its massive debt to the institution. By exercising its power as a large debtor (when you owe the bank \$100 it owns you; when you owe the bank \$100 million, you own it), and wielding the support of its neighbors and others, Argentina successfully resisted most of the key demands made by the IMF, including dramatic hikes in utility rates and increased mortgage foreclosures. Such successful bargaining is practically unheard of at the IMF, and together with the news from Cancún it suggests that when the power of public opinion is brought to bear on governments, governments will sometimes stand up for their people. And the centers of the North's concentrated power can be overcome.

Finally, all eyes turn to Miami, where trade and foreign ministers from around the western hemisphere will gather in mid-November to continue negotiations on the Free Trade Area of the Americas (FTAA). Continued success is necessary there to preserve the momentum from Cancún. The "buzz" about the event across North America's activist communities is probably the loudest it has been since Seattle, and promises a very interesting few days (November 17-22). The key to Miami, from the "inside" perspective, is the position of the Brazilian government. With Brazil's new president, Lula da Silva of the Workers Party, there are reasons for optimism. But Lula has also made alarming noises about wanting to have the FTAA in place by 2005, even as other signals suggest a desire to subvert the plan. Brazilian activists are uncertain about where Lula will finally come down on trade with the U.S. The stakes are very high this time: Miami will tell us a lot about the future of globalization.

Statement for the Citizens Trade Policy Commission, September 19, 2013

Julie Keller Pease, MD, 13 Chestnut Rd, Brunswick, Maine

As a physician concerned about the health of our Maine citizens, I am writing to express my concerns about the Trans-Pacific Partnership (TPP). Here are just a few examples that have come to light in the past few months:

The TPP would prevent public health education efforts, such as anti-tobacco campaigns, if they are viewed as conflicting with corporate profits. In earlier negotiations, the TPP included what was called a “safe harbor” provision, protecting nations that have adopted regulations on tobacco — like package warnings and advertising and marketing restrictions. However, in negotiations last month, the Obama administration reversed this proposed policy, bowing to pressure from the tobacco industry to eliminate the safe harbor provision. This will not only make cigarettes cheaper for the 800 million people in the countries affected by the trade pact, but multinational tobacco corporations will be able to challenge those governments (including ours) for implementing lifesaving public health policies. New York City mayor Michael Bloomberg calls this “a colossal public health mistake which will potentially contribute to the deaths of tens of millions of people around the world.”¹

The TPP will grant twenty year patents for pharmaceuticals and medical devices that can be renewed if a new indication is found or the mechanism of delivery is altered. This is a process called ‘Evergreening’ and it is designed to prevent generics and protect profits. The TPP will also give greater legal standing to health corporations to challenge reimbursements from health systems and to include the cost of marketing into what is considered a ‘fair market value.’

According to Dr. Margaret Flowers, a pediatrician activist from Maryland who has extensively researched its adverse health effects, the TPP “could prevent Medicare from returning to a fully public system, would prevent regulation of specialty hospitals, and would eliminate limitations on for-profit disease management products and requirements that health insurers spend a particular amount of premiums on health services (regulation of the medical loss ratio). This will open the door to greater privatization of health care which is already resulting in great inequalities in access to health care services and health outcomes.”²

These are just a few of my concerns about the TPP. I urge Congress to say “NO” to Fast-track. And, after careful analysis and review of all of its provisions, I further urge Congress to say a resounding “NO” to the TPP.

¹ <http://www.nytimes.com/2013/08/23/opinion/why-is-obama-caving-on-tobacco.html?ref=sunday>

² <http://www.aljazeera.com/indepth/opinion/2013/06/201361711230432720.html>

Medical corporations seek tools to protect their profits despite harmful effects on public health.

June 17, 2013 By Margaret Flowers, M.D. Originally published in [AlJazeera.com](http://www.aljazeera.com)

The [Trans-Pacific Partnership](#) (TPP) is a deal that is being secretly negotiated by the White House, with the help of more than 600 corporate advisers and Pacific Rim nations, including Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam. While the TPP is being called a trade agreement, the US already has trade agreements covering 90 percent of the GDP of the countries involved in the talks. Instead, the TPP is a major power grab by large corporations.

The text of the TPP includes 29 chapters, only five of which are about trade. The remaining chapters are focused on changes that multinational corporations have not been able to pass in Congress such as restrictions on internet privacy, increased patent protections, greater access to litigation and further financial deregulation.

So far, all that is known about the contents of the TPP is from documents that have been leaked and reports from NGOs and industry meetings. Unlike other trade deals, the White House refuses to make the text available to the public. In fact, the negotiators refuse to publish the text until four years after it is signed into law. Why are they being so secretive? Former US Trade Representative Ron Kirk said [he opposed making the text public](#) because doing so would raise such opposition that it could make the deal impossible to sign.

From the information available, one thing is clear about the impacts of the TPP on health care: the intention of the TPP is to enhance and protect the profits of medical and pharmaceutical corporations without considering the harmful effects their policies will have on human health.

We know that the TPP will extend pharmaceutical and medical device patents and provide other tools to keep the prices of these necessities high. This will make medications and treatments unaffordable for millions of people and raise the costs of national health programmes. At its worst, the TPP will provide a pathway to infect the world's health systems with the deadly parasite of for-profit health corporations that plague the US.

Patents keep prices high

Through the TPP, pharmaceutical and medical device corporations are seeking [extensive patent protections](#) using a process known as "Evergreening". The TPP gives 20 years of patent protection for pharmaceuticals and medical devices; however, patents can be renewed for another 20 years each time there is a change in an indication or delivery. For instance, if a drug is indicated for headaches, but then the pharmaceutical company finds that it is also helpful for stomach cramps or makes it a capsule instead of a tablet, a new patent may be issued. In reality, patents can be extended indefinitely under the TPP.

[Doctors Without Borders](#) criticized this practice, stating that patent protections in previous trade agreements raised the price of life-saving medications and made them unavailable to people in poorer countries. Patents prevent the production of low cost generic forms of medications. Yet it was the availability of generic medicines to treat HIV and other infectious diseases that allowed advances to be made in decreasing their impact in developing countries.

Because of the negative impact on public health from patent protections in previous trade agreements, such as the Korea Free Trade Agreement, former President Bush rolled some of these practices back. Unfortunately, the TPP will move them forward again.

In fact, the TPP goes farther than previous agreements by also [requiring](#) that surgical techniques, medical tests and treatments be patented. This will restrict the availability of these treatments, especially in health systems that have limited resources.

Doctors Without Borders also expressed concern that patent protections encourage innovation based on profit instead of the needs of people, particularly those in poor nations. Corporations do not see it as in their financial interest to address health conditions more prevalent in poor nations which do not have the financial resources to buy their products. But it is often in these situations treatments can have the greatest impact on quality of life.

Attacking public health systems

An area of great concern is language within the TPP concerning State-Owned Enterprises (SOEs). These are institutions that are fully or partially owned by governments. SOEs are very common in countries such as Vietnam, Malaysia and Singapore.

Corporate lobbyists are concerned that SOEs have "unfair advantages" over private industry. These advantages include government subsidies, preferred tax status, low finance rates and access to capital. According to a leaked

chapter, corporate lobbyists believe that there is a conflict of interest because SOEs have political considerations such as functioning to provide basic goods and services for their population and believe that instead SOEs should operate strictly as commercial entities seeking profit.

The TPP requires SOEs to disclose any special advantages they receive and the government to give the same advantages to corporations. It also provides methods for corporations to sue governments if they believe that they are not being treated fairly. The text outlines punishments such as increased tariffs on exports from the country found in violation and suspension of any "tariff concessions" made to the country in violation on imports.

Text from a section of the TPP called "Annex on Transparency and Procedural Fairness for Healthcare Technologies" was leaked in June 2011. It reveals this conflict between medical industries that have strictly commercial interests and public health systems that are concerned about the health of the population. Medical industries are pushing on all fronts to keep their prices high while public health systems must negotiate to keep prices affordable and maximize what they can cover within their budgets.

To the medical industries, such price negotiation is one of the "unfair advantages" of public health systems. When a public health system negotiates a lower price, it is said to be exerting its market power. On the flip side, when a government extends patent protections to medical industries to keep prices high, this is not considered to be an unfair advantage granted by the government.

Medical industries are pushing for other concessions within the TPP to "level the playing field", also known as forcing public entities to operate as market-based entities, such as factoring the cost of not just research, development and production of drugs and medical devices, but also the cost of marketing them into what is considered to be a fair market price. And they only view prices negotiated without any government influence as fair. These provisions are significant because the TPP allows pharmaceutical corporations and others to challenge the legitimacy of any reimbursement decisions made by public health systems through the courts.

Patent and price protections for multinational pharmaceutical and medical device corporations based in the US will benefit their bottom line and their investor's pockets, but may bounce back and undermine public health systems in the US. The leaked text indicates that the above provisions only apply to health authorities under the jurisdiction of the federal government. However, the loopholes are large enough that all of the US public health systems, which include Medicare, Medicaid, Tricare and the Veterans Health Administration, can arguably be considered to be federal.

These systems already struggle within the market-based US health system that is most expensive in the world. The US health system wastes one third of health dollars on a bloated bureaucracy due to thousands of different health insurance plans, each with different rules. And people in the US pay the most for prescriptions and health services because there is no rational system for setting prices. High prices in the private health sector drive up prices in the public health sector too. For example, at present Medicare is prohibited from negotiating a bulk price for pharmaceuticals.

Over the past four years, there has been an increase in self-rationing in the US, patients avoiding or delaying necessary medical care and medications, due to health costs. At the same time, CEOs of health industries are the highest-paid in the nation. For the good of public health, we must reverse this trend towards greater privatization and lower the cost of care. But the TPP will protect the medical industries and give them greater power to use their wealth and the rigged trade tribunal court system to protect their profits.

This will undermine health systems in the US and abroad. High prices could bankrupt public health systems like those in Japan and Australia (ranked among the top in the world). Under the TPP, it is also possible that Japan's regulation of health insurance which includes controlling coverage, prices and profits would qualify it as an SOE that has unfair advantages. This could open the door for private multinational health insurance corporations to enter TPP signatory countries and demand access and that regulations are loosened.

As medical corporations gain greater wealth and power, we can expect to see further abuses to the detriment of human health. The TPP takes global health in the wrong direction. The losers in this negotiation will be the patients if the profits of corporations are permitted to come before the health of people.

Margaret Flowers, MD, served as Congressional Fellow for Physicians for a National Health Program and is on the board of Healthcare-Now. She is co-director of It's Our Economy and co-host of Clearing the FOG Radio Show.

Why is Obama Caving on Tobacco?

Michael R. Bloomberg, NY Times, August 22, 2013

LAST year I endorsed President Obama for re-election largely because of his commitment to putting science and public health before politics. But now the Obama administration appears to be on the verge of bowing to pressure from a powerful special-interest group, the tobacco industry, in a move that would be a colossal public health mistake and potentially contribute to the deaths of tens of millions of people around the world.

Although the president's signature domestic issue has been health-care reform, his legacy on public health will be severely tarnished — at a terrible cost to the poor in the developing world — unless his administration reverses course on this issue.

Today in Bandar Seri Begawan, Brunei, representatives from the United States and 11 other nations begin the latest round of negotiations over the Trans-Pacific Partnership, a multinational trade agreement. The pact is intended to lower tariffs and other barriers to commerce, a vitally important economic goal. But if it is achieved at the expense of people's health, the United States and countries around the world will be worse off for it.

The early drafts of the agreement included a “safe harbor” provision protecting nations that have adopted regulations on tobacco — like package warnings and advertising and marketing restrictions — because of “the unique status of tobacco products from a health and regulatory perspective.” This provision would have prevented the tobacco industry from interfering with governments' sovereign right to protect public health through tobacco control laws.

Countries (and cities) that have adopted such regulations have had great success reducing smoking rates and saving lives. In New York City, where we have adopted some of the most comprehensive tobacco policies in the world, the smoking rate among adults has fallen by nearly one-third, and among high school students it has been cut in half. This progress helped to increase average life expectancy: in 2010, it was 80.9 years in the city, more than two years longer than in the country as a whole.

This week, however, the Obama administration bowed to pressure from the tobacco industry and dumped the safe harbor provision from the trade compact. The tobacco industry was joined by other business interest groups that were fearful that the safe harbor provision would lead to other products' being singled out in future trade accords.

So instead of the safe harbor, the Obama administration is now calling for a clause requiring that before a government can challenge another's tobacco regulation under the treaty, their health authorities must “discuss the measure.” The administration will also try to ensure that a general exception for matters to protect human life or health (typical in trade agreements) applies specifically to tobacco regulation.

But these are weak half-measures at best that will not protect American law — and the laws of other countries — from being usurped by the tobacco industry, which is increasingly using trade and investment agreements to challenge domestic tobacco control measures.

If the Obama administration's policy reversal is allowed to stand, not only will cigarettes be cheaper for the 800 million people in the countries affected by the trade pact, but multinational tobacco corporations will be able to challenge those governments — including America's — for implementing lifesaving public health policies. This would not only put our tobacco-control regulations in peril, but also create a chilling effect that would prevent further action, which is desperately needed.

Tobacco use causes more deaths around the world than HIV/AIDS, malaria and tuberculosis combined. If nothing is done, one billion people will die of tobacco use by the end of this century. Through my philanthropy, I have supported grass-roots efforts overseas to discourage tobacco use. Bangladesh, for instance, has enacted new rules that are a big step toward banning smoking in public places and on all modes of transportation. In Vietnam, we helped build public support for comprehensive new legislation that includes some of the most effective tobacco-control techniques, like advertising bans and graphic warning labels on packages.

But if the trade pact proceeds without the safe harbor provision, this progress will be jeopardized, a devastating setback for the global effort to reduce tobacco use, particularly because the signatories to the trade pact include nations — like the United States, Australia and Vietnam — that have some of the world's strongest tobacco control measures. If the Obama administration caves, the tobacco rules of its own Food and Drug Administration will be subject to challenge.

I could not be more strongly in favor of trade agreements that expand economic opportunity here and around the globe. But a deal that sells out our national commitment to public health, and forfeits our sovereign authority over our tobacco laws, does not merit the support of Mr. Obama; of the Senate, which would have to ratify it; or of the American people.

Michael R. Bloomberg is the mayor of New York City.

<http://www.nytimes.com/2013/08/23/opinion/why-is-obama-caving-on-tobacco.html?ref=sunday>

