CITIZEN TRADE POLICY COMMISSION
DRAFT AGENDA

Friday, February 10, 2012 at 9:30 A.M.
Room 220, Burton M. Cross State Office Building
Augusta, Maine

9:30 am Meeting called to order

I. Welcome and introductions

A. New member(s)

II. Review of letters sent to USTR regarding inclusion of Japan, Canada and Mexico in the Transpacific Partnership Agreement

III. Presentation from Troy Haines, Maine Fair Trade Campaign, regarding proposed "Fast Track Authority" for USTR to negotiate the TPPA

IV. Presentation from Representative Sharon Treat regarding recent IGPAC activity and updates on progress of the TPPA

V. Phone presentation from Zoltan Van Heyninge, Executive Director, US Lumber Coalition regarding the U.S.-Canada Softwood Lumber Agreement (Scheduled for 10:30 AM)

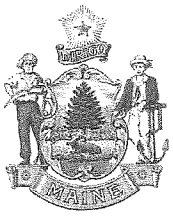
VI. Transpacific Partnership Agreement

A. Bi-annual assessment :

1. Discussion of proposed assessment structure
2. Discussion of potential contractors to conduct the assessment
3. Timeline for completion

VII. Proposed next meeting date of Friday, March 9th and suggestions for agenda topics

Adjourn



STATE OF MAINE

Citizen Trade Policy Commission

Re: Canada's Expression of Interest in the Trans-Pacific Partnership Trade Negotiations

January 11, 2012

Mr. Paul Kirk, Ambassador
Office of the United States Trade Representative
600 17th Street NW
Washington, DC 20508

Dear Ambassador Kirk,

We are writing to you in reference to the December 7, 2011 notice in the Federal Register requesting comments on Canada's Expression of Interest in the Trans-Pacific Partnership Trade Negotiations.

The Maine Citizen Trade Policy Commission is authorized by current Maine law [10MRSA§11(3)] "...to make policy recommendations designed to protect Maine's jobs, business environment and laws from any negative impact of trade agreements." In seeking to fulfill its statutory mandate, during its most recent meeting on December 15, 2011, the Commission voted unanimously to submit this letter to you stating our strong opposition to the possible inclusion of Canada, Mexico or Japan in the proposed Trans-Pacific Partnership negotiations.

Our opposition to the proposed inclusion of these countries in the TPPA is based on a number of concerns and includes:

- The original purpose and design of the TPPA was intended as an international trade agreement among the Pacific Rim countries. Including nations such as Canada with a large international economy and a contiguous border with Maine and other states in a binding trade agreement represents a significant departure from the original purpose and scope of the TPPA and an ominous threat to state sovereignty and existing trade relationships between Maine and these counties;
- The possibility of adding these neighboring countries and large trade partners also amplifies a concern about the loss of transparency that often occurs in this type of international trade agreement. Since the details of the negotiating process are confidential and yet the items being negotiated are often of paramount importance from a state's perspective, the inclusion of large trading partners tends to further diminish state sovereignty over matters such as business and environmental regulation and the procurement policies of state government without any meaningful opportunity for the state to comment until after the agreement has been finalized thereby rendering any state participation as essentially meaningless and without influence;
- From a state perspective, the possible inclusion of large trading partners like Canada, Japan and Mexico in the TPPA also magnifies concerns about the dispute resolution process that typically emerges from trade agreements of this magnitude. For a state such as Maine that has a large contiguous border and extensive trade with a contemplated treaty member such as Canada, a dispute resolution process that takes the state out of the process and instead substitutes the USTR as the defender of particular state regulations and trade deals is a potentially disastrous blow to state sovereignty and the ability to develop, enforce and negotiate

its trading relationships with a country such as Canada. A dispute resolution process that takes the state out of the direct loop in determining a fair outcome and yet imposes possible consequences is inherently unfair and is likely to be extremely detrimental to continued efforts by the state to manage its own economy, environment and overall public welfare;

- Further, the tendency of recent trade agreements to reach beyond the trade of tangible goods and intrude upon specific non-trade regulations and practices is an unwarranted intrusion upon a state's inherent ability to determine its own policies which include public health and safety, environmental and natural resource protection and allowable business practices; and
- Finally, the sum effect of all these aforementioned effects is manifested in the willingness of corporations using foreign investor rights provided by these agreements to purposefully use the provisions of a larger trade agreement like that contemplated for the TPPA to circumvent well conceived state regulations and policies to achieve their own narrow goals and objectives.

In closing, we wish to reiterate our strong opposition to the possible inclusion of including Canada, Mexico and Japan in the TPPA as an unwise and unjustified usurpation of state sovereignty in crucial matters of regulation, business practice and policy decisions regarding public health and welfare.

Thank you for the opportunity to make these comments. Please do not hesitate to contact either of us with any questions that you may have regarding the Commission' position on this issue

Sincerely,

Roger L Sherman
Senator Roger L. Sherman, Chair

Joyce Maker
Representative Joyce Maker, Chair

Cc: Governor Paul R. Lepage
Senator Olympia J. Snowe
Senator Susan M. Collins
Representative Michael H. Michaud
Representative Chellie Pingree

STATE OF MAINE

Citizen Trade Policy Commission

Re: Japan's Expression of Interest in the Trans-Pacific Partnership Trade Negotiations

January 11, 2012

Mr. Paul Kirk, Ambassador
Office of the United States Trade Representative
600 17th Street NW
Washington, DC 20508

Dear Ambassador Kirk,

We are writing to you in reference to the December 7, 2011 notice in the Federal Register requesting comments on Japan's Expression of Interest in the Trans-Pacific Partnership Trade Negotiations.

The Maine Citizen Trade Policy Commission is authorized by current Maine law [10MRSA§11(3)] "...to make policy recommendations designed to protect Maine's jobs, business environment and laws from any negative impact of trade agreements." In seeking to fulfill its statutory mandate, during its most recent meeting on December 15, 2011, the Commission voted unanimously to submit this letter to you stating our strong opposition to the possible inclusion of Japan, Canada, or Mexico in the proposed Trans-Pacific Partnership negotiations.

Our opposition to the proposed inclusion of these countries in the TPPA is based on a number of concerns and includes:

- The original purpose and design of the TPPA was intended as an international trade agreement among the Pacific Rim countries. Including nations such as Japan with a large international economy in a binding trade agreement represents a significant departure from the original purpose and scope of the TPPA and an ominous threat to state sovereignty and existing trade relationships between Maine and these counties;
- The possibility of adding these neighboring countries and large trade partners also amplifies a concern about the loss of transparency that often occurs in this type of international trade agreement. Since the details of the negotiating process are confidential and yet the items being negotiated are often of paramount importance from a state's perspective, the inclusion of large trading partners tends to further diminish state sovereignty over matters such as business and environmental regulation and the procurement policies of state government without any meaningful opportunity for the state to comment until after the agreement has been finalized thereby rendering any state participation as essentially meaningless and without influence;
- From a state perspective, the possible inclusion of large trading partners like Canada, Japan and Mexico in the TPPA also magnifies concerns about the dispute resolution process that typically emerges from trade agreements of this magnitude. A dispute resolution process that takes states out of the process and instead substitutes the USTR as the defender of particular state regulations and trade deals is a potentially disastrous blow to state sovereignty and the ability to develop, enforce and negotiate its trading relationships with a country such as Mexico. A dispute resolution process that takes the state out of the direct loop in determining a fair outcome and yet imposes possible consequences is inherently unfair and is

likely to be extremely detrimental to continued efforts by the state to manage its own economy, environment and overall public welfare;

- Further, the tendency of recent trade agreements to reach beyond the trade of tangible goods and intrude upon specific non-trade regulations and practices is an unwarranted intrusion upon a state's inherent ability to determine its own policies which include public health and safety, environmental and natural resource protection and allowable business practices; and
- Finally, the sum effect of all these aforementioned effects is manifested in the willingness of corporations using foreign investor rights provided by these agreements to purposefully use the provisions of a larger trade agreement like that contemplated for the TPPA to circumvent well conceived state regulations and policies to achieve their own narrow goals and objectives.

In closing, we wish to reiterate our strong opposition to the possible inclusion of including Canada, Mexico and Japan in the TPPA as an unwise and unjustified usurpation of state sovereignty in crucial matters of regulation, business practice and policy decisions regarding public health and welfare.

Thank you for the opportunity to make these comments. Please do not hesitate to contact either of us with any questions that you may have regarding the Commission' position on this issue

Sincerely,

Roger L Sherman

Senator Roger L. Sherman, Chair

Joyce Maker

Representative Joyce Maker, Chair

Cc: Governor Paul R. Lepage
Senator Olympia J. Snowe
Senator Susan M. Collins
Represenative Michael H. Michaud
Representative Chellie Pingree

STATE OF MAINE

Citizen Trade Policy Commission

Re: Mexico's Expression of Interest in the Trans-Pacific Partnership Trade Negotiations

January 11, 2012

Mr. Paul Kirk, Ambassador
Office of the United States Trade Representative
600 17th Street NW
Washington, DC 20508

Dear Ambassador Kirk,

We are writing to you in reference to the December 7, 2011 notice in the Federal Register requesting comments on Mexico's Expression of Interest in the Trans-Pacific Partnership Trade Negotiations.

The Maine Citizen Trade Policy Commission is authorized by current Maine law [10MRSA§11(3)] "...to make policy recommendations designed to protect Maine's jobs, business environment and laws from any negative impact of trade agreements." In seeking to fulfill its statutory mandate, during its most recent meeting on December 15, 2011, the Commission voted unanimously to submit this letter to you stating our strong opposition to the possible inclusion of Mexico, Canada, or Japan in the proposed Trans-Pacific Partnership negotiations.

Our opposition to the proposed inclusion of these countries in the TPPA is based on a number of concerns and includes:

- The original purpose and design of the TPPA was intended as an international trade agreement among the Pacific Rim countries. Including nations such as Mexico with a large international economy and a contiguous border with other states in a binding trade agreement represents a significant departure from the original purpose and scope of the TPPA and an ominous threat to state sovereignty and existing trade relationships between Maine and these counties;
- The possibility of adding these neighboring countries and large trade partners also amplifies a concern about the loss of transparency that often occurs in this type of international trade agreement. Since the details of the negotiating process are confidential and yet the items being negotiated are often of paramount importance from a state's perspective, the inclusion of large trading partners tends to further diminish state sovereignty over matters such as business and environmental regulation and the procurement policies of state government without any meaningful opportunity for the state to comment until after the agreement has been finalized thereby rendering any state participation as essentially meaningless and without influence;
- From a state perspective, the possible inclusion of large trading partners like Canada, Japan and Mexico in the TPPA also magnifies concerns about the dispute resolution process that typically emerges from trade agreements of this magnitude. A dispute resolution process that takes states out of the process and instead substitutes the USTR as the defender of particular state regulations and trade deals is a potentially disastrous blow to state sovereignty and the ability to develop, enforce and negotiate its trading relationships with a country such as Mexico. A dispute resolution process that takes the state out of the

direct loop in determining a fair outcome and yet imposes possible consequences is inherently unfair and is likely to be extremely detrimental to continued efforts by the state to manage its own economy, environment and overall public welfare;

- Further, the tendency of recent trade agreements to reach beyond the trade of tangible goods and intrude upon specific non-trade regulations and practices is an unwarranted intrusion upon a state's inherent ability to determine its own policies which include public health and safety, environmental and natural resource protection and allowable business practices; and
- Finally, the sum effect of all these aforementioned effects is manifested in the willingness of corporations using foreign investor rights provided by these agreements to purposefully use the provisions of a larger trade agreement like that contemplated for the TPPA to circumvent well conceived state regulations and policies to achieve their own narrow goals and objectives.

In closing, we wish to reiterate our strong opposition to the possible inclusion of including Canada, Mexico and Japan in the TPPA as an unwise and unjustified usurpation of state sovereignty in crucial matters of regulation, business practice and policy decisions regarding public health and welfare.

Thank you for the opportunity to make these comments. Please do not hesitate to contact either of us with any questions that you may have regarding the Commission' position on this issue

Sincerely,

Roger L Sherman
Senator Roger L. Sherman, Chair

Joyce Maker
Representative Joyce Maker, Chair

Cc: Governor Paul R. Lepage
Senator Olympia J. Snowe
Senator Susan M. Collins
Represenative Michael H. Michaud
Representative Chellie Pingree

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND AND ELEVEN

JOINT RESOLUTION MEMORIALIZING THE PRESIDENT OF THE UNITED STATES, THE UNITED STATES CONGRESS AND THE UNITED STATES TRADE REPRESENTATIVE REGARDING STATES' RIGHTS IN FUTURE INTERNATIONAL TRADE POLICY

WE, your Memorialists, the Members of the One Hundred and Twenty-fifth Legislature of the State of Maine now assembled in the First Regular Session, most respectfully present and petition the President of the United States, the United States Congress and the United States Trade Representative as follows:

WHEREAS, Maine strongly supports international trade when fair rules of trade are in place and seeks to be an active participant in the global economy; and

WHEREAS, Maine seeks to maximize the benefits and minimize any negative effects of international trade; and

WHEREAS, existing trade agreements have effects that extend significantly beyond the bounds of traditional trade matters, such as tariffs and quotas, and that can undermine Maine's constitutionally guaranteed authority to protect the public health, safety and welfare and its regulatory authority; and

WHEREAS, a succession of federal trade negotiators from both political parties over the years has failed to operate in a transparent manner and has failed to meaningfully consult with states on the far-reaching effect of trade agreements on state and local laws, even when obligating the states to the terms of these agreements; and

WHEREAS, the current process of consultation with states by the Federal Government on trade policy fails to provide a way for states to meaningfully participate in the development of trade policy, despite the fact that trade rules could undermine state sovereignty; and

WHEREAS, under current trade rules, states have not had channels for meaningful communication with the United States Trade Representative, as both the Intergovernmental Policy Advisory Committee on Trade and the state point of contact system have proven insufficient to allow input from states and states do not always seem to be considered as a partner in government; and

WHEREAS, the President of the United States, the United States Trade Representative and the Maine Congressional Delegation will have a role in shaping future trade policy legislation; now, therefore, be it

RESOLVED: That We, your Memorialists, respectfully urge and request that future trade policy include reforms to improve the process of consultation between the Federal Government and the states; and be it further

RESOLVED: That We, your Memorialists, respectfully urge and request that the President of the United States, the United States Congress and the United States Trade Representative seek a meaningful consultation system that increases transparency, promotes information sharing, allows for timely and frequent consultations, provides state-level trade data analysis, provides legal analysis for states on the effect of trade on state laws, increases public participation and acknowledges and respects each state's sovereignty; and be it further

RESOLVED: That We, your Memorialists, respectfully urge and request that the Federal Government reform the system of consultation with states on trade policy to more clearly communicate and allow for states' input into trade negotiations by allowing a state to give informed consent or to opt out if bound by nontariff provisions in a trade agreement and by providing that states are not bound to these provisions without consent from the states' legislatures; to form a new nonpartisan federal-state international trade policy commission to keep states informed about ongoing negotiations and information; and to provide that the United States Trade Representative communicate with states in better ways than the insufficient current state point of contact system; and be it further

RESOLVED: That We, your Memorialists, respectfully urge and request that state laws that are subject to trade agreement provisions regarding investment, procurement or services be covered by a positive list approach, allowing states to set and adjust their commitments and providing that if a state law is not specified by a state as subject to those provisions, it cannot be challenged by a foreign company or country as an unfair barrier to trade; and be it further

RESOLVED: That We, your Memorialists, respectfully urge and request that the United States Congress fund a center on trade and federalism to conduct legal and economic policy analysis on the effect of trade and to monitor the effectiveness of trade adjustment assistance and establish funding for the Department of Commerce to produce state-level service sector export data on an annual basis, as well as reinstate funding for the Bureau of Economic Analysis's state-level foreign direct investment research, both of which are critical to state trade offices and policy makers in setting priorities for market selection and economic impact studies; and be it further

RESOLVED: That suitable copies of this resolution, duly authenticated by the Secretary of State, be transmitted to the Honorable Barack H. Obama, President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, to the United States Trade Representative Ambassador Ron Kirk and to each Member of the Maine Congressional Delegation.

JOINT RESOLUTION MEMORIALIZING THE MAINE DELEGATION, THE CONGRESS OF THE UNITED STATES AND THE PRESIDENT TO SAFEGUARD THE STATE'S ROLE IN INTERNATIONAL TRADE AGREEMENTS

WHEREAS, the State of Maine strongly supports international trade when fair rules of trade are in place, and seeks to be an active participant in the global economy; and

WHEREAS, the State of Maine seeks to maximize the benefits and minimize any negative impacts of international trade; and

WHEREAS, existing trade agreements have impacts which extend significantly beyond the bounds of traditional trade matters such as tariffs and quotas, and can undermine Maine's constitutionally guaranteed authority to protect the public health, safety and welfare, and regulatory authority; and

WHEREAS, a succession of federal trade negotiators from both political parties over the years have failed to operate in a transparent manner and have failed to meaningfully consult with states on the far-reaching impact of trade agreements on State and local laws, even when binding the State of Maine to the terms of these agreements; and

WHEREAS, existing trade agreements have not done enough to ensure a level playing field for Maine workers and businesses, or to include meaningful human rights, labor, and environmental standards, which hurts Maine businesses, workers, and communities; and

WHEREAS, the negative impact of existing trade agreements on the State's constitutionally guaranteed authority to protect the public health, safety and welfare, and regulatory authority has occurred in part because U.S. trade policy has been formulated and implemented under the Trade Promotion Authority (Fast Track) process; and

WHEREAS, Trade Promotion Authority (Fast Track) eliminates vital checks and balances established in the U.S. Constitution by broadly delegating to the Executive Branch authority reserved for Congress to set the terms of international trade; and

WHEREAS, Trade Promotion Authority (Fast Track) circumvents normal congressional review and amendment committee procedures, limits debate to 20 hours total, forbids any floor amendments to the implementing legislation that is presented to Congress, and generally creates a non-transparent trade policymaking process; and

WHEREAS, Trade Promotion Authority (Fast Track) is not necessary for negotiating trade agreements, as demonstrated by the existence of scores of trade agreements, including major pacts such as the agreements administered by the WTO, implemented without use of Fast Track; and

WHEREAS, the current grant of Trade Promotion Authority (Fast Track) expires in July 2007; now, therefore be it

RESOLVED: That the State of Maine respectfully requests that the United States Congress create a replacement for the Trade Promotion Authority (Fast Track) system so that U.S. trade agreements are developed and implemented using a more democratic and inclusive mechanism that entails meaningful consultation with states: and be it further

RESOLVED: That the State of Maine respectfully requests that the United States Congress fully fund and support export promotion programs and Trade Adjustment Assistance programs: and be it further

RESOLVED: That copies of this Joint Resolution be immediately transmitted to Senator Olympia Snowe, Senator Susan Collins, Representative Michael Michaud, and Representative Tom Allen and be copied to the Honorable George W. Bush, President of the United States; Ambassador Susan Schwab, United States Trade Representative; the President of the United States Senate; and the Speaker of the House of Representatives.

PUBLICCITIZEN

215 Pennsylvania Avenue, SE • Washington, D.C. 20003 • 202/546-4996 • www.citizen.org

Replacing Fast Track with an Inclusive, Democratic Trade Negotiating and Approval Process

Fast Track was a U.S. procedure established in the 1970s by President Nixon for negotiating trade agreements that concentrated power in the president's hands. It delegated to the executive branch Congress' exclusive constitutional authority to "regulate Commerce with foreign nations." In particular, Fast Track allowed the executive branch to select countries for, set the substance of, and then negotiate and sign trade agreements — all before Congress had a vote on the matter.

As well, under Fast Track, normal congressional committee processes were circumvented and the executive branch was empowered to write lengthy implementing legislation for each pact on its own. Normal congressional committee processes, such as mark ups, were not allowed under Fast Track. The White House authored and submitted bills that could not be amended in committee or on the House or Senate floor. Yet, these executive-authored trade pact implementing bills altered wide swaths of U.S. law to conform domestic policy to each agreement's requirements. Fast Track was unique in that it empowered the executive branch to force a congressional vote on such implementing legislation and the related agreement within a set amount of time with no amendments allowed and only twenty hours of debate in each chamber.

Fast Track was used to push through Congress various trade pacts, including NAFTA, CAFTA and WTO, that did not enjoy broad public support. Fast Track renewal was last slipped through Congress at midnight in 2002 by only two votes. On June 30, 2007, the current grant of Fast Track, now called "Trade Promotion Authority" by its supporters, expired. Fast Track is not *needed* to approve trade agreements, a fact proven by the dozens of trade agreements that have been passed without its use. Fast Track unnecessarily creates a situation where negotiators cannot be held accountable by the public, and legislators are denied their constitutional authority to set the terms of trade agreements.

We need to replace the outdated Fast Track with a good process to get good trade agreements. Fast Track was designed over 30 years ago as a way to deal with traditional tariff and quota-focused trade deals. The Trade Reform Accountability Development and Employment (TRADE) Act cosponsored by 152 House members in the 111th Congress sets out a Fast Track replacement mechanism that enjoys broad support by small business, labor, consumer, family farm, faith, environmental and other groups.

Core Aspects of the Past Fast Track Trade-Authority Delegation

- Allowed the executive branch to select countries for trade pacts. Ninety-day notice to Congress was required before talks were initiated, but no mechanism was provided for Congress to disapprove;
- Allowed the executive branch to set the substance of, negotiate and then sign trade agreements, all before Congress had a vote on the matter. The executive branch was required only to notify Congress 90 calendar days before signing and entering into an agreement.

- Empowered the executive branch to write implementing legislation for each pact, without committee mark ups. As a concession to congressional decorum, the executive branch agreed to participate in "non" or "mock" hearings and markups by the trade committees. However, this is a practice, not a requirement. In 2008, President Bush chose to ignore this practice and submitted the Colombia FTA without an informal agreement on timing or mock mark ups, despite congressional leaders' objections to the pact's submission at that time.
- Once the executive branch transferred such a bill, the agreement itself, and various supporting materials to Congress, the House and Senate were required to vote within 90 legislative days.
- Such bills were automatically referred to the House Ways & Means and Senate Finance Committees. (In the 2002 Fast Track bill, the House and Senate Agriculture committees also got a formal referral). If a committee failed to report out the bill within 45 legislative days from when it was submitted the legislation to Congress, the bill was automatically discharged to the floor for a vote.
- A House floor vote was required no later than 15 legislative days after the bill was reported or discharged from committee. Thus, within 60 legislative days, the House was required to vote on whatever agreement the president had signed and the implementing legislation.
- The Finance Committee was allowed an additional 15 days after the House vote, at which time the bill was automatically discharged to the Senate floor for a vote required within 15 legislative days.
- The floor votes in both the House and Senate were highly privileged. Normal congressional floor procedures were waived, including Senate unanimous consent, debate and cloture rules, and no amendments were allowed. Debate was limited to 20 hours – even in the Senate.
- Once the president provided Congress with notice of his intent to sign an agreement, he was authorized to sign after 90 calendar days. However, there was no mandatory timeline for submission of implementing legislation. Thus, an agreement's legal text finalized just minutes before the delegation authority expired could be sent to Congress even years later with the extraordinary floor procedures still applying. This "hangover" effect is why Fast Track procedures still apply to the Free Trade Agreements President Bush signed with Panama and Korea in 2007.
- Once a president submitted an agreement under Fast Track, that agreement's Fast Track treatment was "used up." If Congress adjourned before the mandatory vote clock ran out or if Congress voted against the agreement, Fast Track for that agreement expired. If it were to be submitted again, normal congressional procedures would apply. Thus, whether Fast Track applies to the Colombia FTA is a contested matter, as most procedural experts believe Fast Track permitted only one submission under the privileged rules. In 2009 the Bush administration used Fast Track to try to force a vote. Then-Speaker Pelosi worked with the Rules Committee to alter the rule and the vote did not occur.
- An advisory-committee system was established to obtain private sector input on trade-agreement negotiations from presidentially-appointed advisors. This system is organized by sector and industry and included 700 advisors comprised mainly of industry representatives. Throughout trade talks, these individuals obtained special access to confidential negotiating documents to which most members of Congress and the public have no access. And, they have regular access to executive-branch negotiators and must file reports on proposed trade pacts. The Fast Track legislation listed committees for numerous sectors, but not consumer, health, environmental or other public interests.
- The 1974 Fast Track also elevated the Special Trade Representative (STR) to the cabinet level, and required the Executive Office to house the agency. While other cabinet-level positions tend to be responsive to a pre-defined constituency (Agriculture and farmers, for instance), the STR was unique in that its only real constituency was the president, the gatekeeper committees of Congress, and the hundreds of trade advisory committees. And its main goal was proliferation of trade negotiations. The 1979 Fast Track changed the name of the STR to the U.S. Trade Representative.
- The 2002 Fast Track created an additional requirement for 90-day notice to the gatekeeper committees before negotiations could begin, but neither the gatekeepers nor the executive were required to take any further action after receiving this notice.

- In 2002, during the last grant of Fast Track, the procedure was formally renamed "Trade Promotion Authority". However, it is still commonly referred to as Fast Track.

To Obtain Better Trade Pacts, Congress Needs A Meaningful Role in Formative Aspects of Trade Negotiations and the Public Needs More Transparency

Today's "trade" agreements affect a broad range of domestic non-trade issues such as food safety, local prevailing wage laws, Buy-America procurement, zoning, and the environment. Fast Track should be relegated to a museum of outdated. Congress, state officials and the public need a new modern procedure for developing U.S. trade policy that takes into account the realities of 21st century globalization agreements. With a new forward-looking trade negotiating process, we can ensure U.S. trade expansion policy meets the needs of working families, farmers and small businesses. Many in Congress are unaware that Fast Track is just one – now outdated and inappropriate – way to do trade negotiations. We must replace Fast Track to ensure future pacts contain benefit most Americans. There are some key principles, included in the Fast Track replacement in the TRADE Act, for designing a new trade negotiating system that can deliver trade policy that works for the majority:

- **Readiness Criteria and Binding Goals: What Trade Partners and What Must and Must Not be in U.S. Trade Pacts:** Congress must set criteria to guide decisions about with which nations the U.S. negotiates. This is the system that the European Union uses to determine if new countries are ready to join the union. For prospective U.S. trade partners, certifying that a country meets ILO standards and human rights and democracy criteria will show a country to be ready for a win-win deal. The terms of future U.S. trade agreements must set new rules for the global economy. This will only happen if, when Congress delegates its trade authority, Congress sets mandatory goals on what must and must not be in trade pacts. These binding goals must include that U.S. trade deals require corporations to meet the many existing globally-agreed rules on labor, environment, human rights. We will face an endless race-to-the-bottom without imposing a floor of decency – specifying what standards must be met for the resulting commerce to enjoy trade benefits. These goals also must include states' right to prior informed consent before being bound to meet pacts' investment, procurement, service sector and other rules limiting their non-trade regulatory authority.

- **No Free Lancing: Systematic Briefings to Track Negotiations**: Today, executive branch negotiators regularly conduct trade talks with no real congressional oversight. Many in Congress and state legislatures are left with little information about what is happening during trade talks, even when negotiations directly affect their domestic jurisdiction. Official trade advisory committees, comprised of mainly big- business interests, have the official texts. Jurisdiction must be expanded to all congressional committees implicated by today's expansive "trade" pacts. The expanded list of committees must be regularly briefed on negotiators' progress in meeting Congress' goals. Negotiators must regularly brief state legislative officials about proposals' local effects. The trade advisor system must be reformed – requiring diverse participation and appointment of participants by Congress.

- **Certify that Trade Goals Were Actually Met in Negotiations:** Not only negotiators and business representatives with special access should determine if the goals Congress set have been met. Instead, when negotiators think they are done with talks, they must be required to give notice to all of the congressional committees with implicated jurisdiction and file an assessment of how their "finished" text meets Congress' goals. Congress would then decide if negotiators really had met Congress' goals. One way to give Congress this authority is to create a special super-committee of chairs and ranking Members of affected committees to certify mandatory goals were met. A supermajority vote by the special committee would certify that in fact negotiations have met the key

goals Congress listed. A super-committee certification would trigger a full-Congress vote on the agreement itself, binding the U.S. to the final text.

- **Congress Must Vote Before a Trade Agreement Can Be Signed and the U.S. Is "Bound":** If the super-committee certifies that it is satisfied that indeed negotiators have met Congress' goals, then their certification would trigger a congressional vote on a one-line resolution: "Congress authorizes the USTR to enter into the X agreement." Only then could a deal be signed. This would shift Congress' focus onto trade pacts' actual texts at a time when changes can be made and give Congress leverage to control pacts' contents. By inserting a congressional vote into the process early on, Congress would regain leverage to control the contents of the agreements.

- **The Debate Occurs Along the Way, so There Is Less Controversy Over Votes on Final Implementing Legislation:** The single most important change for any pro-democracy, pro-worker, pro-environment Fast Track replacement is to break up the pieces of Congress' delegation. Congress must create opportunities – congressional votes –to ensure its goals are met. By front-loading roles for the public and Congress – and by providing states opt-in for non-trade terms - the tenets of U.S. democracy, such as checks and balances and federalism, would be preserved. This new process would give those who will live with the results a say in making U.S. trade policy. By moving adding votes earlier-on, the final vote to pass implementing legislation for trade deals would be less decisive of the outcomes and could be held under rules similar to final budget votes (limited amendments, privileged order).

For More Information, Contact Public Citizen's Global Trade Watch 202-546-4996 or lwallach@citizen.org

I

111TH CONGRESS
1ST SESSION

H. R. 3012

To require a review of existing trade agreements and renegotiation of existing trade agreements based on the review, to set terms for future trade agreements, to express the sense of the Congress that the role of Congress in trade policymaking should be strengthened, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 24, 2009

Mr. MICHAUD (for himself, Mr. ABERCROMBIE, Mr. ALTMIRE, Mr. ARCURI, Mr. BACA, Ms. BALDWIN, Mr. BOCCIERI, Mr. BOSWELL, Mr. BRADY of Pennsylvania, Mr. BRALEY of Iowa, Mr. CAPUANO, Mr. CARNAHAN, Mr. CARNEY, Mr. CARSON of Indiana, Mr. CHANDLER, Mr. CHILDERS, Mr. CLEAVER, Mr. COHEN, Mr. CONYERS, Mr. COSTELLO, Mr. CUMMINGS, Mrs. DAHLKEMPER, Mr. DEFAZIO, Mr. DELAHUNT, Ms. DELAURO, Mr. DINGELL, Mr. DOYLE, Ms. EDWARDS of Maryland, Mr. ELLISON, Mr. FILNER, Ms. FUDGE, Mr. GORDON of Tennessee, Mr. GRAYSON, Mr. AL GREEN of Texas, Mr. GENE GREEN of Texas, Mr. GRIJALVA, Mr. GUTIERREZ, Mr. HALL of New York, Mr. HARE, Mr. HASTINGS of Florida, Mr. HINCHEY, Ms. HIRONO, Mr. HOLDEN, Mr. HOLT, Mr. JACKSON of Illinois, Ms. JACKSON-LEE of Texas, Mr. JOHNSON of Georgia, Mr. JONES, Mr. KAGEN, Mr. KANJORSKI, Ms. KAPTUR, Mr. KILDEE, Ms. KILPATRICK of Michigan, Ms. KILROY, Mr. KISSELL, Mr. KUCINICH, Mr. LANGEVIN, Ms. LEE of California, Mr. LIPINSKI, Mr. LOEBSACK, Mr. LYNCH, Mr. MASSA, Ms. MCCOLLUM, Mr. MCGOVERN, Mr. MCINTYRE, Mr. MOLLOHAN, Ms. MOORE of Wisconsin, Mr. PATRICK J. MURPHY of Pennsylvania, Mr. MURTHA, Mr. NADLER of New York, Mrs. NAPOLITANO, Ms. NORTON, Mr. OBERSTAR, Mr. PALLONE, Mr. PAYNE, Mr. PERRIELLO, Mr. PETERS, Mr. PETERSON, Ms. PINGREE of Maine, Mr. RAHALL, Mr. ROSS, Mr. ROTHMAN of New Jersey, Ms. ROYBAL-ALLARD, Mr. RYAN of Ohio, Mr. SARBANES, Ms. SCHAKOWSKY, Mr. SCHAUER, Mr. SCOTT of Virginia, Ms. SHEA-PORTER, Mr. SHERMAN, Mr. SHULER, Ms. SLAUGHTER, Mr. SMITH of New Jersey, Mr. STUPAK, Ms. SUTTON, Mr. TIERNEY, Mr. TONKO, Mr. VISCLOSKY, Mr. WALZ, Ms. WASSERMAN SCHULTZ, Ms. WATERS, Mr. WELCH, Mr. WILSON of Ohio, Ms. WOOLSEY, Mr. WU, and Mr. SPRATT) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Rules, for a period to be subsequently deter-

(3) The Committee on Energy and Commerce of the House of Representatives.

(4) The Committee on Financial Services of the House of Representatives.

(5) The Committee on Natural Resources of the House of Representatives.

(6) The Committee on Ways and Means of the House of Representatives.

(7) The Committee on Agriculture, Nutrition, and Forestry of the Senate.

(8) The Committee on Banking, Housing, and Urban Affairs of the Senate.

(9) The Committee on Commerce, Science, and Transportation of the Senate.

(10) The Committee on Energy and Natural Resources of the Senate.

(11) The Committee on Environment and Public Works of the Senate.

(12) The Committee on Finance of the Senate.

(13) The Committee on Health, Education, Labor, and Pensions of the Senate.

SEC. 7. SENSE OF CONGRESS ON IMPROVING THE PROCESS FOR UNITED STATES TRADE NEGOTIATIONS.

It is the sense of the Congress that if Congress considers legislation to provide for special procedures for the

consideration of bills to implement trade agreements, that legislation should include—

(1) readiness criteria for the President to use in determining whether a country—

(A) is able to meet its obligations under a trade agreement;

(B) meets the requirements described in section 3(c); and

(C) is an appropriate country with which to enter into a trade agreement;

(2) a process by which the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives review the determination of the President described in paragraph (1) to verify that the country meets the criteria;

(3) requirements for consultation with Congress during trade negotiations that require more frequent consultations than required by the Bipartisan Trade Promotion Authority Act of 2002 (19 U.S.C. 3801 et seq.), including a process for consultation with any committee of Congress with jurisdiction over any area covered by the negotiations;

(4) binding negotiating objectives and requirements outlining what must and must not be included

in a trade agreement, including the requirements described in section 4(b);

(5) a process for review and certification by the Congress to ensure that the negotiating objectives described in paragraph (4) have been met during the negotiations;

(6) a process—

(A) by which a State may give informed consent to be bound by nontariff provisions in a trade agreement that relate to investment, the service sector, and procurement; and

(B) that prevents a State from being bound by the provisions described in subparagraph (A) if the State has not consented; and

(7) a requirement that a trade agreement be approved by a majority vote in both Houses of Congress before the President may sign the trade agreement.

○

U.S.–Canada Softwood Lumber Trade

U.S. and Canadian Industries Operate on Different Principles – With Significant Impact in U.S. Competitive Market

- The U.S. and Canadian softwood lumber industries operate under two very different systems:
    - In the United States, the industry operates under open market principles, and depends on its own competitiveness to survive.
    - In Canada, the provincial governments own over 90 percent of the timber supply and make it available to the Canadian industry at far below true market pricing. This is done in order to support jobs, by giving Canadian mills a government/taxpayer funded competitive advantage. In short, government policy, instead of the market, determines the cost of timber in Canada.
- The net result of Canada's system is that heavily subsidized Canadian softwood lumber exports severely disrupt the U.S. market.
- Efficient sawmills, workers, and communities across America are put in jeopardy as jobs fall victim to Canada's efforts to protect Canadian mills from free market realities and competition.
- In a commodity market such as lumber, unfair trade practices across Canada all the way to British Columbia have a significant impact on Maine's forestry industry. What happens in Canada with respect to subsidization of its industry matters to Maine.

Canada Has Repeatedly Violated Its Lumber Trade Agreement Commitments

- The U.S.–Canada Softwood Lumber Agreement was designed to help companies, workers, and communities in the United States withstand the negative effects of Canada's unfair government subsidies to softwood lumber production during a down cycle in the housing market.
- Canada is not living up to its lumber trade agreement commitments, to the detriment of the U.S. industry, its workers and their jobs, and private family forest landowners.
- Canada's non-compliance with critical parts of the Agreement has caused additional hardship in lumber-producing states – including the Pacific Northwest, the Inland West, the Northeast, and across the South.

U.S. Industry is Calling on Canada to Fully Comply With Its Trade Agreement Commitments – While Insisting on Swift and Effective Enforcement of the Lumber Trade Agreement

- While the U.S.–Canada Softwood Lumber Agreement has just been extended for two years – to October2015 – the big question is "what happens after 2015."

- What happens post 2015 depends on whether Canada will take affirmative steps to come into full compliance with the agreement, or whether the United States has to repeatedly turn to arbitration panels to resolve Canadian trade agreement violations.

SETTLEMENT AGREEMENT TO RESOLVE
CANADIAN LUMBER DISPUTE

- On September 12, 2006, the United States and Canada signed an agreement to settle the dispute regarding Canadian softwood lumber imports. The governments brought the agreement into effect (in a slightly amended form) on October 12, 2006.

- From the perspective of the U.S. lumber industry, the agreement has significant limitations. It will not soon and may never yield the U.S. industry's goal of open and competitive timber sales across Canada. Still, the agreement is, on balance, in the best interests of U.S. sawmills and mill workers.

Outline of the Agreement

➢ Canada must impose export restrictions on shipments of softwood lumber to the United States as described below.

➢ The United States and Canada are to move towards negotiations to end subsidies to and dumping of Canadian lumber.

Scope of Agreement -- The product coverage of the agreement matches the product coverage of the countervailing and antidumping duties (softwood lumber).

Export Measures -- Each region[1] has selected one of two types of export measures, Option A or Option B. The BC Coast and Interior regions and Alberta have selected Option A. The other non-exempt provinces -- Manitoba, Ontario, Quebec and Saskatchewan -- have selected Option B.

As described by the table below, export tax rates and quota volumes will depend on the level of lumber prices. Export measures will be more restrictive during periods of low prices (when unfair imports are particularly injurious).

Random Lengths Framing Lumber Composite Price	Option A: Export Charge	Option B: Export Charge Plus Quota
Over US$355/mbf	0%	0% + no quota
US$336 to US$355/mbf	5%	2.5% + regional share of 34% of U.S. consumption
US$316 to US$335/mbf	10%	3.0% + regional share of 32% of U.S. consumption
US$315 or under	15%	5.0% + regional share of 30% of U.S. consumption

Each region that selected Option B will have its regional market share determined based on the region's average share of total Canadian exports during the period 2001 to 2005.

3rd Country Trigger -- If during any two consecutive quarters the following three conditions exist, Canada will refund any export charges paid in those quarters (up to the equivalent of a 5% charge):

[1] Each Canadian province is a "region," except the western part of British Columbia (the "Coast" region) and the eastern part of British Columbia (the "Interior" region) are to be treated as separate regions.

(1) the U.S. market share accounted for by third country imports (e.g., Germany) increases by 20%;
(2) U.S. producers' U.S. market share increases; and
(3) Canadian producers' U.S. market share declines.

Surge Mechanism -- If any region's exports to the U.S. exceed 111% of its allocated share in any period, then those exports face an export charge equal to 150% of the prevailing export charge during the period. Any region triggering this provision is ineligible for refunds under the 3rd Country Trigger provision.

Maximum Taxable Value -- The export tax is to be assessed on the first US$500/mbf of the price of lumber shipped to the United States.

"First Mill" Treatment of Certain Remanufactured Lumber -- Lumber that is remanufactured by Canadian companies that do not use government timber and are independent of those that do is accorded "first mill" tax treatment. Export taxes are applied to the price of the lumber that is acquired by the remanufacturer as a production input -- not to the price for which the remanufacturer sells the finished product.

Exclusions -- Lumber produced from logs harvested in the Maritime provinces, the Yukon, the Northwest Territories or Nunavut is excluded from the border measures, as is lumber produced by certain Canadian companies (primarily along the Quebec/U.S. border) that were excluded from the countervailing duty.

Anti-circumvention Provision -- The agreement forbids the parties to circumvent their obligations under the agreement. For example, the provinces are forbidden to change their timber-pricing systems in ways that expand the subsidy to lumber. In addition, the provinces are forbidden to provide new conventional subsidies for lumber production.

Possible Regional Exemptions -- The agreement calls for the two countries to negotiate an end to timber-pricing systems that result in the under-pricing of timber. Provinces that adopt new systems that end timber under-pricing will be exempted from the border measures.

Dispute Settlement -- Any disputes under the agreement are to be resolved through a binding dispute settlement process involving non-North American commercial arbitrators.

Duration -- The Agreement is to last 7 years, and may be renewed for 2 more years. At Canada's insistence, in general, neither the United States nor Canada can terminate the agreement for the first two years that it is in place. If the United States terminates the agreement early without cause or the agreement runs its full term (7 or 9 years), U.S. unfair trade cases may not be brought against Canadian lumber for the first year after the end of the agreement.

Ellen R. Shaffer

Ellen R. Shaffer writes and lectures extensively on globalization and health, access to health care, and women's health. Under her leadership, CPATH called national attention to the impact of the US-Australia free trade agreement on drug reimportation measures. She is also an Assistant Clinical Professor in the Department of Clinical Pharmacy at the University of California, San Francisco.

She served as senior health policy advisor to U.S. Senator Paul Wellstone from 1992 to 1995, guiding staff work on national health care reform and managed care patients' rights. Her proposal for a state-based universal health service, under a grant from the California Health Care Options Project, extended her work with U.S. Representative Barbara Lee on H.R. 3000, the U.S. Universal Health Service Act. She co-authored the chapter on politics in the latest edition of Our Bodies Ourselves. She serves on the Executive Board of the American Public Health Association. She has a Masters in Public Health from the University of California at Berkeley, a Ph.D. from the School of Hygiene and Public Health at Johns Hopkins University, and is a Certified Employee Benefits Specialist.

Testimony to the Trade Subcommittee
Ways and Means Committee
U.S. House of Representatives

for:
Hearing on the Trans-Pacific Partnership Agreement
December 14, 2011

by:
American Academy of Pediatrics
American College of Preventive Medicine
American Society of Addiction Medicine
Center for Policy Analysis on Trade and Health (CPATH)
Tom Houston MD, FAAFP, FACPM, Ohio State University

Exclude Tobacco From Trade Rules To Protect Public Health;

Represent Medicine and Public Health on Trade Advisory Committees

Testimony to the Trade Subcommittee, Ways and Means Committee,
U.S. House of Representatives
Trans-Pacific Partnership Agreement:
Implications for Tobacco Control, and Comment on Trade Advisory Committees
Submitted December 28, 2011

On behalf of the American Academy of Pediatrics, the American College of Preventive Medicine, the American Society of Addiction Medicine and the Center for Policy Analysis on Trade and Health, we thank Subcommittee Chair Kevin Brady (R-Texas), Ranking Member Jim McDermott (D-Wash.), and members of the Trade Subcommittee of the Committee on Ways and Means for the opportunity to provide comments regarding the Trans Pacific Partnership Agreement (TPPA). Representing the perspective of medical and public health experts nationwide,[1 2 3] we ask the Subcommittee to recommend that Ambassador Kirk and the office of the United States Trade Representative (USTR) ensure that all tobacco products, including tobacco, cigarettes, cigars, smokeless tobacco, and other tobacco products are excluded from all provisions of this and any other Free Trade Agreement (FTA), that tobacco control measures be specifically exempted from any trade rules protecting intellectual property including trademarks and also exempted from any investor-state dispute resolution processes, and that our trading partners' current applied tariffs on these products not be reduced or eliminated.

Trade-based challenges to health policies represent a growing threat against efforts to curb tobacco use. Ongoing trade-based tobacco arbitration and contemporary U.S. trade agreements challenge health principles by treating tobacco—a lethal and addictive product—the same as any other good.

Our comments convey the following:

1. Tobacco is a deadly product.
2. Countries around the world are enacting increasingly strong and effective tobacco control policies that are proven to reduce tobacco use.
3. Such measures are being contested as violations of international trade agreements.
4. To reduce worldwide tobacco consumption, tobacco must be carved out from all protections afforded under the TPPA.

1. Tobacco is a deadly product

The scourge of tobacco-related morbidity and mortality is a present and persistent threat. Tobacco use remains the world's leading preventable cause of death and disease. Teenage smoking is a serious public health problem in developed and developing nations and contributes to the global burden of noncommunicable diseases (NCD), extending into adulthood. Tobacco use accounts for 5.2 million deaths worldwide each year, or one in ten adults,[4] There are 438,000 tobacco-related deaths each year in the U.S., more than deaths from HIV, illegal drugs, alcohol, motor vehicle injuries, suicides, and murders combined.[5] On average, American adult smokers die 14 years earlier than nonsmokers.[6]

Use most often begins in youth. Exposure to tobacco smoke in childhood is correlated with increased asthma attacks, respiratory infections, and a higher incidence of Sudden Infant Death

Syndrome.[7] Kids who smoke are more likely to consume alcohol and use illicit drugs; they also have a higher likelihood of suffering from mental illnesses including anxiety and depression.[8]

Global tobacco consumption is rising. Almost 80 percent of the world's tobacco consumers live in low- and middle-income countries.[9] Many TPPA partners are low- and middle-income countries.

The World Bank estimates that the total health care cost from smoking typically constitutes between 1 and 1.5 percent of a country's GDP.

2. Countries around the world are enacting increasingly stronger and more effective tobacco control policies that are proven to reduce tobacco use. [10]

The US and TPP partners all recognized the prospect for concerted action to address the public health tragedy of tobacco use when each signed the world's first public health treaty, the Framework Convention on Tobacco Control (FCTC), a function of the World Health Organization (WHO) . The FCTC supports international tobacco controls intended to reduce the demand for tobacco, which also represent the democratic will of the people in free societies around the world.

Increased cigarette prices are the single most effective strategy for reducing smoking, particularly among teenagers and young adults. Indeed, the Framework Convention on Tobacco Control (FCTC) states that "price and tax measures are an effective and important means of reducing tobacco consumption by various segments of the population, in particular young persons." The FCTC provides that its parties should maintain measures which may include tax policies and price policies on tobacco products so as to reduce tobacco consumption, and prohibit or restrict duty-free sales of tobacco products to travelers. Reducing prices for cigarettes by cutting tariffs on tobacco or cigarettes will only undercut this evidence-based health initiative.

Several countries have experienced significant success in discouraging smoking and motivating current smokers to quit by using graphic warning labels, that also include toll-free phone lines that support quitting. The U.S. has taken steps in that direction. Furthermore, Australia has proposed plain packaging on cigarette packages.

The FCTC also supports bans on "low tar" or "mild" labeling, designs of warning labels, and restriction on mass-media advertising. The United States and over 120 other countries have. instituted limits including bans on ad campaigns, particularly marketing that targets younger people. These measures are effective. A systematic review of research indicates that nonsmoking adolescents who were more aware of or receptive to tobacco advertising were more likely to become smokers later, compared with who are less exposed to tobacco ads.[11]

Public health research demonstrates that warning labels on cigarette packages increase awareness of the harms of tobacco use, and increase the likelihood of attempting to quit smoking.[12] To date, more than 100 countries have placed warning labels on cigarette packages.

3. However, such measures are being challenged as violations of international trade agreements.

Unless explicitly excluded, tobacco products are subject to all trade rules, which have implications for tobacco control measures on distribution of tobacco products, trademarks, and advertising. Provisions regarding intellectual property as they relate to advertising, trademarks and labeling, services rules on product regulation and distribution, and rules on market access, and national treatment, could all interfere with tobacco control measures. Tobacco control measures have been subject to trade challenges in the past, under the investment provisions, and continue to be vulnerable since they are not explicitly excluded.

Around the world, tobacco corporations are using trade rules to file charges against effective tobacco control measures. Phillip Morris International is using the investor-state dispute mechanisms available through trade agreements to challenge these effective tobacco control measures, relying on the intellectual property provisions related to trademarks enshrined in some existing bilateral investment treaties. Trade-based lawsuits are ongoing in Uruguay and Australia, where arbitration focuses on whether cigarette packaging regulations impinge upon trademark displays. In Norway and Ireland, trade-based lawsuits question the governments' ability to enact retail display bans.

Trade agreements also reduce tariffs on tobacco products, making them less expensive. The agreements therefore promote and facilitate greater tobacco consumption.

Eight of the TPPA partner nations, but not yet the US, have ratified the FCTC. It would be inconsistent with American support for the FCTC and with those nations' obligations under the FCTC for our country to negotiate a trade agreement with TPP partners that would lower tariffs on tobacco and increase the incidence of smoking.

4. To reduce worldwide tobacco consumption, tobacco must be carved out from all protections afforded under the TPPA.

Unless tobacco products are excluded from all of its provisions, the TPPA has the potential to validate trade-based challenges to tobacco control measures and limit the ability of sovereign governments to use proven tactics of discouraging tobacco use. If tobacco products are granted protections under the TPPA, there is a serious prospect for losing ground and exacerbating current tobacco use around the globe. The Trans Pacific Partnership Agreement (TPPA) has the potential to undermine much of the progress made in tobacco control by limiting the ability of sovereign governments to use proven measures to discourage tobacco use.

The U.S. has the opportunity to forge a trade agreement for the 21st century, that promotes progress in public health We should lead the way forward by eliminating the prospect for tobacco companies to manipulate trade rules in order to thwart the sovereign authority and obligation of states to protect health.

To reaffirm America's position as a global leader in tobacco control, we ask that the U.S. exclude tobacco products from all provisions of the TPPA. US trade negotiators should not ask any nation to weaken its current anti-smoking or alcohol control strategies.

In this event tariffs and other price controls designed to decrease tobacco use will remain in effect. New intellectual property rights would also not be extended to tobacco manufacturers, which they could otherwise use to challenge effective product controls on marketing and packaging such as warning labels. Hard fought victories in tobacco control must not be sacrificed the interest of promoting free trade.

It is imperative that the United States play a leadership role to reduce tobacco use and its devastating consequences around the world. Accordingly, notwithstanding any language to the contrary, nothing in the TPPA should block, impede, restrict, or modify the ability of any party to take or maintain any action, including tariffs or domestic content requirements, relating to manufactured tobacco that is intended or expected by the trading party to prevent or reduce tobacco use or its harms, or that is reasonably likely to prevent or reduce its use or harms. Moreover, if there occurs a conflict between provisions of this TPPA and any party's efforts to comply with the Framework Convention on Tobacco Control, the terms of the FCTC must prevail. Trade liberalization should not trump the goal of saving lives and promoting and protecting public health.

The US has already exempted other harmful products such as firearms from coverage by intellectual property rules and investor-state challenges. This should be our consistent position with regard to tobacco products and leaf tobacco.

Finally, the medical professions and public health would benefit from being well informed about trade policy, and are well positioned to advise the US Trade Representative on policies and measures that would safeguard health while promoting economic growth. We continue to advocate for full public health representation on trade advisory committees.

In conclusion, USTR should exclude tobacco and tobacco products from the TPPA and from all future free trade agreements.

Thank you for your consideration. We look forward to continued discussion on this important topic.

Robert Block, MD, FAAP, President
American Academy of Pediatrics
Department of Federal Affairs
601 13th Street, NW
Suite 400 North
Washington, DC 20005
202-347-8600

The American Academy of Pediatrics is an organization of 60,000 primary care pediatricians, pediatric medical subspecialists and pediatric surgical specialists dedicated to the health, safety and well- being of infants, children, adolescents and young adults.

Miriam Alexander, MD, MPH, FACPM, President
American College of Preventive Medicine
455 Massachusetts Avenue NW, Suite 200
Washington, DC 20001
202-466-2044
info@acpm.org

ACPM is the national medical society for nearly 2,500 preventive medicine physicians who are uniquely trained in both clinical and population-based medicine and are committed to disease prevention and health promotion.

American Society of Addiction Medicine
4601 N. Park Avenue, Upper Arcade #101
Chevy Chase, MD 20815
301-656-3920
Alexis Geier-Horan <ageier@asam.org>

Ellen R. Shaffer PhD MPH and Joe Brenner MA, Co-Directors
Sohil Sud MD, Senior Fellow
Center for Policy Analysis on Trade and Health (CPATH)
San Francisco Presidio
P.O. Box 29586
San Francisco, CA 94129-0586
415-922-6204
cpath@cpath.org

Tom Houston MD, FAAFP, FACPM
Clinical Professor, Department of Family Medicine
and College of Public Health
The Ohio State University
Columbus, Ohio

---

[1] Report 18 of the Board of Trustees, American Medical Association, (A-04), International Trade Agreements, (Resolution 219-A-03), 2004.

[2] Joseph Brenner and Ellen Shaffer, co-directors, Center for Policy Analysis on Trade and Health (CPATH), Comments to USTR: Proposed United States-Trans-Pacific Partnership Trade Agreement [Docket: USTR-2009-0041] (January 25, 2010), available at: http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480a83af2

[3] Matthew Meyers, President of Campaign for Tobacco Free Kids, Comments to USTR: Proposed United States -Trans-Pacific Partnership Trade Agreement [Docket USTR-2009-0041] (January 25, 2010), available at: http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480a831a4

[4] http://www.who.int/mediacentre/factsheets/fs310/en/index2.html

[5] http://www.cdc.gov/tobacco/data_statistics/fact_sheets/health_effects/tobacco_related_mortality/

[6] http://www.cdc.gov/tobacco/data_statistics/fact_sheets/health_effects/tobacco_related_mortality/

[7] http://www.cdc.gov/tobacco/data_statistics/fact_sheets/secondhand_smoke/health_effects/

[8] http://www.nlm.nih.gov/medlineplus/smokingandyouth.html

[9] World Health Organization (2011). Tobacco Fact Sheet. Available at www.who.int/mediacentre/factsheets/fs339/en/index.html

[10] http://whqlibdoc.who.int/publications/2011/9789240687813_eng.pdf

[11] http://summaries.cochrane.org/CD003439/does-tobacco-advertising-and-promotion-make-it-more-likely-that-adolescents-will-start-to-smoke

[12] http://www.who.int/tobacco/global_report/2011/en/index.html

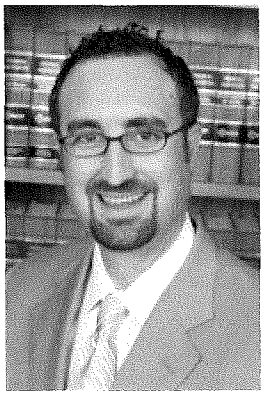
AMERICAN UNIVERSITY WASHINGTON COLLEGE OF LAW

FACULTY

Sean Flynn

Associate Director, Program on Information Justice and Intellectual Property Professorial Lecturer in Residence

Office: 4910 Building - Suite 121
Phone: 202-274-4157
E-mail: sflynn@wcl.american.edu



Curriculum Vitae (PDF)
SSRN Author Page
Print Profile

Sean Flynn teaches courses on the intersection of intellectual property, trade law, and human rights and is the Associate Director of the Program on Information Justice and Intellectual Property (PIJIP). At PIJIP, Professor Flynn designs and manages a wide variety of research and advocacy projects that promote public interests in intellectual property and information law and coordinates PIJIP's academic program, including events, student advising and curriculum development. Professor Flynn's research examines legal frameworks promoting access to essential goods and services. He serves as counsel for advocacy organizations and state legislatures seeking to promote and defend regulations that promote access to essential medicines. (PIJIP).

Prior to joining WCL, Professor Flynn completed clerkships with Chief Justice Arthur Chaskalson on the South African Constitutional Court and Judge Raymond Fisher on the U.S. Court of Appeals for the Ninth Circuit. He also represented consumers and local governments as a senior associate with Spiegel & McDiarmid and as senior attorney for the Consumer Project on Technology, served on the policy team advising then Assistant Attorney General for Civil Rights Deval Patrick, and taught Constitutional Law at the University of Witwaterstrand, South Africa.

Currently Teaching

- LAW-962-002 Human Rights&Acccess to Medicines
- LAW-795-009 Copyright Clearance & Fair Use in Film Industry (10/28-29)
- Intellectual Property and Human Rights

Areas of Specialization

- Intellectual Property & Human Rights
- Comparative Constitutional Law (Especially South Africa)
- Essential Goods and Services Law and Policy
- Law and Development

Degrees & Universities

- J.D., Harvard Law School 1999 (*magna cum laude*)
- B.A., Pitzer College (Claremont) 1992 (*Political Science, honors*)

Selected Publications

Sean Flynn, *Using Competition Law to Promote Access to Knowledge*, in *Access to Knowledge in the Age of Intellectual Property* (A. Kapczynski ed., 2010). SSRN Link

Sean Flynn, Adrian Hollis & Mike Palmedo, *An Economic Justification for Open Access to Essential Medicine Patents in Developing Countries*, 37 J.L. Med. & Ethics 184 (2009).

Sean Flynn, *Abbott's Refusal to Register Medicines as a Contravention of Section 28 of the Thailand Competition Act*, in *Right to Life*, 75 (Kannikar Kijtiwatchakul ed., Medecins Sans Frontieres 2007).

More Publications...

Books

Am. U. Program on Info. Just. & Intell. Prop. & Ctr. for Soc. Media, *Copyright & Documentary Film in the Commonwealth: Legal Scholar Reports from Six Countries* (Sean Flynn ed., 2009).

Other Publications

Sean Flynn, *The Constitutionality of State Regulation of Prescription Data Mining*, 5 BNA Pharm. L. & Indus. Rep. 1146 (2007).

Sean Flynn & Mike Palmedo, *Analysis of the KORUS FTA Pharmaceuticals and IP Chapters*, Program On Info. Just. & Intell. Prop. Br. (May 25, 2007).

Sean Flynn & Mike Palmedo, *The Second Wave of Developing Country Activism on AIDS Drug Pricing*, Program On Info. Just. & Intell. Prop. Br. (May 08, 2007).

Sean Flynn & Mike Palmedo, *The Price of Kaletra in Thailand*, Program On Info. Just. & Intell. Prop. Br. (Apr. 30, 2007).

Sean Flynn, *Thailand's Lawful Compulsory Licensing and Abbott's Anticompetitive Response*, Program On Info. Just. & Intell. Prop. Br. (Apr. 26, 2007).

Sean Flynn, Robert Weissman, Brook Baker, & Judit Rius Sanjuan, *Article Misleads in Support of Big Pharma, Op-ed*, Bangkok Post (Apr. 26, 2007).

Sean Flynn, *How KORUS FTA Will Raise Drug Prices*, Program On Info. Just. & Intell. Prop. Br. (Apr. 18, 2007).

Sean Flynn, *Annex 2C-plus" Provisions in the Korea-US FTA Pharmaceuticals Chapter*, Program On Info. Just. & Intell. Prop. Br. (Apr. 17, 2007).

Sean Flynn & Sharon Treat, *A Drug Deal Gone Bad*, TomPaine.com (Mar. 30, 2007).

Sean Flynn, *Considering Competition Complaints Against Abbott in Thailand - A Brief Explanation of Potential Legal Arguments*, Program on Info. Just. & Intell. Prop. (Mar. 23, 2007).

Sean Flynn, *Access to Medicines Issues in the US-Korea Free Trade Negotiations*, Program On Info. Just. & Intell. Prop. Br. (Feb. 11, 2007).

Sean Flynn & Tim Lay, *Who's Afraid of Competition? The Latest Assaults on Municipal Provision of Broadband Services and the Competitive Ideals of the Communications Act*, 13 J. Mun. Telecomm. Policy 6 (2006).

Sean Flynn, *Democratizing the Regulation and Governance of Water in the U.S.,*, in *Reclaiming Public Water: Achievements, Struggles, and Visions from Around the World* (Belén Balanyá, Brid Brennan, Olivier Hoedeman, Satoko Kishimoto & Philipp Terhorst, eds., 2d ed., Transntl. Inst. & Corp. Eur. Observaotry 2005).

Sean Flynn & Tim Lay, *Brand X and the New Agency Kings*, 46 Mun. Law. 6 (2005).

Sean Flynn, Robert Jablon & Mark Hegedus, *Dispelling Myths: A Real World Perspective on Trinko*, 50 Antitrust Bull. 589 (2005).

Sean Flynn, *Constitutional Issues and the Right to Water*, in *The Age of Commodity: Water Privatization in Southern Africa* (David A. McDonald & Greg Ruiters, eds., Earthscan Publications 2004).

Sean Flynn, *Legal Strategies for Expanding Access to Medicines*, 17 Emory Intl. L. Rev. 535 (2003).

Selected Works in Progress

Sean Flynn & Peter Jaszi, *Untold Stories in South Africa: The Creative Consequences of the Clearance Culture for South African Documentary Filmmakers* (forthcoming 2010). SSRN Link

Selected Presentations

Sean Flynn, Presentation, *The Right to Benefit from Scientific Discoveries: The Case of Access to Medicines in South Africa* (Am. Acad. Adv. Sci., D.C., Sep. 10, 2009).

Sean Flynn, Presentation, *Hale, Foucault, and the Possibilities for Post-Realist Essential Services Litigation Strategies* (U. Kwazulu-Natal, Durban, S. Afr., July 2009).

Sean Flynn, Panelist, *Fair Use, Fair Dealing, and Documentary Film in the U.S., Canada, and South Africa* (U. Ottawa, Feb. 2009).

Sean Flynn, Presentation, *Economic Justifications for Limiting Patent Rights in Developing Countries* (Brown Intl. Adv. Research Inst., Brown U., R.I., June 2009).

Sean Flynn, Presentation, *Intellectual Property and Human Rights* (Intell. Prop. Workshop for Korean Visiting Scholars, Am. U. Wash. C. L., Jan. 2009).

Sean Flynn, Presentation, *An Economic Critique of the Barton/Pfizer Price Discrimination Proposal* (Achieving Access + Innovation in Global Pharm. Mkt., Am. U. Wash. C. L., Feb. 2009).

Sean Flynn, Presentation, *Prescription Data Mining Regulation and the First Amendment* (Am. U., Oct. 16, 2009).

Sean Flynn, Presentation, *Special 301's Threat to Access to Knowledge* (Open Socy. Inst., London, Oct. 2008).

Sean Flynn, Presentation, *The TRIPS Agreement and Prizes* (Geo. Wash. U., Feb. 2008).

Sean Flynn, Presentation, *Prescription Data Privacy and the First Amendment* (Righting the Script: Improving Prescription Drug Policy in an Era of Health Reform, Carnegie Ctr. , D.C., Dec. 2008).

Sean Flynn, Presentation, *Legal Challenges to State Pharmaceutical Regulations* (Natl. Legis. Assn. Prescription Drug Prices, Portland, Me., Oct. 2007).

Sean Flynn, Presentation, *Promoting Access to Second Line Treatments in the Second Decade After TRIPS* (3rd Annual South Africa AIDS Conference, Durban, S. Afr., June 6, 2007).

Sean Flynn, Presentation, *Reflections on Constitutional Litigation Against Prepaid Watrer Meters* (Centre for Civil Society, Durban, S. Afr., June 5, 2007).

Sean Flynn, Presentation, *State Responses to Constitutional Litigation Challenging Prescription Drug Policies* (National State Attorneys General Program at Columbia Law School, N.Y.C., N.Y., May 10, 2007).

Sean Flynn, Presentation, *Comparison of Medicines Provisions of Australia and Korea Free Trade Agreements* (American University Washington College of Law, Wash., D.C., Apr. 18, 2007).

Sean Flynn, Presentation, *Constitutional Issues in State Drug Policy* (Winter Meeting of the National Legislative Association on Prescription Drug Prices, Manchester, N.H., Mar. 16, 2007).

Sean Flynn, Presentation, *Access to Medicines Issues in the Korea Free Trade Agreement Negotiations* (Congressional Briefing on the Korea Free Trade Agreement Sponsored by the Korea Policy Institute, U.S. House of Representatives, Wash., D.C., Feb. 13, 2007).

Sean Flynn, Presentation, *Competition Grounds for Compulsory Licenses for Needed Medicines* (UNCTAD Meeting on "Intellectual Property Arrangements: Implications for Developing Country Productive Capabilities in the Supply of Essential Medicines, Geneva, Switz., Oct. 18, 2006).

Sean Flynn, Presentation, *Citizen Participation in Utility Oversight* (World Conference on Regulation, Wash., D.C., Oct. 8, 2006).

Selected Media Appearances

New Hampshire Ban on Sale of Prescribing Data is Overruled (AMNews May 28, 2007) (Quoted in Article).

Thailand and Brazil Compulsory Licenses for Needed Medicines (Slate.com May 11, 2007) (Interview).

Abbot's Withdrawal of Drugs From Thailand in Response to Compulsory License Issued by Thai Government (Reuters May 2, 2007) (Interview).

Biogenerics and Drug Pricing: A Battle Royal (Pharmacy Times Dec. 15, 2006) (Quoted in Article).

Related Links

- Program on Information Justice and Intellectual Property

MATTHEW C. PORTERFIELD

Harrison Institute for Public Law ~ Georgetown University Law Center
111 F Street, NW, Suite 120 ~ Washington, D.C. 20001-2095
(202) 662-9608 ~ porterfm@law.georgetown.edu

Experience

Georgetown University Law Center, Washington, D.C. *1996 to present*
Senior Fellow and Adjunct Professor at the Harrison Institute for Public Law (1998-present); Teaching Fellow (1996-98). Responsibilities include -

- Supervising second and third year law students in 14 credit year-long clinical program
- Teaching clinical seminars
- Advising government officials and nongovernmental organizations on a wide range of trade and investment policy issues

Law Offices of Edward Lee Rogers, Washington, D.C. *1990 to 1996*

- Represented nonprofit organizations on federal, state and local environmental and land use issues

Greenpeace, Washington, D.C. *May – August 1989*

- Drafted legislation on pesticide exports; monitored congressional hearings; researched and drafted memoranda on EPA enforcement policies

Education

LL.M., Georgetown University Law Center, Washington, D.C. *May 1998*

J.D., *Magna cum laude,* Vermont Law School, South Royalton, VT *May 1990*

- Class Rank: 7/137
- Vermont Law Review - Head Notes Editor (1989-1990); staff (1988-1989)
- Vermont Law School Scholar Award
- American Jurisprudence Award: Constitutional Law
- American Jurisprudence Award: Contracts
- Member: Environmental Law Society

B.A., University of Vermont, Burlington, VT *May 1986*

- English Major with Coordinate Major in Environmental Studies

Committee Memberships and Bar Admissions

- Member, *Subcommittee on the Model Bilateral Investment Treaty of the State Department Advisory Committee on International Economic Policy* (2009 and 2004)
- U.S. Supreme Court (2000)
- District of Columbia (1992)
  - Member, International Law Section
- Connecticut (1990)

Publications

State Practice and the (Purported) Customary International Law Prohibition on Uncompensated Regulatory Expropriation, 37 NORTH CAROLINA JOURNAL OF INT'L LAW & COMMERCIAL REG. ___ (forthcoming – fall 2011)

Philip Morris v. Uruguay: Will Investor-State Arbitration Send Restrictions on Tobacco Marketing up in Smoke? INVESTMENT TREATY NEWS QUARTERLY (with Christopher Byrnes; forthcoming – summer 2011)

Approaches to Limiting or Eliminating ICSID's Jurisdiction over International Investment Claims (International Institute for Sustainable Development, Nov. 2009)

U.S. Farm Subsidies and the Expiration of the WTO's Peace Clause, 27 U. PA. J. INT'L ECON. L. 999 (2007)

An International Common Law of Investor Rights? 27 U. PA. J. INT'L ECON. L. 79 (2006)

International Expropriation Rules and Federalism, 23 STANFORD ENVT'L L. J. 3 (2004)

Who Preempted the Massachusetts Burma Law? Federalism & Political Accountability under Global Trade Rules, 31 PUBLIUS: THE JOURNAL OF FEDERALISM 1 (Fall 2001, with Robert Stumberg)

The Massachusetts Burma Law Decision, Obstacle Preemption, and the Role of International Trade Disputes in Challenges to State and Local Laws, MUNICIPAL LAWYER at 18 (September/October 2000)

State and Local Foreign Policy Initiatives and Free Speech: The First Amendment as an Instrument of Federalism, 35 STANFORD J. INT'L L. 1 (1999)

Rippling Puddles, Small Handles and Links of Chain: The Scope of Environmental Review for Army Corps of Engineers Permit Decisions, 10 TULANE ENVT'L L.J. 31 (1996)

Public Citizen v. Office of the United States Trade Representative: The (Con)fusion of Standing and the Merits under NEPA, 19 HARVARD ENVT'L L. REV. 157 (1995)

Agency Action, Finality and Geographical Nexus: Judicial Review of Agency Compliance with NEPA's Programmatic Environmental Impact Statement after Lujan v. National Wildlife Federation, 28 U. RICHMOND L. REV. 619 (1994)

Selected Presentations

Panelist, Congressional Staff Briefing, *Investment Provisions of U.S. Free Trade Agreements (January 2011)*

Panelist, Congressional Staff Briefing, *FTA Investment Chapters: Korea-U.S. FTA and Beyond (July 2010)*

Panelist, Senate Staff Briefing, *U.S. Investment Treaties and the Public Interest: U.S.-China Negotiations, the Administration's Review of the Bilateral Investment Treaty Program and the Implications for Labor, Environment, Democracy and Development (December 2009)*

Panelist, *Third Annual Forum of Developing Country Investment Negotiators, "Developing Countries and New Directions in International Investment Law,"* Quito, Ecuador *(November 2009)*

Panelist, *Local Food Procurement Preferences*, Community Food Security Coalition Conference, Baltimore, MD *(March 2007)*

Presenter, *U.S. Farm Subsidies and the WTO: Implications for U.S. Wheat Producers*, National Association of Wheat Growers and U.S. Wheat Associates Annual Meeting, Washington, DC *(January 2007)*

Presenter, *U.S. Farm Subsidies and the Expiration of the WTO's Peace Clause*, U.S. Agricultural Export Development Council, Baltimore, MD *(November 2006)*

Panelist, Congressional Staff Briefing, *Local Food Systems*, Washington, DC *(June 2006)*

Panelist, *The WTO and Agricultural Subsidies*, Trade Policy Leadership Seminar, National Conference of State Legislators Fall Forum, Chicago, Ill. *(December 2005)*

Panelist, *Forum on Democracy and Trade National Leadership Retreat*, Pocantico Conference Center, Tarrytown, New York *(April 2005)*

Presenter, *International Investment Roundtable*, Georgetown University Law Center, Washington, DC *(March 2005)*

Participant, *Experts Meeting on Draft Model International Investment Agreement for Sustainable Development*, The Hague, Netherlands *(January 2005)*

ROBERT K. STUMBERG

Harrison Institute for Public Law ~ Georgetown University Law Center
111 F Street, NW, Suite 120 ~ Washington, D.C. 20001-2095
(202) 662-9603 ~ stumberg@law.georgetown.edu

Experience

Georgetown University Law Center, Washington, DC. *1975 to present*
Professor of law and director of the Harrison Institute for Public Law; previous positions include associate professor, assistant professor, adjunct professor and graduate fellow. Past work at the Harrison Institute includes:

- *Democracy and trade* – policy work on global agreements and state sovereignty *1993 to present*
- *Community health* – policy work on access to care and community-based food systems *1995 to present*
- *Climate change* – policy that adapts to climate change and reduces greenhouse gases *2009 to present*
- *Utility regulation* – guidance to state regulators on their authority and best practices *2008 to 2010*
- *Community lending* – policy work on interstate banking and community reinvestment *1987 to 1993*
- *Economic development* – policy work on microenterprise and rural intermediaries *1987 to 1993*
- *Local government legislation* – policy work for the DC Council and Montgomery Co. Council *1975 to 1987*
- *Multifamily housing* – representation of group clients and policy work on housing finance *1980 to 1987*
- *Land use and historic preservation* – administrative law practice for community coalitions *1980 to 1985*

Center For Policy Alternatives, Washington, DC. *1987 to 1995*
Policy director. Responsible for policy research, legislative analysis, legal drafting, database development, general management and fundraising for multi-issue center on progressive state policy. In addition to issues noted above, policy work included worker displacement, job creation, welfare reform, solid waste management, sustainable agriculture, family & medical leave, and voter registration reform.

Montgomery County Government, Rockville, MD. *1984 to 1987*
Associate legislative counsel to Montgomery County Council in a joint program with Georgetown University.

Education

LL.M., Georgetown University Law Center, Washington, D.C. Focus on legislation/policy analysis. *May 1979*

J.D., Georgetown University Law Center, Washington, D.C. Fellow in legal writing program *May 1975*

B.A., Macalester College, St. Paul, Minnesota. *Phi Beta Kappa*; student body president; graduation with distinction; *Pi Sigma Alpha* (political science). *May 1972*

Bar Membership

U.S. Supreme Court (2000), District of Columbia (3/30/80), Maryland (11/3/81) and Missouri (9/6/75).

Selected Publications

Guide to GATS Negotiations on Domestic Regulation, Heinrich Boell Foundation (2011).

Tobacco in the Trans-Pacific Partnership, Forum on Democracy and Trade (draft working paper, 2011).

Procurement and Decent Work, Working Paper, International Labor Organization (Washington Office, 2010).

NAFTA Services and Climate Change, in *the Future of North American Trade Policy: Lessons from NAFTA* (Kevin Gallagher, ed., 2009).

Reform of Investor Protections, Testimony before the U.S. House Committee on Ways & Means, Subcommittee on Trade (May 2009).

The WTO, Services & the Environment, in *Handbook on Trade & Environment* (Kevin Gallagher, ed., 2008).

GATS & Electricity, State and Local Working Group on Energy & Trade Policy (April 2005).

Who Preempted the Massachusetts Burma Law? Federalism & Political Accountability Under Global Trade Rules, 31 Publius: The Journal of Federalism 1 (Fall 2001, with Matthew Porterfield).

Preemption & Human Rights: Local Options After Crosby v. NFTC, 32 Law & Policy in Int'l Business, 109 (2000).

Supreme Court Brief for Members of Congress, Amici Curiae, in *Crosby v. National Foreign Trade Council,* On Writ of Certiorari, Supreme Court No. 99-474 (January 13, 1999, with Matthew Porterfield).

A Multilateral Agreement on Investment: Would It Undermine Subnational Environmental Protection? 8 Journal of Environment & Development 5, March 1999 (with Thomas Singer).

Sovereignty by Subtraction: The Multilateral Agreement on Investment, 31 Cornell Int'l Law Journal 491 (1998).

Selected Presentations

International audiences

- China Administration of Grain, WTO subsidy rules – Georgetown Law — *June 2010*
- International Legislative Drafting Institute – Tulane Law School; New Orleans, LA — *June 1998 – June 2010*
- National Economic Development and Labour Council, Johannesburg — *March 2010*
- WTO annual forum, Geneva — *September 2008*

Congressional testimony

- U.S. House Committee on Ways & Means, Subcommittee on Trade — *May 2009*

Presentations to state and local government associations – public sector roles in developing trade policy

- National Conference of State Legislatures — *December 2011*
- National Association of State Treasurers; Divestment of pension fund assets — *March 2010*
- National Conference of State Legislatures; Trade Policy Leadership Seminar, Atlanta, GA — *December 2008*
- World Trade Organization, Annual Forum — *September 2008*
- International Municipal Lawyers Association; Washington, DC — *May 2008*
- Council of State Governments, San Juan, PR — *June 2007*
- National Association of Attorneys General; Washington, DC — *May 2007*
- National Association of Counties, Agriculture and Rural Affairs Steering Committee — *March 2006*
- Legislative Agricultural Chairs Summit; Tempe, AZ — *January 2006*

Testimony at state-level hearings – federalism and the impact of trade agreements on state or provincial law

- Vermont International Trade Commission; Montpelier, VT — *February 2011*
- Vermont International Trade Commission; Montpelier, VT — *April 2010*
- California Energy Commission — *May 2007*
- Vermont Commission on International Trade — *May 2007*
- California Senate, Committee on Business, Professions and Economic Development — *January 2006*
- U.S. Senate, Committee on Homeland Security and Governmental Affairs — *July 2005*
- New Jersey Senate, Subcommittee on Casinos and Historic Preservation — *February 2005*

Seminar and Conference Presentations

- Consortium for Sweatfree Purchasing – state preemption of labor standards for procurement — *May 2011*
- School Food Focus – geographic preference for procurement — *June 2011*
- Georgetown Reflective Engagement Workshop – living wage standards — *February 2011*
- Forum on Democracy and Trade – international regulation of services — *June 2010*
- American Society of International Law – policy update on international economic law — *March 2010*
- National Regulatory Research Institute – regulating in the public interest — *February 2010*

- Carnegie Institute – NAFTA services and climate change *December 2009*
- Sweatfree Communities – labor standards for procurement of goods *November 2009*
- George Washington University – federalism and foreign relations *April 2006*
- Inter-American Institute for Cooperation on Agriculture – agriculture and trade policy *October 2005*

7-11

Tobacco in the Trans-Pacific Partnership
A web of investment and trade rules

Robert Stumberg
Discussion draft of February 21, 2011 – v7b

This draft will be revised,
so please do not post without permission.
Send comments to Robert Stumberg at
stumberg@law.georgetown.edu

Forum
on democracy & trade

Tobacco in the Trans-Pacific Partnership

Abstract

The Trans-Pacific Partnership Agreement (TPP) is the Obama Administration's proposal for a "21st Century Trade Agreement." Philip Morris International (PMI) wants the TPP to follow the current U.S. model for trade agreements. That model treats tobacco trade like any other sector. This paper explains how PMI is using the same kind of investment and trade rules that it wants in the TPP to challenge the world's leading tobacco regulations in Uruguay. In other words, the TPP could strengthen PMI's ability to challenge the strongest regulations that serve as models for implementing the Framework Convention on Tobacco Control (FCTC). Among the ways to block this threat are to exclude investor-state arbitration from the TPP and to simply to carve tobacco out of the TPP. This paper also offers questions that public officials and health advocates can raise during oversight of TPP negotiations.

Contents

Forum on democracy & trade

The Forum on Democracy and Trade
is a network of U.S. public officials. We work
to ensure that trade agreements support local
decision-making and economic innovation.

Website: www.forumdemocracy.net

Acknowledgements

The author appreciates the helpful comments and editorial guidance from Benn McGrady, Matthew Porterfield, Gus Van Harten, Christopher Byrnes, Dana Eidsness and William Waren.

Forum
on democracy & trade

Tobacco in the Trans-Pacific Partnership

Introduction and summary

The Obama Administration is leading negotiations to create a Trans-Pacific Partnership Agreement, "a true 21st century trade agreement" that "will reflect U.S. priorities and values."[1] A key question is whether those U.S. priorities include expanding or reducing tobacco trade.

As of November 2010, the TPP negotiations include nine Pacific Rim countries: Australia, Brunei, Chile, Malaysia, New Zealand, Peru, Singapore, United States, and Vietnam.[2] They may eventually be joined by Canada, Japan and Korea.[3] With one exception, all TPP countries are members of the world's first global health agreement, the Framework Convention on Tobacco Control (FCTC).[4] The exception is the United States,[5] which is home to the world's largest tobacco company, Philip Morris International (PMI).[6]

---

1 Remarks by Ambassador Ron Kirk at the Washington International Trade Association (December 15, 2009), available at http://www.ustr.gov/about-us/press-office/speeches/transcripts/2009/december/remarks-ambassador-ron-kirk-washington-inte (viewed August 11, 2010).

2 USTR, Update on Trans-Pacific Partnership Negotiations in Brunei Darussalam (October 7, 2010), available at http://www.ustr.gov/about-us/press-office/blog/2010/october/update-trans-pacific-partnership-negotiations-brunei-darussa (viewed October 20, 2010); *see also* USTR, TPP Contacts, available at http://www.ustr.gov/tpp (viewed October 20, 2010); USTR, Request for Comments on Negotiating Objectives With Respect to Malaysia's Participation in the Proposed Trans-Pacific Partnership Trade Agreement, Federal Register, Vol. 75, No. 202, 64778 (October 20, 2010) (should the "viewed" dates be changed to sometime in November?).

3 Inside U.S. Trade, TPP Countries Say Canada Not Ready to Join Talks, Press Vietnam to Decide (October 22, 2010); Inside U.S. Trade, Japan Conducts High-Level Consultations on Whether to Join TPP Talks (October 8, 2010); Associated Press, Japan invited to meet with US-backed TPP members, Forbes.com (November 14 2010), available at http://www.forbes.com/feeds/ap/2010/11/14/business-as-japan-trade_8103664.html?boxes=Homepagebusinessnews (viewed November 15, 2010); Reuters, South Korea mulling U.S.-led TPP trade initiative: report (November 13, 2010), available at http://www.reuters.com/article/idUSTRE6AD05L20101114 (viewed November 15, 2010).

4 WHO, Framework Convention on Tobacco Control, WHO Doc. A56/VR/4 (May 21, 2003), available at http://www.who.int/gb/ebwha/pdf_files/WHA56/ea56r1.pdf. *See generally* Allyn L. Taylor, Ruth Roemer and Jean Lariviere, *Origins of the WHO Framework Convention on Tobacco Control,* 95 AM. J. PUB. HEALTH 936 (20050; U. of Maryland Legal Studies Research Paper No. 2005-50, available at SSRN: http://ssrn.com/abstract=818984.

5 A White House spokesman said on November 11th that President Obama "hopes to submit" the FCTC to the Senate for ratification in 2011. Duff Wilson, Cigarette Giants in a Global Fight on Tighter Rules: Governments Are Sued, New York Times A1, at A6 (November 14, 2010) [hereinafter Wilson, NYT, Cigarette Giants in a Global Fight].

6 PMI, Company overview, available at http://www.pmi.com/eng/about_us/company_overview/pages/company_overview.aspx (viewed August 2, 2010). In 2008, PMI spun off as a subsidiary from Altria, "becoming the world's leading international tobacco company and the fourth largest global consumer packaged goods company." PMI, Our History, available at http://www.pmi.com/eng/about_us/pages/our_history.aspx (viewed November 17, 2010). Philip Morris USA ("the largest tobacco company in the US") remains a subsidiary of Altria, Philip Morris USA, available at http://www.philipmorrisusa.com/en/cms/Home/default.aspx (viewed November 17, 2010). PMI has a much more aggressive litigation strategy than does Philip Morris USA. *See* Wilson, NYT, Cigarette Giants in a Global Fight, at A6.

In January 2010, the U.S. Trade Representative (USTR) sought public comments on the TPP. In its comments, PMI urged U.S. negotiators to continue their practice of treating tobacco trade like any other sector.[7] In particular, PMI asked USTR to include investor-state arbitration, incorporate WTO rules to protect tobacco trademarks and brands, and expand restrictions on regulation of cross-border services, including distribution of tobacco.[8] Public health advocates urged USTR to reject PMI's request and carve out tobacco from the TPP altogether. The advocates included the Campaign for Tobacco Free Kids[9] (TFK) and the Center for Policy Analysis on Trade and Health (CPATH).[10]

Just a few weeks later, PMI invoked investor-state arbitration and WTO trademark rules to challenge Uruguay's limits on tobacco brands and packaging.[11] PMI sought arbitration under the Switzerland-Uruguay bilateral investment treaty (BIT).[12] Like most BITs, this one provides the remedy of monetary compensation for an investor's losses.[13] Following the strategy used by oil companies under the U.S.-Ecuador BIT,[14] PMI has also asked arbitrators to "suspend" Uruguay's new regulations.[15] The challenged regulations do the following: (1) limit PMI to a "single

---

7 PMI, Submission of Philip Morris International in Response to the Request for Comments Concerning the Proposed Trans-Pacific Partnership Trade Agreement (January 22, 2010) 2, available at http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480a81299 (viewed August 11, 2010) [hereinafter, PMI, Comments on TPP].

8 *Id.*

9 Matthew Meyers, President of TFK, Comments to USTR: Proposed United States – Trans-Pacific Partnership Trade Agreement [Docket USTR-2009-0041] (January 25, 2010), available at http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480a831a4 (viewed August 9, 2010) [hereinafter, TFK, Comments on TPP].

10 Joseph Brenner and Ellen Shaffer, co-directors of CPATH, Comments to USTR: Proposed United States-Trans-Pacific Partnership Trade Agreement [Docket: USTR–2009–0041] (January 25, 2010), available at http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480a83af2 (viewed August 9, 2010) [hereinafter, CPATH, Comments on TPP].

11 Request for Arbitration, FTR Holdings S.A. (Switzerland), Phillip Morris Products S.A. (Switzerland) and Abel Hermanos S.A. (Uruguay) v. Oriental Republic of Uruguay, ICSID case no. ARB/10/7, noticed February 19, 2010 and registered March 26, 2010 available at http://ita.law.uvic.ca/documents/PMI-UruguayNoA.pdf (viewed March 5, 2011) [hereinafter, PMI v. Uruguay complaint].

12 Agreement between the Swiss Confederation and the Eastern Republic of Uruguay relating to the Promotion and Reciprocal Protection of Investments, SR 0.975.277.6, 22 April 1991 [hereinafter, Switzerland-Uruguay BIT].

13 Switzerland-Uruguay BIT, art. 5(1) (Dépossession, compensation).

14 Like the Switzerland-Uruguay BIT, the U.S.-Ecuador BIT does not expressly limit arbitration awards to money damages or restitution of property. More recent U.S. BITs (e.g., Uruguay) and investment chapters of free trade agreements (e.g., Peru and Korea) do limit the scope of awards. This alone could explain why PMI chose to litigate under the Switzerland-Uruguay BIT rather than the U.S.-Uruguay BIT. *Compare* Treaty Between the United States of America and the Republic of Ecuador Concerning the Encouragement and Reciprocal Protection of Investment, art. VI (disputes and awards), S Treaty Doc No 103-15 (1993), 11 May 1997 [hereinafter, U.S.-Ecuador BIT] *with* Treaty Between the United States of America and the Oriental Republic of Uruguay Concerning the Encouragement and Reciprocal Protection of Investment, art. 31(1) (limiting arbitrators to awarding monetary damages and restitution of property), S Treaty Doc No 109-9 (2006), 1 November 2006 [hereinafter, U.S.-Uruguay BIT]. *See also* U.S.-Peru TPA, art. 10.26; proposed U.S.-Korea FTA, art. 11.26.

15 PMI v. Uruguay complaint, ¶¶ 88-94 (relief sought). In Chevron's BIT claim against Ecuador, Chevron asked the arbitrators for interim measures, which include ordering Ecuador (1) "to use all measures necessary to enjoin enforcement of any judgment against Chevron" and (6) "to refrain from taking any action that would aggravate, exacerbate or extend the dispute in question." Chevron Corp. and Texaco Petroleum Co. v. Republic of Ecuador, Claimants' Request for Interim Measures (April 1, 2010) ¶ 14(a). In response, the arbitrators are monitoring domestic court proceedings against Chevron, and they ordered the parties to "maintain, as far as possible the status quo and not to exacerbate the procedural and substantive disputes." Chevron Corp. and Texaco Petroleum Co. v. Republic of Ecuador, Order on Interim Measures (May 14, 2010) ¶ 1(i).

presentation" of a brand in order to eliminate "light" tobacco brands and (2) require 80 percent of a package (the most anywhere) to depict the risk of death and disease from smoking.[16]

In effect, PMI wants the TPP to include the same legal tools that it is using against Uruguay. PMI candidly admits that it is targeting tobacco regulations in at least two TPP countries, Australia and Singapore. If successful, PMI will be able to influence a much larger set of countries that want to exceed the "floor" of regulations required by the Framework Convention on Tobacco Control. If the TPP covers tobacco trade and investment, PMI would also have a platform to challenge future tobacco regulations in the United States (e.g., through a subsidiary in another TPP country). Congress recently delegated authority to the Food and Drug Administration to regulate tobacco products; this delegation is similar to the authority that PMI is targeting in Singapore.[17]

In addition to expanding investor-state arbitration, the TPP would also support PMI's effort to incorporate certain trade obligations that pertain to investments. These are likely to include protection of trademarks under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and limits on domestic regulation of distribution services under the General Agreement on Trade in Services (GATS). PMI is using this web of trade and investment agreements to shrink the policy space that is available to the 171 parties of the FCTC.[18]

Over the past decade, TFK, CPATH, Essential Action, and others have outlined this threat. What this paper adds is a more specific description of the connections between three kinds of international economic agreements: (1) free trade agreements (FTAs, such as the TPP, which include investment chapters), (2) bilateral investment treaties (BITs, which cover additional countries), and (3) WTO agreements that pertain to investments (such as intellectual property and services). With the TPP, PMI's objective is to expand this web of agreements in order to constrain tobacco regulations.

As explained below, the TPP follows a series of FTAs in which the U.S. negotiated tariff concessions to promote tobacco trade and non-tariff protections for investment, trademarks and services that treat tobacco like any other industry. By all accounts, the TPP is being modeled on those previous agreements. One purpose of this paper is to contrast the pro-tobacco treatment in recent FTAs with the Obama Administration's support for stronger domestic regulation of tobacco products and sales.

Another purpose of this paper is to guide oversight of TPP negotiations by congressional committees as well as state legislatures and trade policy commissions.[19] State-level regulation was the catalyst for many federal tobacco policies. State attorneys general directed 40 lawsuits that held tobacco companies accountable for misrepresenting health risks. Their Master Settlement Agreement (MSA) obligates tobacco companies to pay $206 billion over the first 25

---

[16] PMI v. Uruguay complaint, ¶¶ 20-38, 44-46 (single presentation), ¶¶ 39-42, 47 (demeaning pictographs and percent of package warning).

[17] *See* "Number of brands and marketing terms," notes 38-39 below, with accompanying text.

[18] WHO, Parties to the WHO Framework Convention on Tobacco Control, available at http://www.who.int/fctc/signatories_parties/en/index.html (viewed August 2, 2010).

[19] State-level commissions for oversight of trade policy have been created in Washington, Utah, Massachusetts, Vermont, New Hampshire and Maine.

years and $9 billion per year thereafter.[20] In short, the influence of federalism is strong in tobacco regulation, and states have a major stake in oversight of the TPP.

Overview of lead questions for oversight

The sections of this paper focus attention on the following questions for oversight of tobacco trade in the TPP negotiations.

- **Which tobacco regulations is PMI challenging?**
  In its international litigation to date, PMI is challenging display bans, plain packaging, limits on the number of brands and marketing terms, and package warnings. Generally, its strategy seeks to convert the FCTC's regulatory floors into ceilings. Specifically, PMI has targeted the TPP countries of Australia (plain packaging) and Singapore (package warnings and marketing terms). Other TPP countries also exceed the FCTC regulatory floors, and the United States will soon join them.

- **How does the TPP support PMI's litigation strategy?**
  The United States is PMI's home jurisdiction. PMI asked U.S. negotiators to continue their practice of treating tobacco trade like any other sector. This entails tariff reductions and expanding the following: (a) access to investor-state arbitration, (b) protection of brands, and (c) limits on regulation of distribution services.

- **How can PMI use WTO obligations to strengthen its investment claims?**
  As it did in its Uruguay claim, PMI can try to incorporate WTO obligations that pertain to investment (e.g., certain rules regarding intellectual property (TRIPS) and regulation of services (GATS) by using the TPP's most favored nation (MFN) clause to gain access to umbrella clauses or more favorable clauses in other BITs of TPP countries.

- **Have U.S. negotiators complied with prohibitions on promoting tobacco trade?**
  Two directives prohibit federal agencies from promoting tobacco trade or undermining tobacco regulations abroad. One is President Clinton's Executive Order 13193, and the other is the Doggett Amendment, a recurring congressional limit on appropriations.

- **What are the options to limit TPP support for tobacco trade?**
  The most elegant way to avoid undermining regulation of tobacco is to carve tobacco out of the TPP.

---

[20] *See* Report to Senate U.S. Comm. on Commerce, Science & Transportation, States' Use of MSA Payments, GAO-O1-851, at 8 (June 2001). One of the lead authors of the Master Settlement Agreement was Heidi Heitkamp, who was then the Attorney General of North Dakota. She is presently a member of the board of directors of the Forum on Democracy and Trade. Several Canadian tobacco distributors were unsuccessful in their claims against the MSA in Grand River v. United States, an investor-state arbitration under NAFTA's investment chapter. In early 2011, the arbitrators ruled in favor of the United States on procedural and substantive grounds. As the Grand River claims challenged master settlement obligations and treaty status of indigenous investors, there is little direct relevance of this award to PMI's litigation strategy that targets regulatory standards. *See generally* International Centre for Settlement of Investment Disputes, Award, Grand River Enterprises, Six Nations Ltd. et al, and the United States of America, (January 12, 2011); all previous documents from this case are available at http://www.naftaclaims.com/disputes_us_grand_river.htm (viewed August 3, 2010).

CITIZEN TRADE POLICY COMMISSION
DRAFT AGENDA

Friday, March 9, 2012 at 9:30 A.M.
Room 220, Burton M. Cross State Office Building
Augusta, Maine

9:30 am Meeting called to order

I. Welcome and introductions

II. Review of Legislative Resolution and letter sent to USTR regarding need for transparency, appropriate protection of state sovereignty and adequate congressional review in trade treaty negotiations

III. News articles of interest;

- **Australia's opposition to inclusion of investor-state dispute settlement (ISDS) clauses in the Trans-Pacific Partnership Agreement (TPPA)**
- **TPPA discussion on new members**
- **U.S. position on footwear tariffs in TPPA**
- **Pharmaceutical reimbursement being negotiated in TPPA**
- **U.S.- Vietnam Bilateral talks on goods market access**

IV. Possible CTPC comment to USTR regarding proposed changes in the Rules of Origin under the Dominican Republic- Central America- United States Free Trade Agreement (CAFTA-DR) (April 17th deadline)

V. Opportunity for written comment to the U.S. House of Representatives, Committee on Ways and Means regarding President Obama's Trade Policy Agenda (March 15th deadline)

VI. CTPC Assessment: TPPA

A. Bi-annual assessment :

- **Discussion of proposed assessment structure**
- **Discussion of potential contractors to conduct the assessment**
- **Timeline for completion**

VII. Proposed next meeting date and suggestions for agenda topics

Adjourn

JOINT RESOLUTION MEMORIALIZING THE PRESIDENT OF THE UNITED STATES AND THE CONGRESS OF THE UNITED STATES TO IMPROVE THE PROCESS USED TO NEGOTIATE AND APPROVE INTERNATIONAL TRADE AGREEMENTS

Your Memorialists, the Members of the One Hundred and Twenty-fifth Legislature of the State of Maine now assembled in the Second Regular Session, most respectfully present and petition the President of the United States and the Congress of the United States as follows:

WHEREAS, the State of Maine strongly supports international trade when fair rules of trade are in place and seeks to be an active participant in the global economy in order to encourage meaningful transparency, appropriately acknowledge the vitally important role of state sovereignty, and to afford more meaningful Congressional review and acceptance; and

WHEREAS, the State of Maine seeks to maximize the benefits and minimize any negative impacts of international trade; and

WHEREAS, existing trade agreements have impacts that extend significantly beyond the bounds of traditional trade matters such as tariffs and quotas and can undermine Maine's constitutionally guaranteed authority to protect the public health, safety, welfare and regulatory authority; and

WHEREAS, a succession of federal trade negotiators from both political parties over the years have failed to operate in a transparent manner and have failed to meaningfully consult with states on the far-reaching impact of trade agreements on state and local laws, even when binding the State of Maine to the terms of these agreements; and

WHEREAS, existing trade agreements have not done enough to ensure a level playing field for Maine workers and businesses or to include meaningful human rights, labor and environmental standards, which ~~hurt~~ help Maine businesses, workers and communities; and

WHEREAS, the negative impact of existing trade agreements on Maine's constitutionally guaranteed authority to protect the public health, safety, welfare and regulatory authority has occurred in part because United States trade policy has been formulated and implemented in a process which lacks transparency, fails to properly recognize the principles of state sovereignty and is significantly lacking in any meaningful opportunity for congressional review and acceptance; and

WHEREAS, the United States Trade Authority is currently negotiating the terms of a proposed Trans-Pacific Partnership Agreement which will have a significant impact upon the citizens and commerce of the State of Maine; and

WHEREAS, there is a current opportunity for improving the process by which significant foreign trade policy agreements such as the Trans-Pacific Partnership Agreement are negotiated, therefore, be it

RESOLVED that We, your Memorialists, respectfully urge and request the President of the

United States and the Congress of the United States improve the process by which United States trade agreements are developed and implemented in order to encourage meaningful transparency and appropriately acknowledge the vitally important role of state sovereignty and to afford more meaningful opportunity for Congressional review and acceptance; and be it further

RESOLVED that suitable copies of this resolution, duly authenticated by the Secretary of State, be transmitted to the Honorable Barack Obama, President of the United States, to the President of the Senate of the United States, to the Speaker of the House of Representatives of the United States, to Ambassador Ron Kirk, United States Trade Representative, and to each Member of the Maine Congressional Delegation.

STATE OF MAINE

Citizen Trade Policy Commission

March 6, 2012

The Honorable Ron Kirk
Trade Ambassador
Office of the United States Trade Representative
600 17th Street NW
Washington, DC 20508

Dear Mr. Ambassador:

The Maine Citizen Trade Policy Commission "... is established to assess and monitor the legal and economic impacts of trade agreements on state and local laws, working conditions and the business environment; to provide a mechanism for citizens and Legislators to voice their concerns and recommendations; and to make policy recommendations designed to protect Maine's jobs, business environment and laws from any negative impact of trade agreements." In seeking to fulfill its statutory mandate, the Commission voted unanimously during its meeting of February 10, 2012 to submit this letter to you urging your support for significant changes in the process used to negotiate and accept foreign trade policy agreements such as, but not limited to, the Trans-Pacific Partnership Agreement (TPPA).

Maine has traditionally supported international trade when fair rules of trade are in place. As do other states, Maine intends to be an active participant in the global economy. From the Commission's perspective, the current process used to inform, negotiate and accept the provisions of a foreign trade treaty like the TPPA is in need of significant improvement.

Specifically, the Commission remains concerned that recent international trade agreements may have a negative impact on the State's constitutionally guaranteed authority to protect not only the public health, safety and welfare, but also

regulatory authority. The Commission believes this situation has occurred in large part because the process used to formulate United States trade policy lacks transparency, fails to properly recognize the principles of state sovereignty and is bereft of any meaningful opportunity for Congressional review and acceptance. The current process minimizes the opportunity for meaningful input and review, and the Commission suggests there should be an opportunity for process change with significant improvements in transparency and participation.

Please contact us with any questions that you may have regarding the Commission's position on these issues.

Sincerely,

Senator Roger L. Sherman, Chair

Representative Joyce Maker, Chair

Cc: Governor Paul R. Lepage
Senator Olympia J. Snowe
Senator Susan M. Collins
Representative Michael H. Michaud
Representative Chellie Pingree
State Representative Sharon Treat

smh.com.au
The Sydney Morning Herald

Labor standing firm on Pacific trade deal

Adam Gartrell, AAP Diplomatic Correspondent
March 5, 2012 - 6:09PM

The federal government is standing firm against Australian and US business demands that it allow controversial dispute settlement clauses into an ambitious new Pacific free trade deal.

Australia is one of nine nations seeking to reach final agreement on a deal known as the Trans-Pacific Partnership (TPP) by the end of 2012.

The 11th round of negotiations - which also includes the US, New Zealand, Singapore, Malaysia, Vietnam, Peru, Chile and Brunei - are now underway in Melbourne.

But talks have entered troubled waters over what are known as investor-state dispute settlement (ISDS) clauses.

These typically give businesses from one country power to take international legal action against the government of another, over agreement breaches.

The clauses are included in many multilateral and bilateral free trade agreements.

But the federal government last year issued a new trade policy, in which it ruled out supporting such clauses, arguing they ran the risk of giving foreign business greater legal rights than domestic businesses.

The government believes such clauses could also constrain its ability to make laws on social, environmental and economic matters.

Trade Minister Craig Emerson on Monday said the government would not change its position.

"We do not and will not support investor-state dispute settlement provisions," Dr Emerson told reporters on Monday.

"This is government policy.

"It's the result of a cabinet decision in April last year, reaffirmed at the (ALP) national conference."

The heads of 31 US business groups last week urged President Barack Obama to take Australia to task over the issue.

"Australia's rejection of investor-state dispute settlement is not only thwarting the ability of the TPP negotiations to produce strong enforcement outcomes, it is also having a corrosive effect on the level of ambition and other key aspects of the TPP negotiations," the business leaders said in an open letter to Mr Obama.

The Australian Chamber of Commerce and Industry (ACCI) on Monday also expressed concerned about the government's position.

"We think the Australian government's approach of non-inclusion is poor policy and leaves Australian firms exposed when they are doing business overseas," ACCI Director of Trade and International Affairs Bryan Clark said.

"We urge the government to reconsider its position on ISDS and negotiate all aspects of the TPP in good faith and in support of Australian business interests."

There are hopes the TPP will serve as a building block for the ultimate goal of a free-trade deal covering all 21 APEC countries.

This story was found at: ***http://news.smh.com.au/breaking-news-national/labor-standing-firm-on-pacific-trade-deal-20120305-1ue2b.html***

6

http://insidetrade.com/201203052392109/WTO-Daily-News/Daily-News/tpp-members-to-discuss-possible-new-entrants-in-melbourne-but-no-final-decisions-expected/menu-id-949.html

TPP Members To Discuss Possible New Entrants In Melbourne, But No Final Decisions Expected

Posted: March 5, 2012

MELBOURNE – Negotiators meeting this week in the eleventh formal round of Trans-Pacific Partnership (TPP) negotiations are expected to discuss the interest of Japan, Canada and Mexico in joining the initiative, but they are unlikely to come to any firm conclusions, according to a U.S. trade official

"We do not expect decisions on prospective members," the official said, when asked about what progress can be expected in Melbourne on this issue. "We expect to exchange information at the round on our respective bilateral consultations with countries that have expressed interest in joining."

U.S. officials do not have any meetings scheduled with Japanese, Canadian or Mexican officials in Melbourne, according to the official. While TPP members do not allow officials from prospective participants to attend the ongoing talks, such countries have in the past sent their officials to discuss their interest in joining the negotiations with current members on the sidelines of some formal rounds.

Consultations continue between the United States and these three interested countries. While in Japan last week, Assistant USTR Wendy Cutler met Nobuhiko Sasaki, director general of the trade policy bureau within the Ministry of Economy, Trade and Industry (METI). In that meeting, Cutler "explained U.S. domestic interests in the auto area," and the two sides "reaffirmed to continue to work together," according to a Japanese official.

That meeting followed up on a series of meetings that U.S. and Japanese officials held last month, although Japanese sources say the two sides are still primarily exchanging information and views of stakeholders. They also are discussing the level of ambition in the TPP talks and whether Japan could meet that level of ambition.

The U.S. and Japan have not yet discussed potential "preconditions" that Japan would have to meet, or precise "assurances" that Japan would have to give in key areas like auto market access in order to participate in TPP, according to Japanese officials.

Many observers believe that Japan will have to at least give some assurances on what it is willing to do in autos, agriculture and insurance in order to participate in TPP.

Sources differed as to why the two sides were not yet discussing these issues in detail. One Japanese official argued that such discussions should happen once Japan joins the TPP, not before. That reflects the official Japanese position of not negotiating away concessions before

joining the talks, although most observers believe some sort of "pre-negotiation" is likely to take place.

An informed source pointed out that, this official position not withstanding, Japan has made a number of commitments regarding automotive trade to the European Union in order to win over certain EU member states to the idea of launching Japan-EU trade negotiations. The two sides are expected to announce the launch of those trade talks in a matter of months, Japanese officials said.

Japanese officials say it is clear that USTR is looking for some sort of initial outcome in the TPP talks by this summer. One official said that, for that reason, it is "quite natural" for Japan to aim to join the TPP talks before that time.

Japan has gotten no firm response from USTR on timing of its potential participation or when TPP members may come to a decision on new members. But one Japanese official said that USTR has at least signaled that joining the talks by this summer may be difficult.

Some within the Japanese government believe that USTR does not want Japan to join until TPP partners have at least concluded some sort of initial deal. One Japanese official speculated that this could be the reason why the U.S.-Japan consultations are not advancing more swiftly.

Japan's desire to join TPP by summer is also driven by domestic political reasons, one informed source said. This relates to the fact that Japanese Prime Minister Yoshihiko Noda, who is a strong proponent of Japan joining the TPP, also wants to advance an unpopular increase in Japan's consumption tax.

The consumption tax issue is likely to come to a head in June, when it will become apparent that the Japanese Diet will not agree to an increase. At that point, many political analysts expect Noda to dissolve the Diet and call for new elections, this source said. Those new elections, in turn, would take place in August or September, and Noda may not be re-elected. Without Noda's leadership, there may be no domestic political will for Japan to join TPP, this source said.

Substantively, Japan's near-term participation in TPP would allow it to help shape the rules of the agreement, which it prefers to simply signing onto an agreement that is, at least in some aspects, already completed. Other sources have speculated that Japan is pressing for participation in the short term because it knows any "down payment" of concessions to which it would have to agree to join the talks will only increase the longer it is excluded from the talks.

---

http://insidetrade.com/201203052392106/WTO-Daily-News/Daily-News/debate-over-us-position-on-footwear-tariffs-in-tpp-focuses-on-tariffs-and-rules-of-origin/menu-id-949.html

Debate Over U.S. Position On Footwear Tariffs In TPP Focuses On Tariffs And Rules Of Origin

Posted: March 5, 2012

MELBOURNE – The debate among U.S. stakeholders on how to treat footwear in a final Trans-Pacific Partnership (TPP) agreement has two components: tariff reductions and the rule of origin that will apply to imported footwear products.

Both are the subject of intense debate between importers of footwear, and manufacturers of footwear.

U.S. footwear tariffs vary depending on the type of shoe that is imported. Imported athletic footwear -- which is of huge interest for companies like Nike and New Balance-- typically faces tariffs in the 17-20 percent range, an industry source said.

That is lower than shoes with rubber soles and canvas "uppers," for instance, which face tariffs of 48 percent. Rain shoes and some athletic shoes face tariffs as high as 36.7 percent.

In addition to immediately scrapping these tariffs, importers want to establish a rule of origin for footwear in the TPP that they say would be more uniform and less burdensome. In particular, they want all footwear to be subject to a "tariff shift" rule, under which processing in a TPP country sufficient to change a product's tariff classification would bestow origin, and therefore qualify that product for preferential access under TPP.

This "tariff shift" approach is favored by U.S. importers in the TPP context because it would allow factories in Vietnam, for instance, to use components from China, assemble shoes in Vietnam and, as long as a tariff shift took place, export those shoes to the United States under TPP preferences.

In past trade deals, USTR has typically negotiated a tariff-shift rule of origin for footwear. However, it has also included exceptions from that general rule for more sensitive items. For instance, the Korea-U.S. free trade agreement stipulates that 15 sensitive tariff lines are subject to a 55 percent value-added rule of origin rather than the tariff-shift rule.

These tariff lines cover items like waterproof footwear; footwear with outer soles and uppers of rubber or plastics; sports and athletic footwear with outer soles of rubber/plastics and uppers of textiles; and footwear meant to protect against water, oil, grease or chemicals, or cold or inclement weather.

The value-added rule is more difficult to meet because an exporter must ensure that footwear contains a certain amount of value from the FTA region if it is to receive preferences. This

approach also imposes more burdensome record-keeping requirements on companies tracking the value of all components into footwear, one critic said.

U.S. manufacturers like New Balance not only want to preserve the 15 sensitive tariff lines from the Korea FTA that were exempted from the tariff-shift rule of origin. They also want to roughly double the number of tariff lines that would be subject to the 55 percent value-added rule. One source said the Rubber And Plastics Footwear Manufacturers Association is supporting this position on behalf of New Balance and others.

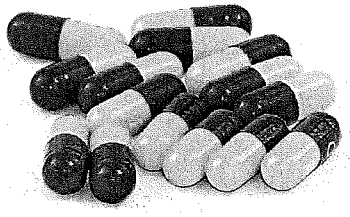
One critic of this position conceded that even with a 55 percent value-added rule, producers of athletic shoes in Vietnam like Nike may still be able to qualify for TPP benefits because the industry in Vietnam is vertically integrated. This means Vietnam does not import all of its components from China.

But the 55 percent value-added rule could be more of a hurdle for producers of leather shoes, which makes new investments in Vietnam a bit less appealing, this source argued. U.S. manufacturers like New Balance also want to exempt tariffs on sensitive footwear lines from any duty reductions in a final TPP deal.

http://infojustice.org/archives/8694

TPP Negotiators Turn to Pharmaceutical Reimbursement

March 4, 2012 By Sean Flynn Leave a Comment



(cc) hitthatswitch http://goo.gl/iJ87i

MELBOURNE, AUSTRALIA. Negotiations of the Transpacific Partnership Agreement (TPP) have turned to discussions of the pharmaceutical reimbursement chapter today. This issue is highly controversial and represents a very recent shift in trade policy. There are only two previous free trade agreements with the US to include chapters restricting the operation of pharmaceutical reimbursement programs — the US-Korea FTA, including its side letter (KORUS) and the US-Australia FTA, including its side letter (AUSFTA).

The leaked text of the US proposal for a pharmaceutical "transparency" chapter shows that it is using the KORUS FTA as a template. And this, in turn, shows that its real intent is to control the efficacy of price restraints in public health programs, not to promote transparency within them. This is a bold and controversial proposal — particularly in an agreement including a large number of developing countries.

The enclosed korus korus ausfta side by side contains a comparison of the AUSFTA and KORUS reimbursement chapters. It shows clearly the shift from a set of norms governing "transparency" in the AUSFTA to enabling pharmaceutical company challenges to ultimate pricing decisions in KORUS.

Notably, the exchange of letters convey an interpretation that the AUSFTA requires only that "Australia shall provide an opportunity for independent review of PBAC determinations, *where an application has not resulted in a PBAC recommendation to list*." There is no appeal under AUSFTA for a listed drug at a lower than desired price.

There clearly is an appeal on price in KORUS. The side letter promises to "establish and maintain a body to review, at the request of an applicant that is directly effected, recommendations or determinations *regarding the pricing* and reimbursement of pharmaceutical products or medical devices."

I don't know of any reimbursement (or procurement) program in the US that would give an appeal to a pharma company based on unhappiness with the price offered by a formulary. Companies can refuse to sell at the price offered. But they don't have an appeal based on the "value" of a patent, as is provided in KORUS and the US proposal for TPP.

Indeed, most or all Medicaid formularies would not comply with AUSFTA either (which is why KORUS had to include a Medicaid carve out) because they do not give any appeals to pharmaceutical companies for listing decisions on their preferred drug lists. Medicaid and other formularies could also be vulnerable to challenge under any agreement applicable to them that required only "objective" criteria to be used in formula decisions. The listing of drugs on a formulary often includes negotiation and deliberation among experts and health officials, not a mathematical application of a defined formula.

Although this chart shows that the chapter in KORUS is a lot worse for public health and affordable pricing concerns than AUSFTA, it does not mean that AUSFTA should be a standard to be pushed for in the TPP or future FTAs. US state officials opposed both AUSFTA and KORUS, even with the Medicaid carve outs. VT Governor Peter Shumlin wrote to Obama explained: "because the FTA was negotiated with minimal public input, and because general principles are likely to prevail over finely crafted exceptions, state officials are concerned that U.S. programs will be threatened by the provisions in the Korea FTA and similar norms exported to other agreements (e.g. the TPP)." The Vermont Governor also noted the inadvisability of exporting rules US programs have no experience complying with: "it is inappropriate for U.S. trade policy to advance restrictions on pharmaceutical pricing programs that U.S. programs do not meet but for technical carve outs."

This policy also breaks new ground in expanding restrictions on access to affordable medications in developing countries.The US government is already under fire by public health groups and Members of Congress for the leaked IP chapter showing that it is backtracking on the 2007 New Trade Policy on access to medicines. During the ratification process for KORUS, USTR officials repeatedly represented that they had no intent of asking developing countries to sign a reimbursement chapter. The Special 301 program also initially avoided identifying developing countries for reimbursement issues (although recent report have listed eastern european countries). The TPP agreement will be the first FTA where the US is known to be proposing a standard that would restrict the operation of non-discriminatory domestic pharmaceutical price policies in developing countries. And it is doing it an agreement is described as having "global" and "gold standard" ambitions.

http://insidetrade.com/201203072392349/WTO-Daily-News/Daily-News/us-vietnam-still-making-slow-progress-in-bilateral-talks-on-goods-market-access/menu-id-948.html

U.S., Vietnam Still Making Slow Progress In Bilateral Talks On Goods Market Access

Posted: March 7, 2012

MELBOURNE – The bilateral talks on goods market access between the United States and Vietnam continue to make fairly slow progress, as neither side appears willing to "make the first move" on offering critical concessions that could enable the other to follow suit, sources said.

One of Vietnam's top priorities in the TPP talks is securing better access to the U.S. market for its textiles and apparel exports. The other is better access for its footwear exports. The United States is keen to increase its access to Vietnam in agricultural products like pork, among other things.

On footwear, there are no signs yet that the United States has tabled any significant concessions on Vietnam's priorities, such as reducing the 12-15 percent duties on much of the athletic footwear that it exports to the United States. The United States has tabled what it sees as ambitious tariff reductions on many tariff lines, but apparently not the ones vital for Vietnam, one source said.

Cutting footwear tariffs is controversial in the United States, as limited production of footwear takes place in Maine, Massachusetts, and Wisconsin, which would be he hurt by the reduction in tariffs.

Partly as a result of the U.S. stance, Vietnam appears unwilling to engage on U.S. demands, to the frustration of U.S. negotiators that want to start reaching initial compromises with Vietnam on less controversial issues in order to build trust and momentum. But Vietnam, because of the lack of real movement on the U.S. side on its priorities, appears unwilling to even do that, sources said.

The talks on footwear have two components – tariff reductions and the rules of origin that footwear would have to meet in order to qualify for TPP preferences. The former is likely more important to Vietnam because its footwear industry is vertically integrated, meaning it does not rely on imports and therefore can meet tougher rules of origin.

Due to the high volume of footwear that Vietnam exports, cutting duties facing athletic shoes in half – perhaps from 20 percent to 10 percent – over a reasonable period of time would be a significant U.S. concession and would imply substantial savings for importers of Vietnamese footwear, one source said.

On textiles and apparel, the two sides also appear to still be stuck in initial positions. Unlike footwear, the rules of origin are of paramount importance here. The United States has tabled a yarn-forward rule of origin with few exemptions, which would be more difficult for Vietnam to

meet, whereas Vietnam has essentially tabled a "cut and sew" rule, which is also strongly supported by U.S. importers.

One observer suggested that the first major step in the talks could be for Vietnam to accept a yarn-forward rule as the basis for discussions, while the United States accepts that it will have to agree to significant exemptions for key tariff lines within that overall rule. Thus far, the two sides have not yet engaged in that kind of conversation, this observer said.

A yarn-forward rule means Vietnamese apparel could not be shipped to the United States under TPP preferences unless essentially all steps in making the garment, from the spinning of the yarn forward, are done in the TPP region. That would greatly limit Vietnam's ability to ship apparel under preferential tariffs to the U.S. or other TPP markets because its industry currently imports much of the yarn and fabric it uses from China, which is not party to the TPP talks.

The cut and sew rule of origin that Vietnam is demanding takes this into account. It would allow Vietnam to enjoy preferential access for apparel items that have been cut and sewn from Chinese fabric or fabric from any other destination.

Better access for pork is a U.S. priority because the National Pork Producers Council (NPPC) sees huge gains in Vietnam due to its high per capita consumption of pork, sources said.

According to NPPC, the United States exported 16,700 metric tons of pork products to Vietnam in 2008, valued at $31.9 million. NPPC believes Vietnam offers the greatest growth potential of any TPP country for increased pork exports.

NPPC is asking U.S. negotiators to demand the immediate elimination of all pork duties under a TPP deal. Vietnam currently applies a 25 percent tariff for fresh/chilled pork; a 15 percent tariff on frozen pork; an 8 percent tariff for pork offals; a 10 percent tariff for processed pork; and a 22 percent tariff for sausages and processed pork products, among others.

February 21, 2012

MEMORANDUM FOR ALL ADVISORY COMMITTEE MEMBERS

FROM: Isaac Faz
Acting Assistant U.S. Trade Representative
Intergovernmental Affairs and Public Engagement

SUBJECT: New Federal Register Notice on Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR)

On February 17, 2012, USTR published a notice in the *Federal Register*:

- Request for Petitions To Modify the Rules of Origin Under the Dominican Republic-Central America-United States Free Trade Agreement

This is a notice of opportunity to file petitions requesting changes to the non-textile and non-apparel products rules of origin under the CAFTA-DR under Article 4.14 of the Agreement.

The comment period for the notice closes at noon on April 17, 2012. For questions please contact Kent Shigetomi at 202-395-9459 or Jason Bernstein at 202-395-6577.

Executive Service members: Lois E. Quam, Chairperson, Executive Director for the Global Health Initiative, Office of the Secretary, Department of State; Frank A. Rose, Deputy Assistant Secretary, Bureau of Arms Control, Verification and Compliance, Department of State; Sharon L. Waxman, Senior Advisor, Office of the Under Secretary for Civilian Security, Democracy, and Human Rights, Department of State.

Dated: February 13, 2012.

Steven A. Browning,

Acting Director General of the Foreign Service and Director of Human Resources, Department of State.

[FR Doc. 2012–3788 Filed 2–16–12; 8:45 am]

BILLING CODE 4710–15–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Petitions To Modify the Rules of Origin Under the Dominican Republic—Central America—United States Free Trade Agreement

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of opportunity to file petitions requesting changes to the non-textile and non-apparel products rules of origin under the Dominican Republic—Central America—United States Free Trade Agreement ("the Agreement" or "CAFTA–DR").

SUMMARY: This notice solicits proposals on appropriate changes that USTR should consider for modifying the CAFTA–DR's rules of origin under Article 4.14 of the Agreement.

DATES: Public comments are due at USTR by close of business, April 17, 2012.

ADDRESSES: Submissions via on-line: *http://www.regulations.gov.* For alternatives to on-line submissions please contact Kent Shigetomi at (202) 395–9459.

FOR FURTHER INFORMATION CONTACT: Kent Shigetomi, Director for Mexico, NAFTA, and the Caribbean, at (202) 395–9459.

SUPPLEMENTARY INFORMATION: On January 23, 2012, the CAFTA–DR Free Trade Commission ("FTC" or "the Commission"), the plurilateral ministerial-level body responsible for supervising the implementation of the CAFTA–DR, agreed to consider modifying the rules of origin established in the Agreement, particularly in light of more recent free trade agreements. The CAFTA–DR requires each government to provide preferential tariff treatment to goods that meet the Agreement's origin rules. In the United States, those rules are implemented through the Dominican Republic—Central America—United States Free Trade Agreement Implementation Act (Public Law 109–53, 119 Stat. 462) (19 U.S.C. 4011(a) ("the Act")). Under the Act, goods imported into the United States qualify for preferential treatment if they meet the requirements of the general CAFTA–DR rules of origin set out in section 203 of the Act and the CAFTA–DR product-specific rules set out in the Harmonized Tariff System. The Agreement allows the Parties to amend the Agreement's origin rules as they deem appropriate. Section 203(o)(3) of the Act authorizes the President to proclaim modifications to the CAFTA–DR product-specific origin rules set forth in the HTS, subject to the consultation and layover provisions of section 104 of the Act.

Additional Information: The United States and the other CAFTA–DR Parties have not yet decided whether to make changes to the Agreement's rules of origin and, if such changes were made, what the scope or extent of such changes should be. The United States and the other CAFTA–DR Parties expect to take into account several factors in considering whether to make such changes, including: (1) The extent that any such changes may reduce transaction and manufacturing costs or increase trade among the Parties; (2) the feasibility of devising, implementing, and monitoring new rules of origin; and (3) the level and breadth of interest that manufacturers, processors, traders, and consumers in the Parties express for making particular changes. The Parties expect to make only those changes that are broadly supported by stakeholders in all countries.

Requirements for Comments/Proposals: Submitters should indicate whether they have discussed their proposals with representatives of the relevant sector in the other Parties and, if such discussions have taken place, the result of those discussions. Submissions should indicate if representatives of the relevant sector in the other Parties do not support the proposal. USTR encourages interested parties to consider submitting proposals jointly with interested parties in the other Parties.

Scope and Coverage of Proposals: USTR encourages interested parties to review the broadest appropriate range of items and to submit proposals that reflect a consensus reached after such a broad-based review. A single proposal can thus include requests covering multiple tariff headings. Proposals should cover entire 8-digit tariff subheadings, and may also be submitted at the 6, 4, or 2 digit level where the intent is to cover all subsidiary tariff lines.

Requirements for Submissions: Persons submitting written comments must do so in English and must identify (on the first page of the submission) "CAFTA–DR Rules of Origin." In order to be assured of consideration, comments should be submitted by noon, [60 days after publication].

In order to ensure the timely receipt and consideration of comments, USTR strongly encourages commenters to make on-line submissions, using the *http://www.regulations.gov* Web site. Comments should be submitted under the following docket: USTR–2012–0002. To find the docket, enter the docket number in the "Enter Keyword or ID" window at the *http://www.regulations.gov* home page and click "Search." The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting "Notices" under "Document Type" on the search-results page, and click on the link entitled "Submit a Comment." (For further information on using the www.regulations.gov Web site, please consult the resources provided on the Web site by clicking on the "Help" tab.)

The *http://www.regulations.gov* Web site provides the option of making submissions by filling in a comments field, or by attaching a document. USTR prefers submissions to be provided in an attached document. If a document is attached, it is sufficient to type "See attached" in the "Type Comment" and attach a file in the "Upload File(s)" field. USTR also prefers submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf). If the submission is in an application other than those two, please indicate the name of the application in the "Comments" field.

A person seeking to request that information contained in a submission from that person be treated as business confidential information must certify that such information is business confidential and would not customarily be released to the public by the submitter. For any comments submitted electronically containing business confidential information, the file name of the business confidential version should begin with the characters "BC." Confidential business information must be clearly designated as such. The submission must be marked "BUSINESS CONFIDENTIAL" at the top and bottom of the cover page and each succeeding page, and the submission should indicate, via brackets, the specific information that is confidential.

16

Additionally, "BUSINESS CONFIDENTIAL" must be included in the "Type Comment" field. Filers of submissions containing business confidential information must also submit a public version of their comments indicating where confidential information has been redacted. The non-confidential summary will be placed in the docket and open to public inspection. The file name of the public version should begin with the character "P." The "BC" and "P" should be followed by the name of the person or entity submitting the comments or reply comments. Filers submitting comments containing no business confidential information should name their file using the character "P," followed by the name of the person or entity submitting the comments.

Please do not attach separate cover letters to electronic submissions; rather, include any information that might appear in a cover letter in the comments themselves. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments in the same file as the submission itself, not as separate files.

USTR strongly urges submitters to file comments through *www.regulations.gov*, if at all possible. Any alternative arrangements must be made with Kent Shigetomi in advance of transmitting a comment. Mr. Shigetomi should be contacted at (202) 395–9459. General information concerning USTR is available at *http://www.ustr.gov*.

Inspection of Submissions: Submissions in response to this notice, except for information granted "business confidential" status, will be available for public viewing at *http://www.regulations.gov*. Such submissions may be viewed by entering the docket number USTR–2012–0002 in the search field at: *http://www.regulations.gov*.

John M. Melle,

Assistant U.S. Trade Representative for the Americas.

[FR Doc. 2012–3717 Filed 2–16–12; 8:45 am]

BILLING CODE 3190–W2–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted regarding the passenger motor vehicle insurance companies and rental/leasing companies comply with 49 CFR Part 544, Insurer Reporting Requirement, has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on November 25, 2011 (76 FR 72750). The agency received no comments.

DATES: Comments must be submitted on or before March 19, 2012.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Ms. Carlita Ballard at the National Highway Traffic Safety Administration, Office of International Policy, Fuel Economy and Consumer Programs (NVS–131), 1200 New Jersey Ave., SE., West Building, Room W43–439, NVS–131, Washington, DC 20590. Ms. Ballard's telephone number is (202) 366–0846. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: 49 CFR part 544; Insurer Reporting Requirement.

OMB Control Number: 2127–0547.

Type of Request: Request for public comment on a previously approved collection of information.

Abstract: This information collection supports the Department's strategic goal of Economic Growth and Trade. The Motor Vehicle Theft Law Enforcement Act of 1984, added Title VI to the Motor Vehicle and Information Cost Savings Act (recodified as Chapter 331 of Title 49, United States Code) which mandated this information collection. The 1984 Theft Act was amended by the Anti Car Theft Act (ACTA) of 1992 (Pub. L. 102–519). NHTSA is authorized under 49 U.S.C. 33112, to collect this information. This information collection supports the agency's economic growth and trade goal through rulemaking implementation developed to help reduce the cost of vehicle ownership by reducing the cost of comprehensive insurance coverage. 49 U.S.C. 33112 requires certain passenger motor vehicle insurance companies and rental/leasing companies to provide information to NHTSA on comprehensive insurance premiums, theft and recoveries and actions taken to address motor vehicle theft.

Affected Public: Business or other for profit.

Estimated Total Annual Burden: Based on prior years' insurer compilation information, the agency estimates that the time to review and compile information for the reports will take approximately a total of 19,625 burden hours (17,500 man-hours for 25 insurance companies and 2,125 man-hours for 5 rental and leasing companies). Claim Adjusters incur separate burden hours from the number of insurers. Claim adjuster's duties are those of normal business practice and do not assist in preparing or compiling information for the reports. There has been a decrease in the number of companies required to report since the last reporting period, also, some companies have merged into one entity or have been exempted from the reporting requirements since the last reporting period. The agency has re-estimated the burden hours to be 19,625 total annual hours requested in lieu of 63,238 as the current OMB inventory. This is a decrease of 43,613 hours. Most recent year insurer compilation information estimates reveal that it takes an average cost of $47.00 per hour for clerical and technical staff to prepare the annual reports. Therefore, the agency estimates the total cost associated with the burden hours is $922,375.

The burden hour for rental and leasing companies is significantly less than that for insurance companies because rental and leasing companies comply with fewer reporting requirements than the insurance companies. The reporting burden is

From: Eyes on Trade <gtwinfo@citizen.org>
Date: Fri, 24 Feb 2012 20:06:08 +0000
To: Sharon Treat <satreat@gmail.com>
Subject: Eyes On Trade: Consumer groups call on Obama Administration to defend country-of-origin labels on meat

Eyes On Trade: Consumer groups call on Obama Administration to defend country-of-origin labels on meat

Consumer groups call on Obama Administration to defend country-of-origin labels on meat

Posted: 24 Feb 2012 09:29 AM PST

FOR IMMEDIATE RELEASE
February 24, 2012

Consumer groups call on Obama Administration to defend country-of-origin labels on meat

The nation's largest consumer groups today wrote to the Obama administration, urging an appeal of the November 2011 ruling by a World Trade Organization (WTO) panel against U.S. country-of-origin labels on meat. The ruling followed a case brought by Canada and Mexico in December 2008 against the popular U.S. law, which was also opposed by large agribusiness corporations in the U.S.

"Poll after poll show that American consumers want to know where their food comes from," said Jean Halloran, director of Food Policy Initiatives at Consumers Union. "The WTO should not stand in the way."

The COOL law – implemented in March 2009 - was a result of a decades-long struggle to assure consumers are provided with basic information about the origin of meat products, fish and seafood, certain nuts and fresh fruits and vegetables.

"Consumers have been pushing for country-of-origin labeling for decades only to have the new law challenged at the WTO," said Chris Waldrop, director of the Food Policy Institute at Consumer Federation of America. "If upheld on appeal, the WTO ruling will undermine consumers' faith
in the fairness of these international institutions."

Countries all around the world have some form of country-of-origin labeling, including Argentina, Australia, Japan, Canada, Mexico and the European Union.

"Consumers worldwide have successfully advocated for country-of-origin labeling requirements -- most more transparent and informative than the U.S. labels," said Wenonah Hauter, executive director
of Food & Water Watch. "Neither the president nor the congress should bow to the will of international trade bureaucrats that want to take commonsense country-of-origin labels away from the American people."

While the WTO panel affirmed the right of the United States to require country-of-origin labeling for meat products, the panelists concluded that requiring companies to comply with the law was too costly for imported livestock (in violation of WTO rules), but that the flexibilities in the law (made in response to demands by importers themselves) violated other WTO rules. The consumer groups point out that this conflicted ruling demonstrates the danger of emphasizing trade over consumer regulation.

The U.S. has until mid-March to appeal the ruling. If it is not appealed or is upheld on appeal, the U.S. may be asked to weaken or eliminate COOL.

"An appeal will buy the U.S. time and may help weaken or overturn the damaging lower panel ruling," said Lori Wallach, director of Public Citizen's Global Trade Watch. "But consumers are calling on Congress to challenge the legitimacy of any WTO ruling against popular consumer policies."

The letter sent to the administration can be found here: **http://bit.ly/wRQIfg**

# # # # #

Consumer Federation of America is an association of nearly 300 nonprofit consumer organizations that was established in 1968 to advance the consumer interest through research, advocacy and education.

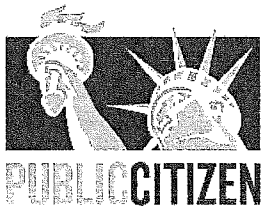
Consumer Reports is the world's largest independent product-testing organization. Using its more than 50 labs, auto test center, and survey research center, the nonprofit rates thousands of products and services annually. Founded in 1936, Consumer Reports has over 8 million subscribers to its magazine, website, and other publications. Its advocacy division, **Consumers Union**, works for health reform, food and product safety, financial reform, and other consumer issues in Washington, D.C., the states, and in the marketplace.

Food & Water Watch works to ensure the food, water and fish we consume is safe, accessible and sustainable. So we can all enjoy and trust in what we eat and drink, we help people
take charge of where their food comes from, keep clean, affordable, public tap water flowing freely to our homes, protect the environmental quality of oceans, force government to do its job protecting
citizens, and educate about the importance of keeping shared resources under public control.

Public Citizen is a national, nonprofit consumer advocacy organization based in Washington, D.C. founded in 1971.

Consumer Federation of America

Consumers Union
Nonprofit Publisher of Consumer Reports



February 24, 2012

Dear President Obama:

We are writing to urge your administration to appeal the November 2011 ruling by a World Trade Organization (WTO) panel against U.S. country-of-origin labeling on meat.

Our organizations are strong supporters of this law, which was implemented in March 2009, after decades of consumer efforts. Country-of-origin labeling is wildly popular in the U.S., as poll after poll show overwhelming support for labeling. Indeed, nations around the world are implementing variants of such laws.

The panel affirmed the right of the United States to require country-of-origin labeling for meat products, but concluded that requiring companies to comply with the law was too costly for imported livestock (in violation of WTO rules), while also concluding that the flexibilities in the law (made in response to demands by importers themselves) violated other WTO rules. The panel's conflicted ruling demonstrates the extreme perils of allowing trade lawyers to interfere with consumer regulation. If upheld on appeal, the WTO ruling will undermine consumers' faith in the fairness of these international institutions.

Please feel free to be in touch with any of our organizations if we can be of assistance as you craft this appeal.

Sincerely,

Consumer Federation of America

Consumers Union

Food & Water Watch

Public Citizen

COMMITTEE on WAYS and MEANS

Hearing Advisory

Chairman Camp Announces Hearing on President Obama's Trade Policy Agenda with U.S. Trade Representative Ron Kirk and Second Panel on the Future of U.S. Trade Negotiations

Wednesday, February 29, 2012

House Ways and Means Committee Chairman Dave Camp (R-MI) today announced that the Committee on Ways and Means will hold a hearing on President Barack Obama's trade policy agenda with U.S. Trade Representative Ron Kirk and with a second panel of witnesses on the future of U.S. trade negotiations. **The hearing will take place on Wednesday, February 29, 2012, in 1100 Longworth House Office Building, beginning at 10:00 A.M.**

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

BACKGROUND:

International trade is an engine for growth and job creation in the United States. While the United States is the largest economy and trading nation in the world, 95 percent of the world's consumers are abroad. The future success of American workers, businesses, and farmers is therefore integrally tied with continuing America's strong commitment to finding new markets and expanding existing ones for U.S. goods and services.

The bipartisan passage of the implementing bills for the Colombia, Panama, and South Korea free trade agreements in October 2011 marked an important step forward for U.S. trade policy. This hearing will provide an opportunity to explore with Ambassador Kirk how the President's trade agenda will sustain this momentum with respect to current trade issues, such as: progress in the Trans-Pacific Partnership negotiations; Russia's accession to the World Trade Organization; China's trade restrictive practices and non-tariff barriers that prevent U.S. companies from competing on a level playing field; the President's trade agency reorganization proposal and National Export Initiative (NEI); and various bilateral and multilateral trade disputes and concerns. In addition, Ambassador Kirk's testimony and the second panel of witnesses will provide an opportunity to focus on long-term thinking relating to future trade negotiations, including "post-Doha" WTO issues such as an international services agreement, Information Technology Agreement (ITA) expansion, and a trade facilitation agreement in the age of global supply chains; Bilateral Investment Treaties (BITs) with China and India and new BITs and investment opportunities; and the trade and investment relationship with the European Union, India, and Latin America.

21

In announcing this hearing, Chairman Camp said, **"Opening new markets for U.S. businesses, workers, and farmers and strong enforcement of U.S. rights are essential to driving economic growth and job creation here in the United States. The three free trade agreements with Colombia, Panama, and South Korea that Congress passed last year in a bipartisan manner sent a strong message that the United States has returned to the trade negotiating table. We are now at an important juncture to move forward aggressively on the Trans-Pacific Partnership negotiations and other initiatives to make sure that last year's momentum is not lost. It's also a critical time for us to look ahead for future trade and investment opportunities with important trading partners like the European Union, India, and Latin America to maximize American competitiveness and ensure that we do not fall behind."**

FOCUS OF THE HEARING:

The first panel of the hearing will provide an opportunity to explore with Ambassador Kirk current trade issues such as: (1) ensuring prompt implementation of the three free trade agreements with Colombia, Panama, and South Korea; (2) seeking to conclude a good Trans-Pacific Partnership agreement this year; (3) considering Russia's WTO accession; (4) improving our important trade relationship with China and addressing China's trade barriers; (5) addressing the Obama Administration's trade agency reorganization proposal and National Export Initiative (NEI); and (6) ensuring appropriate trade enforcement efforts. The first and second panels will also focus on areas of potential future trade negotiations such as: (1) advancing WTO negotiations, including "post-Doha" issues at the WTO such as an international services agreement, Information Technology Agreement (ITA) expansion and a trade facilitation agreement; (2) completing Bilateral Investment Treaties (BITs) with China and India and exploring new BITs and investment opportunities; (3) deepening and expanding the trade and investment relationship with the European Union; and (4) establishing long-term, closer ties with important trading partners such as Latin America and India.

DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:

Please Note: Any person(s) and/or organization(s) wishing to submit for the hearing record must follow the appropriate link on the hearing page of the Committee website and complete the informational forms. From the Committee homepage, http://waysandmeans.house.gov, select "Hearings." Select the hearing for which you would like to submit, and click on the link entitled, "Click here to provide a submission for the record." Once you have followed the online instructions, submit all requested information. ATTACH your submission as a Word document, in compliance with the formatting requirements listed below, **by the close of business on Wednesday, March 15, 2012**. Finally, please note that due to the change in House mail policy, the U.S. Capitol Police will refuse sealed-package deliveries to all House Office Buildings. For questions, or if you encounter technical problems, please call (202) 225-1721 or (202) 225-3625.

FORMATTING REQUIREMENTS:

The Committee relies on electronic submissions for printing the official hearing record. As always, submissions will be included in the record according to the discretion of the Committee. The Committee will not alter the content of your submission, but we reserve the right to format it according to our guidelines. Any submission provided to the Committee by a witness, any supplementary materials submitted for the printed record, and any written comments in response to a request for written comments must conform to the guidelines listed below.

22

Any submission or supplementary item not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

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

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

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

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

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

Hi, Lock,
Thanks for the resumes. I wish that we had more money to spend, as I would love to get each of these people on the topic they know the most about and get the broadest possible input.

From a practical perspective, though, our money may not go very far, and travel & related expenses will come out of it as well.

It seems to me that we might best stretch our money by asking the two Georgetown professors, Bob Stumberg and Matt Porterfield, to work together, combining their expertise. I have seen Bob Stumberg present, and worked with him to a limited extent on some of the work done for the Commission through the Forum on Trade and Democracy. I have a very high opinion of Bob and his work on trade issues.

While I would love to have Ellen Schafer on our prescription drug issue, I doubt that the money will reach that far. Perhaps in the future.

Please feel free to share my comments with the Commission, since I will be out of the country on Friday, as you know, and will regretfully miss the meeting.

Thank you for your efforts,
Linda

Linda M. Pistner
Chief Deputy Attorney General
State House Station #04333
Augusta, ME
Linda.pistner@maine.gov
(207) 626-8800

ROBERT K. STUMBERG

Harrison Institute for Public Law ~ Georgetown University Law Center
111 F Street, NW, Suite 120 ~ Washington, D.C. 20001-2095
(202) 662-9603 ~ stumberg@law.georgetown.edu

Experience

Georgetown University Law Center, Washington, DC. *1975 to present*
Professor of law and director of the Harrison Institute for Public Law; previous positions include associate professor, assistant professor, adjunct professor and graduate fellow. Past work at the Harrison Institute includes:

- *Democracy and trade* – policy work on global agreements and state sovereignty *1993 to present*
- *Community health* – policy work on access to care and community-based food systems *1995 to present*
- *Climate change* – policy that adapts to climate change and reduces greenhouse gases *2009 to present*
- *Utility regulation* – guidance to state regulators on their authority and best practices *2008 to 2010*
- *Community lending* – policy work on interstate banking and community reinvestment *1987 to 1993*
- *Economic development* – policy work on microenterprise and rural intermediaries *1987 to 1993*
- *Local government legislation* – policy work for the DC Council and Montgomery Co. Council *1975 to 1987*
- *Multifamily housing* – representation of group clients and policy work on housing finance *1980 to 1987*
- *Land use and historic preservation* – administrative law practice for community coalitions *1980 to 1985*

Center For Policy Alternatives, Washington, DC. *1987 to 1995*
Policy director. Responsible for policy research, legislative analysis, legal drafting, database development, general management and fundraising for multi-issue center on progressive state policy. In addition to issues noted above, policy work included worker displacement, job creation, welfare reform, solid waste management, sustainable agriculture, family & medical leave, and voter registration reform.

Montgomery County Government, Rockville, MD. *1984 to 1987*
Associate legislative counsel to Montgomery County Council in a joint program with Georgetown University.

Education

LL.M., Georgetown University Law Center, Washington, D.C. Focus on legislation/policy analysis. *May 1979*

J.D., Georgetown University Law Center, Washington, D.C. Fellow in legal writing program *May 1975*

B.A., Macalester College, St. Paul, Minnesota. *Phi Beta Kappa*; student body president; graduation with distinction; *Pi Sigma Alpha* (political science). *May 1972*

Bar Membership

U.S. Supreme Court (2000), District of Columbia (3/30/80), Maryland (11/3/81) and Missouri (9/6/75).

Selected Publications

Guide to GATS Negotiations on Domestic Regulation, Heinrich Boell Foundation (2011).

Tobacco in the Trans-Pacific Partnership, Forum on Democracy and Trade (draft working paper, 2011).

Procurement and Decent Work, Working Paper, International Labor Organization (Washington Office, 2010).

NAFTA Services and Climate Change, in *the Future of North American Trade Policy: Lessons from NAFTA* (Kevin Gallagher, ed., 2009).

Reform of Investor Protections, Testimony before the U.S. House Committee on Ways & Means, Subcommittee on Trade (May 2009).

The WTO, Services & the Environment, in *Handbook on Trade & Environment* (Kevin Gallagher, ed., 2008).

GATS & Electricity, State and Local Working Group on Energy & Trade Policy (April 2005).

Who Preempted the Massachusetts Burma Law? Federalism & Political Accountability Under Global Trade Rules, 31 Publius: The Journal of Federalism 1 (Fall 2001, with Matthew Porterfield).

Preemption & Human Rights: Local Options After Crosby v. NFTC, 32 Law & Policy in Int'l Business, 109 (2000).

Supreme Court Brief for Members of Congress, Amici Curiae, in *Crosby v. National Foreign Trade Council,* On Writ of Certiorari, Supreme Court No. 99-474 (January 13, 1999, with Matthew Porterfield).

A Multilateral Agreement on Investment: Would It Undermine Subnational Environmental Protection? 8 Journal of Environment & Development 5, March 1999 (with Thomas Singer).

Sovereignty by Subtraction: The Multilateral Agreement on Investment, 31 Cornell Int'l Law Journal 491 (1998).

Selected Presentations

International audiences

- China Administration of Grain, WTO subsidy rules – Georgetown Law — *June 2010*
- International Legislative Drafting Institute – Tulane Law School; New Orleans, LA — *June 1998 – June 2010*
- National Economic Development and Labour Council, Johannesburg — *March 2010*
- WTO annual forum, Geneva — *September 2008*

Congressional testimony

- U.S. House Committee on Ways & Means, Subcommittee on Trade — *May 2009*

Presentations to state and local government associations – public sector roles in developing trade policy

- National Conference of State Legislatures — *December 2011*
- National Association of State Treasurers; Divestment of pension fund assets — *March 2010*
- National Conference of State Legislatures; Trade Policy Leadership Seminar, Atlanta, GA — *December 2008*
- World Trade Organization, Annual Forum — *September 2008*
- International Municipal Lawyers Association; Washington, DC — *May 2008*
- Council of State Governments, San Juan, PR — *June 2007*
- National Association of Attorneys General; Washington, DC — *May 2007*
- National Association of Counties, Agriculture and Rural Affairs Steering Committee — *March 2006*
- Legislative Agricultural Chairs Summit; Tempe, AZ — *January 2006*

Testimony at state-level hearings – federalism and the impact of trade agreements on state or provincial law

- Vermont International Trade Commission; Montpelier, VT — *February 2011*
- Vermont International Trade Commission; Montpelier, VT — *April 2010*
- California Energy Commission — *May 2007*
- Vermont Commission on International Trade — *May 2007*
- California Senate, Committee on Business, Professions and Economic Development — *January 2006*
- U.S. Senate, Committee on Homeland Security and Governmental Affairs — *July 2005*
- New Jersey Senate, Subcommittee on Casinos and Historic Preservation — *February 2005*

Seminar and Conference Presentations

- Consortium for Sweatfree Purchasing – state preemption of labor standards for procurement — *May 2011*
- School Food Focus – geographic preference for procurement — *June 2011*
- Georgetown Reflective Engagement Workshop – living wage standards — *February 2011*
- Forum on Democracy and Trade – international regulation of services — *June 2010*
- American Society of International Law – policy update on international economic law — *March 2010*
- National Regulatory Research Institute – regulating in the public interest — *February 2010*

SEAN MICHAEL FIIL FLYNN

sflynn@wcl.american.edu
(o) 202-274-4157
(cell) 202-294-5749

AMERICAN UNIVERSITY WASHINGTON COLLEGE OF LAW
Professorial Lecturer in Residence, 2008-present
Associate Director, Program on Information Justice and Intellectual Property, 2006-present
Courses Taught:

- International Patent Law (WIPO Academy, Sao Paulo, Brazil, September 2011)
- Advanced International Intellectual Property (Summer 2011)
- Intellectual Property and Access to Medicines (Summer 2010)
- Intellectual Property, Human Rights & Development (2006-2010)
- Intellectual Property and Healthcare (Summer 2009)
- Human Rights & Access to Medicine (University of Pretoria 2007-2010)
- Intellectual Property and Access to Medicine in Eastern Europe and Central Asia (National Ukrainian University Mohyla Academy 2009)

Grants and Awards:

- Global Expert Network on Copyright Limitations and Exceptions in National Legal Reform, Open Society Foundation (2011)
- Global Expert Network on Copyright Limitations and Exceptions in National Legal Reform, Google Inc. (2011)
- Strengthening the Knowledge Base for Public Interest Intellectual Property Policy, IDRC (2011)
- Public Interest Analysis of International Intellectual Property Policy, Google Inc. (2011)
- Public Interest Review of International Intellectual Property Enforcement Agenda, Google Inc. (with Peter Jaszi 2010)
- Human Rights and Intellectual Property Legal Education Initiative, Open Society Institute (2007-2010)
- International Copyright Flexibilities and Documentary Film, Ford Foundation (with Peter Jaszi 2008-09)
- Prescription Access Litigation & Policy Advising, NLARx, Community Catalyst, Prescription Policy Choices (2006-2010)
- Prescription Drugs and Trade, Forum on Democracy and Trade (2006-2011)
- 2010 Coach, Patent Law Moot Court Team, placed 2nd in the nation

Collaborative Research Media Piracy Project, SSRC/Ford Foundation/IDRC 2008-2010.

EDUCATION

HARVARD LAW SCHOOL, J.D., *magna cum laude*, 1999
Honors:
Hankin Fund General University Scholar
Frederick Sheldon Traveling Fellowship
Irving Kaufman Fellowship
J. William Fulbright Foreign Scholarship (post-graduation)
Activities:
Board of Student Advisors; Instructor, Legal Argument and Reasoning

Research Assistant, Professor Lucie White
Founder, Project on Law and Organizing

PITZER COLLEGE, B.A., honors, Political Studies, 1992

SELECTED PUBLICATIONS

Public Interest Analysis of the US Trans Pacific Partnership Proposal for an IP Chapter, PIJIP Research Paper Series. Paper 21. http://digitalcommons.wcl.american.edu/research/21 (with Margot Kaminski, Brook Baker and Jimmy Koo).

ACTA and Access to Medicines, Commissioned Paper by the EU Parliament (forthcoming 2011), draft available at http://tinyurl.com/6hzkfbg

ACTA's Constitutional Problem, 26 AUILR 903 (2011), available at http://www.auilr.org/pdf/26/26.3.10.pdf

Networked Governance and the USTR, in MEDIA PIRACY IN EMERGING ECONOMIES (2011)

Using Competition Law to Promote Access to Knowledge, in ACCESS TO KNOWLEDGE IN THE AGE OF INTELLECTUAL PROPERTY (Amy Kapczynski and Gaelle Kirkorian, eds., MIT Press 2011).

Special 301 of the Trade Act of 1974 and Access to Medicine, 7 JOURNAL OF GENERIC MEDICINE 309 (2010).

An Economic Justification for Open Access to Essential Medicine Patents in Developing Countries, 37 J. L. MED. & ETHICS 184 (2009) (with Aidan Hollis & Mike Palmedo)

UNTOLD STORIES IN SOUTH AFRICA: THE CREATIVE CONSEQUENCES OF THE CLEARANCE CULTURE FOR DOCUMENTARY FILMMAKERS, PROGRAM ON INFORMATION JUSTICE AND INTELLECTUAL PROPERTY (2009)

The Constitutionality of State Regulation of Prescription Data Mining, BNA PHARM. L. & INDUS. REP. (2007)

Who's Afraid of Competition? The Latest Assaults on Municipal Provision of Broadband Services and the Competitive Ideals of the Communications Act. 13 J. MUN. TELECOM. POL. 6 (2006)

Dispelling Myths: A Real World Perspective on Trinko, 50 ANTITRUST BULL. 589 (2006) (with Robert Jablon & Mark Hegedus)

Brand X and the New Agency Kings, 46 Mun. Lawyer 6 (2005) (with Tim Lay)

Verizon Communications v. Trinko: The Message for Cities is Caution, 45 MUN. LAW. 18 (2005) (with Robert Jablon & Mark Hegedus)

Democratizing the Regulation and Governance of Water in the U.S., in RECLAIMING PUBLIC WATER: ACHIEVEMENTS, STRUGGLES AND VISIONS FROM AROUND THE WORLD (2005).

Constitutional Issues and the Right to Water, in THE AGE OF COMMODITY: WATER PRIVATIZATION IN SOUTHERN AFRICA (David A. McDonald & Greg Ruiters eds., 2004)

ELLEN R. SHAFFER PhD MPH
1915 Fourteenth Ave., San Francisco, California 94116-1336
phone: home 415-661-1352 work (415) 922-6204 fax: (415) 885-4091
email: ershaffer@gmail.com

WORK EXPERIENCE

CO-DIRECTOR, Center for Policy Analysis. The Center conducts research, policy analysis and advocacy on health care access and on the impact of international trade agreements on population health, and on access to vital human services including water. April 2002-present.

- **EQUAL (Equitable, Quality, Universal, Affordable) Health Care** develops and tracks proposals to expand access to affordable health care. Website: http://www.centerforpolicyanalysis.org/
  Selected activities 2008-2010:
  - Analysis of legislative proposals
    - ERISA and health reform
    - Affordability
  - Publications: Huffington Post, Salon
  - Established EQUAL listserve for policymakers, advocates, media
  - Community forums and presentations to groups: public health, women, nurses, physicians, seniors, League of Women Voters

- The **Center for Policy Analysis on Trade and Health (CPATH)** is a leading public health voice and a key resource for policymakers on global trade. Website: www.cpath.org
  Selected publications and testimony:
  - Invited Congressional testimony to House Ways and Means on trade advisory committees, 2009 and 2010
  - CAFTA and access to medicines, Health Affairs, 2009
  - Trade and public health, American Journal of Public Health, 2005
  - Tobacco control and trade, Tobacco Control, 2005

ASSISTANT CLINICAL PROFESSOR, Department of Clinical Pharmacy, University of California, San Francisco (without salary). April, 2001 to present.

PROFESSOR, International Honors Program, Boston University. Developed and presented curriculum on Globalization and Health through semester abroad program for U.S. undergraduates studying in India, China and South Africa. January to May, 2006.

CONSULTANT, Washington, D.C. and San Francisco. 1995 to 2002. Researched, analyzed and commented on the financing, organization, and outcomes of health care services. Prepared reports and educational programs for publication and for distribution to clients and the public on health care trends including reimbursement policy, community public health interventions, managed care, access, quality of care, inequality, patient protection, immigration, mental health, and workforce issues. Selected clients and projects:

- California Health and Human Services Agency. Author, California Health Service Plan, Health Care Options Project, April 2002.
- March of Dimes. Report: State Policies on Neonatal Intensive Care Units, March 2002.
- Health Works Project. Initiated and conducted research to identify uninsured union members, immigrants, and other residents, and developed programs to expand health care coverage. March 2000 to March 2002.

- U.S. Agency for Health Care Research and Quality. Research on special needs children and managed care, 1998.
- Coalition for Health Care Choice and Accountability. Wrote original patient protection legislation, secured sponsor in U.S. Congress, led advocacy activities. 1995 to 1998.

LEGISLATIVE ASSISTANT, U.S. Senator Paul Wellstone, Washington, D.C. Senior health policy advisor. Analyzed and initiated legislation on health care issues. Assisted in drafting national health care reform legislation, prepared amendments to health reform legislation presented in Labor and Human Resources Committee of the U.S. Senate. Staff coordinator for Senate Working Group on Mental Health. Worked extensively with full range of constituencies concerned with health care. Monitored issues related to pensions. Extensive writing and public speaking. January 1992 - January 1995.

SENIOR RESEARCH ANALYST FOR EMPLOYEE BENEFITS, Service Employees International Union, Washington, D.C. Analyzed and advised local unions regarding health and pension plans, initiated and coordinated related studies such as impact of new accounting rules on retiree health care, prepared and presented trainings, supervised Research Assistants. October 1989, to January 1992.

EDUCATION

Ph.D., Johns Hopkins University School of Hygiene and Public Health, Department of Health Policy and Management. May, 2001.

Certified Employee Benefits Specialist, International Foundation of Employee Benefit Plans and the Wharton School. April, 1993.

Masters in Public Health, University of California, Berkeley. May, 1986.

Brandeis University, Waltham, Massachusetts. 1967 to 1969.

PUBLICATIONS

Shaffer, ER and JE Brenner. A trade agreement's impact on access to generic drugs. *Health Affairs,* Web Exclusive. Aug. 25, 2009. w957-w967.

Shaffer, ER. Book Review. A dictionary of public health. *Journal of Epidemiology and Community Health* 2008;62:471-472.

Shaffer, ER, H Waitzkin, J Brenner, R Jasso-Aguilar. Global Trade and Public Health. In: *Readings in Global Health.* Omar A. Kahn, MD PH, Editor. APHA Press. June 1, 2008.

Letter to the Editor, *New York Times*, December 23, 2007

Shaffer, ER, JE Brenner and TPHouston. International trade agreements: a threat to tobacco control policy. *Tobacco Control* 2005;14;19-25.

Shaffer, ER, H Waitzkin, J Brenner, R Jasso-Aguilar. Global Trade and Public Health. *American Journal of Public Health.* January, 2005.

Irland CV
Feb. 2012

Lloyd C. Irland

President
The Irland Group
174 Lord Road
Wayne, Maine 04284

Birthdate: November 4, 1946
Chicago, Illinois
Married, 4 Children
4 grandchildren

Wayne home and office (207) 685-9613

E-mail: lcirland@gmail.com

EMPLOYMENT

January 1987 to present
Founder and President, The Irland Group. Forestry, Economics, and Marketing Consulting Firm. (Published *Eastern Quotes & Comments* and *Engineered Lumber Trends* until Summer 2002).

Fall 2003-2010 Lecturer and Senior research Scientist, Yale School of Forestry & Environmental Studies (fall term) (appointment ended June 2011)

March 2008 Fulbright Senior Specialist Program, lecture and study trip to Ukraine, National Agr. Univ., Kyiv, and National Forestry University, Lviv.

June, July 2006 Visiting Research Professor, ENGREF, Nancy, France

1981-1986 State Economist, State Planning Office. Participated in a ten-year state economic forecast project, and prepared a detailed study of natural resources in Maine's economy. Carried out staff studies for Governor's Blue Ribbon Commission on Education.

1979-1981 Director, Maine Bureau of Public Lands. Responsible for management of 250,000 forested acres, plus tidelands and islands.

1976-1979 Forest Insect Manager, Maine Forest Service. Responsible for all spruce budworm control programs, including spraying, research, and environmental monitoring.

1973-1976 Assistant Professor, Yale School of Forestry and Environmental Studies.

1972-1973 Associate Economist, US Forest Service, New Orleans, Louisiana, Southern Forest Experiment Station.

Fall, 1968 & Summer, 1970 Staff Economist, Chicago Board of Trade. Conducted feasibility studies for a futures market in plywood.

EDUCATION

Bachelor of Science, Michigan State University, 1967.
Master of Science, University of Arizona, 1968.
Ph.D. Yale University, 1973.

MILITARY

US Army, enlisted ranks, 1968-1970. Served in Vietnam.

AWARDS AND RECOGNITION

- Received Distinguished Service Award, New England SAF, 1997.
- Elected Fellow of the Society of American Foresters, 1997.
- Fulbright Senior Scholar roster, Dec. 2007.
  Visit to Ukraine, March, 2008.

PROFESSIONAL ACTIVITIES AND GROUPS

- Registered Professional Forester in the State of Maine (#187).
- Member, American Economic Association.
- Member, Association of Consulting Foresters.
- Member, American Association for the Advancement of Science.
- Member, Society of American Foresters.
- Chairman, Economics, Policy, and Law Working Group, Society of American Foresters, 1985-1986.
- Member, SAF National Task Force on Federal Forest Taxation, 1985-1987.
- Member, SAF Policy Committee, January 1990 to December 1992.
- Chair, Maine Division, New England Society of American Foresters, 1992.
- Member, SAF National Convention Program Committee, 1992-1995.
- Member, SAF Accreditation for Oregon State University, 2011.

MATTHEW C. PORTERFIELD

Harrison Institute for Public Law ~ Georgetown University Law Center
111 F Street, NW, Suite 120 ~ Washington, D.C. 20001-2095
(202) 662-9608 ~ porterfm@law.georgetown.edu

Experience

Georgetown University Law Center, Washington, D.C. *1996 to present*
Senior Fellow and Adjunct Professor at the Harrison Institute for Public Law (1998-present); Teaching Fellow (1996-98). Responsibilities include -

- Supervising second and third year law students in 14 credit year-long clinical program
- Teaching clinical seminars
- Advising government officials and nongovernmental organizations on a wide range of trade and investment policy issues

Law Offices of Edward Lee Rogers, Washington, D.C. *1990 to 1996*

- Represented nonprofit organizations on federal, state and local environmental and land use issues

Greenpeace, Washington, D.C. *May – August 1989*

- Drafted legislation on pesticide exports; monitored congressional hearings; researched and drafted memoranda on EPA enforcement policies

Education

LL.M., Georgetown University Law Center, Washington, D.C. *May 1998*

J.D., *Magna cum laude,* Vermont Law School, South Royalton, VT *May 1990*

- Class Rank: 7/137
- Vermont Law Review - Head Notes Editor (1989-1990); staff (1988-1989)
- Vermont Law School Scholar Award
- American Jurisprudence Award: Constitutional Law
- American Jurisprudence Award: Contracts
- Member: Environmental Law Society

B.A., University of Vermont, Burlington, VT *May 1986*

- English Major with Coordinate Major in Environmental Studies

Committee Memberships and Bar Admissions

- Member, *Subcommittee on the Model Bilateral Investment Treaty of the State Department Advisory Committee on International Economic Policy* (2009 and 2004)
- U.S. Supreme Court (2000)
- District of Columbia (1992)
  - Member, International Law Section
- Connecticut (1990)

Publications

State Practice and the (Purported) Customary International Law Prohibition on Uncompensated Regulatory Expropriation, 37 NORTH CAROLINA JOURNAL OF INT'L LAW & COMMERCIAL REG. ___ (forthcoming – fall 2011)

Philip Morris v. Uruguay: Will Investor-State Arbitration Send Restrictions on Tobacco Marketing up in Smoke? INVESTMENT TREATY NEWS QUARTERLY (with Christopher Byrnes; forthcoming – summer 2011)

Approaches to Limiting or Eliminating ICSID's Jurisdiction over International Investment Claims (International Institute for Sustainable Development, Nov. 2009)

U.S. Farm Subsidies and the Expiration of the WTO's Peace Clause, 27 U. PA. J. INT'L ECON. L. 999 (2007)

An International Common Law of Investor Rights? 27 U. PA. J. INT'L ECON. L. 79 (2006)

International Expropriation Rules and Federalism, 23 STANFORD ENVT'L L. J. 3 (2004)

Who Preempted the Massachusetts Burma Law? Federalism & Political Accountability under Global Trade Rules, 31 PUBLIUS: THE JOURNAL OF FEDERALISM 1 (Fall 2001, with Robert Stumberg)

The Massachusetts Burma Law Decision, Obstacle Preemption, and the Role of International Trade Disputes in Challenges to State and Local Laws, MUNICIPAL LAWYER at 18 (September/October 2000)

State and Local Foreign Policy Initiatives and Free Speech: The First Amendment as an Instrument of Federalism, 35 STANFORD J. INT'L L. 1 (1999)

Rippling Puddles, Small Handles and Links of Chain: The Scope of Environmental Review for Army Corps of Engineers Permit Decisions, 10 TULANE ENVT'L L.J. 31 (1996)

Public Citizen v. Office of the United States Trade Representative: The (Con)fusion of Standing and the Merits under NEPA, 19 HARVARD ENVT'L L. REV. 157 (1995)

Agency Action, Finality and Geographical Nexus: Judicial Review of Agency Compliance with NEPA's Programmatic Environmental Impact Statement after Lujan v. National Wildlife Federation, 28 U. RICHMOND L. REV. 619 (1994)

Selected Presentations

Panelist, Congressional Staff Briefing, *Investment Provisions of U.S. Free Trade Agreements (January 2011)*

Panelist, Congressional Staff Briefing, *FTA Investment Chapters: Korea-U.S. FTA and Beyond (July 2010)*

Panelist, Senate Staff Briefing, *U.S. Investment Treaties and the Public Interest: U.S.-China Negotiations, the Administration's Review of the Bilateral Investment Treaty Program and the Implications for Labor, Environment, Democracy and Development (December 2009)*

Panelist, *Third Annual Forum of Developing Country Investment Negotiators, "Developing Countries and New Directions in International Investment Law,"* Quito, Ecuador *(November 2009)*

Panelist, *Local Food Procurement Preferences*, Community Food Security Coalition Conference, Baltimore, MD *(March 2007)*

Presenter, *U.S. Farm Subsidies and the WTO: Implications for U.S. Wheat Producers*, National Association of Wheat Growers and U.S. Wheat Associates Annual Meeting, Washington, DC *(January 2007)*

Presenter, *U.S. Farm Subsidies and the Expiration of the WTO's Peace Clause*, U.S. Agricultural Export Development Council, Baltimore, MD *(November 2006)*

Panelist, Congressional Staff Briefing, *Local Food Systems*, Washington, DC *(June 2006)*

Panelist, *The WTO and Agricultural Subsidies*, Trade Policy Leadership Seminar, National Conference of State Legislators Fall Forum, Chicago, Ill. *(December 2005)*

Panelist, *Forum on Democracy and Trade National Leadership Retreat*, Pocantico Conference Center, Tarrytown, New York *(April 2005)*

Presenter, *International Investment Roundtable*, Georgetown University Law Center, Washington, DC *(March 2005)*

Participant, *Experts Meeting on Draft Model International Investment Agreement for Sustainable Development*, The Hague, Netherlands *(January 2005)*

CITIZEN TRADE POLICY COMMISSION
DRAFT AGENDA

Friday, April 27, 2012 at 9:30 A.M.
Room 220, Burton M. Cross State Office Building
Augusta, Maine

9:30 am Meeting called to order

I. Welcome and introductions

II. Presentation from Bruce Bryant, Northeast Field Representative, Alliance of American Manufacturing on unfair trade practices regarding imported auto parts from China (Scheduled for 10 AM)

III. Presentation from Representative Sharon Treat on updates of the dallas round of TPPA negotiations, update on the newly adoted model for future bilaterlal trade agreements and update on certain international trade licensing issues (Scheduled for 10:30 AM)

IV. Presentation from Don Tardie, Managing Director/ Sales for Maine Woods Company LLC, on the Softwood Lumber Agreement (Scheduled for 11 AM)

V. News articles of interest;

VI. CTPC Assessment: update

VII. Proposed next meeting date and suggestions for agenda topics

Adjourn

April 20, 2012

Announcement of Flawed 2012 Model BIT Shows Agenda Motivating Obama TPP Talks

The Obama administration released the 2012 Model Bilateral Investment Treaty this morning. Here's our response:

Announcement of Flawed Investment Rules Show Agenda Motivating Obama Trade Talks

Statement of Lori Wallach, Public Citizen

Instead of the reforms promised by candidate Obama, the Obama administration's 'new' Model Bilateral Investment Treaty released today is the same in all major respects as the deeply flawed 'old' Model Bilateral Investment Treaty (BIT) and the investment chapters of U.S. free trade agreements.

Like the old U.S. investment model, the new text will allow companies to challenge public interest regulations outside of domestic court systems before tribunals of three private sector trade attorneys operating under minimal to no conflict of interest rules. These arbitrators can order governments to pay corporations unlimited taxpayer-funded compensation for having to comply with policies that affect their future expected profits, and with which domestic investors have to comply.

By revealing a fundamentally unchanged BIT (after pushing three Bush trade deals in 2011 based on the same flawed model), the administration is exposing the anti-public interest agenda motivating the nine-nation Trans-Pacific Partnership trade talks. In those negotiations, countries like Australia (who have been attacked in BITs by Philip Morris over their plain packaging tobacco policies) have criticized the U.S. model of investment rules.

At a time when multinationals like Chevron are using BITs to evade justice and get out of environmental remediation obligations, it is unthinkable that an Obama administration – post BP oil spill, post Wall Street crash – would privilege the rich at the expense of the 99 percent.

For those wishing to see a track changes version of the little that changed in the 2012 Model BIT relative to the 2004 Model BIT, along with some commentary of the shortcomings of both, click here.

Posted by Todd Tucker at 1:47pm in Inside the Beltway | Permalink

TrackBack

TrackBack URL for this entry:
http://www.typepad.com/services/trackback/6a00d83452507269e20168ea769864970c

Daily News

U.S. Unveils Revised Model BIT; Alters Provisions On Labor, Environment, SOEs

Posted: April 20, 2012

The Obama administration today (April 20) unveiled a revised model bilateral investment treaty (BIT) that includes new provisions designed to further bolster labor rights and the environment, as well as new language related to transparency and state-led economies. The long-awaited revision was released more than three years after the administration initiated its review of the 2004 model BIT in February 2009.

In a fact sheet accompanying the release, the Office of the U.S. Trade Representative explained that the 2012 model BIT "maintains language from the 2004 model BIT, in particular its carefully calibrated balance between providing strong investor protections and preserving the government's ability to regulate in the public interest." At the same time, USTR stressed that the revision makes "several targeted and important changes from the previous model text."

Concerning labor and environmental protections, the revised model BIT appears to provide more binding language compared with its predecessor. On labor rights, for instance, the old model BIT stated that each party "shall strive to ensure" that it does not waive or derogate from its labor laws "in a manner that weakens or reduces adherence to" a list of internationally recognized labor rights in order to encourage investment.

However, that "strive to ensure" language -- which is generally considered by legal experts to be a weaker standard because it only speaks to an intent to achieve a result, not the result itself -- is strengthened in the new model BIT.

The revised model BIT states that each party "shall ensure" that it does not waive or otherwise derogate from its labor laws, where such waiver or derogation would be inconsistent with a set of basic labor rights. Those labor rights are outlined in the new version in slightly altered form compared with the 2004 model BIT. For instance, a new right -- "the elimination of discrimination in respect of employment and occupation" -- is added to the list.

The new model BIT also states that each party "shall ensure" that it does not "fail to effectively enforce its labor laws through a sustained or recurring course of action or inaction" in order to encourage investment in its territory. The 2004 model BIT had no similar language concerning enforcement.

On the environment, the new model BIT appears to strengthen protections in similar ways. It states that each party "shall ensure" that it does not "waive or otherwise derogate from" its environmental laws "in a manner that weakens or reduces the protections afforded in those laws."

That appears stronger than the 2004 model BIT, which stated that the parties "shall strive to ensure" that they do not waive or otherwise derogate from their environmental laws "as an encouragement for the establishment, acquisition expansion, or retention of an investment in its territory."

The new model BIT also commits each party to ensure that it does not "fail to effectively enforce" its environmental laws in order to encourage investment, something not included in the 2004 version.

That said, the 2012 model BIT does include a new paragraph clarifying that a party would not violate its new obligation to effectively enforce its environmental laws "where a course of action or inaction" reflects a "reasonable" exercise of discretion on investigatory and prosecutorial matters, or results from a "bona fide" decision regarding the allocation of government resources.

The 2012 model BIT section on environmental protections also contains new language laying out what constitutes an "environmental law" for the purposes of BIT obligations. It states that this term covers each party's statutes or regulations, or provisions thereof, "the primary purpose of which is the protection of the environment, or the prevention of a danger to human, animal, or plant life or health" through a list of specific means. It also clarifies that this term does not include any statute or regulation "directly related to worker safety or health."

The environmental and labor rights sections also contain stronger consultation provisions. In the old model BIT, a party that considers that its BIT partner is not upholding its obligations may request consultations, and the two

parties "shall consult" on the matter. However, it provided no further details on how and when this would take place.

By contrast, the new sections on environmental and labor rights state explicitly that, if a party makes a written request for consultations concerning any matter arising under that section, the other party "shall respond to a request for consultations within thirty days of receipt of such request."

Finally, the labor and environmental sections of the revised model BIT for the first time refer explicitly to multilateral agreements. For instance, the new model BIT states that the parties recognize that multilateral environmental agreements to which they are both party "play an important role in protecting the environment."

Likewise, it states that the parties to the BIT "reaffirm their respective obligations as members of the International Labor Organization" and the commitments under the 1998 ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up.

The new revision also clarifies how the scope of BIT obligations would apply to state-owned enterprises (SOEs). At issue is the fact that under the old model BIT, key BIT obligations were said to apply to "a state enterprise or other person when it exercises any regulatory, administrative, or other governmental authority delegated to it" by the government of the relevant BIT party.

Business representatives have long worried about this formulation because, in some instances, a government may not explicitly "delegate" authority to an SOE, making it less clear whether SOEs would be subject to the disciplines. They have pushed USTR on this issue in a variety of contexts, including with relation to the U.S. proposal on SOEs in the Trans-Pacific Partnership (TPP) negotiations (*Inside U.S. Trade*, March 25, 2011).

The new model BIT appears to provide more definition for when government authority is "delegated." In particular, it states that government authority that has been delegated "includes a legislative grant, and a government order, directive or other action transferring to the state enterprise or other person, or authorizing the exercise by the state enterprise or other person of, governmental authority."

The 2012 model BIT also includes new language that, according to the USTR press release, is designed to prevent parties from imposing domestic technology requirements such as "requiring the purchase, use or according of a preference to domestically developed technology in order to provide an advantage to a Party's own investors, investments or technology."

This appears to be a reference to Article 8 of the new model BIT, which deals with "performance requirements." In that article, the administration had inserted new language stating that neither party may, in connection with an investment in its territory, impose or enforce any requirement "to purchase, use, or accord a preference to, in its territory, technology of the Party or of persons of the Party" in order to protect its own investors or technology.

Moreover, the new model BIT states that neither party may, in connection with an investment in its territory, impose or enforce any requirement "that prevents the purchase or use of, or the according of a preference to, in its territory, particular technology" so as to protect its own investors or technology.

Again, this new language appears to reflect the increasing attention that this administration is paying to issues like forced technology transfer. USTR is also proposing related provisions in the TPP talks (*Inside U.S. Trade*, March 30). These new provisions in the revised BIT would not apply to government procurement.

Finally, the new model BIT contains several new provisions that appear designed to bolster transparency. For instance, it inserts new language stating that, with respect to "proposed regulations of general application" issued by the government of one of the parties, that party must publish the proposed regulations in a single official journal.

Moreover, it states that parties "should in most cases" publish those proposed regulations "not less than 60 days before the date public comments are due," and "shall include in the publication an explanation of the purpose of and rationale for the proposed regulations."

Finally, the parties must, when adopting final regulations, "address significant, substantive comments received during the comment period and explain substantive revisions that it made to the proposed regulations in its official

journal or in a prominent location on a government Internet side."

Again, this follows the same general track that the U.S. is pursuing in the TPP negotiations. There, the U.S. is putting a lot of emphasis behind the issue of "regulatory coherence," and is pushing TPP partners to ensure they have a mechanism in place to facilitate central coordination of new regulatory measures (*Inside U.S. Trade*, Nov. 4).

Many other sections of the new model BIT are essentially unchanged from the 2004 version, a fact that sparked the ire of the non-governmental group Public Citizen, which immediately issued a press release blasting the revised model BIT for retaining an investor-state dispute settlement mechanism.

"Like the old U.S. investment model, the new text will allow companies to challenge public interest regulations outside of domestic court systems before tribunals of three private sector trade attorneys operating under minimal to no conflict of interest rules," it charged.

"These arbitrators can order governments to pay corporations unlimited taxpayer-funded compensation for having to comply with policies that affect their future expected profits, and with which domestic investors have to comply," it added.

U.S. BIT negotiations opened with China and India have remained stuck at a technical level while the administration's review of the U.S. model BIT was underway.

http://uk.reuters.com/article/2012/04/20/usa-investment-treaties-idUKL2E8FK7GZ20120420

UPDATE 2-US resolves 3-yr debate on investment treaty terms

Fri Apr 20, 2012 8:04pm BST

* Administration says new model will help level playing field

* U.S. party to 40 investment pacts, out of 3,000 worldwide

* Critic says new model no improvement over old (Adds detail, quotes throughout)

By Doug Palmer

WASHINGTON, April 20 (Reuters) - The U.S. government on Friday said it has resolved a three-year internal debate over how strongly to press countries such as China and India to protect workers' rights and the environment in negotiations on treaties to protect U.S. foreign investment.

The U.S. State Department and the U.S. Trade Representative's office issued a joint statement outlining a so-called "model BIT" (Bilateral Investment Treaty) that will be used as a template in future negotiations.

They said new language "will help achieve several important goals of the Obama Administration (such as) ensuring that U.S. companies benefit from a level playing field in foreign markets, providing effective mechanisms for enforcing the international obligations of our economic partners, and creating stronger labor and environmental protections."

The Emergency Committee for American Trade, a U.S. business group, welcomed the announcement and called for quick resumption of investment talks with China, India, Vietnam and Mauritius that have been on hold.

But the group, whose members range from heavy equipment manufacturer Caterpillar to publisher McGraw-Hill , said the stronger U.S. labor and environment demands in the model BIT "could be counterproductive" because they go much further than what other developed countries demand in their investment pacts.

"ECAT is concerned that these labor and environment provisions set a bad precedent and may well undermine the United States' ability to conclude BITs with developing countries and the very improvements in labor and environmental objectives that increased foreign investment would bring," it said.

The business group added it was "very disappointed that the new 2012 model BIT does not strengthen core protections for U.S. investors overseas."

The United States and other countries negotiate bilateral investment treaties to protect their companies against potentially unfair foreign government actions.

There are some 3,000 BITS in force around the world, of which the United States is party to 40.

Critics say the treaties, which must be approved by the Senate, encourage U.S. companies to move production overseas and allow them too easily to challenge government regulations that could hurt the value of their investments.

One of the most outspoken critics, Lori Wallach, director of Public Citizen's Global Trade Watch, said the new model BIT was basically the same as "the deeply flawed 'old' model."

"At a time when multinationals like Chevron are using BITs to evade justice and get out of environmental remediation obligations, it is unthinkable that an Obama administration - post-BP oil spill, post-Wall Street crash - would privilege the rich at the expense of the 99 percent," Wallach said.

The administration of former President George W. Bush launched BIT negotiations with China and Vietnam in its waning months. Responding to concerns raised by Democrats and labor groups, the incoming Obama administration put those talks on hold and instituted a review of the U.S. model BIT in February 2009.

The U.S. Trade Representative's office, in a Fact Sheet, said the 2012 model BIT expands labor and environmental obligations in "four important ways."

It requires governments not to "waive or derogate" from their own labor and environmental laws to attract investment or to fail to effectively enforce those laws to attract investment.

U.S. BIT partners also must reaffirm their commitment to core International Labor Organization principles, such as the rights of workers to organize and bargain collectively, and recognize the importance of international environmental agreements, such as those protecting endangered species.

The new BIT model also contains "more detailed and extensive consultation procedures (on labor and environment) than those applicable under the 2004 model BIT," USTR said.

The Obama administration also responded to growing concerns about the role of foreign "state-owned enterprises" in international trade by including provisions in the model BIT to help level the playing field for U.S. companies.

(Reporting By Doug Palmer; Editing by Chizu Nomiyama, Vicki Allen and Dan Grebler)

Obama administration clears hurdle for China, India investment treaties

http://thehill.com/blogs/on-the-money/1005-trade/222809-obama-administration-clears-hurdle-for-china-india-investment-treaties

By Erik Wasson - 04/20/12 12:42 PM ET

The Obama administration on Friday announced that it has completed a controversial review of its approach to bilateral investment treaties (BITs), clearing a major hurdle for potential deals with China, India and Russia.

Investment treaties are a major goal of U.S. business, which argues the treaties smooth the way for expansion overseas by reducing the legal risks that investments can be confiscated by foreign governments or impaired by

corrupt court systems.

The Office of U.S. Trade Representative and Department of State have been reviewing the template under which they negotiate BITs since the early days of the Obama administration.

Labor unions and environmental groups wanted stronger protections in the BITs, and some activists wanted the United States to stop giving foreign companies access to special arbitration panels that can review U.S. policies outside the U.S. court system.

Activists said the BIT could impair the ability of the United States or foreign partners to regulate businesses because those regulations could be rendered null by an obscure arbitration process.

Their demands slowed the model BIT review.

The new model BIT contains beefed up labor and environmental protections and makes the BIT process more transparent, USTR said in a press release. It claims the new model BIT, the first revision since 2004, balances investor protections with the ability of governments to regulate.

At least one activist was not buying the latter claim on Friday.

"Instead of the reforms promised by candidate Obama, the Obama administration's 'new' Model Bilateral Investment Treaty released today is the same in all major respects as the deeply flawed 'old' Model Bilateral Investment Treaty (BIT) and the investment chapters of U.S. free trade agreements," Lori Wallach of Public Citizen said in a emailed statement.

"Like the old U.S. investment model, the new text will allow companies to challenge public interest regulations outside of domestic court systems before tribunals of three private sector trade attorneys operating under minimal to no conflict of interest rules," she said.

The model BIT is not subject to congressional action at this time, but signed BITs must pass the Senate by a two-thirds vote.

BITs with China and India are under preliminary negotiation, while the administration has talked of launching talks with Russia. More than 40 BITs are already in place with U.S. partners.

US revises investment treaty approach

http://www.ft.com/intl/cms/s/0/50a4f600-8b23-11e1-bc84-00144feab49a.html#axzz1scPhKtlV

By James Politi in Washington

The Obama administration has laid out its criteria for bilateral investment treaties in a move that could catalyse negotiations on such deals with China and India.

The office of the US trade representative on Friday announced that it had finalised a three-year review of the so-called "model BIT", which America uses as the foundation for agreements on investor protection with other countries.

The last time the US proposed a model BIT was in 2004, under George W. Bush. Almost immediately upon taking office, Barack Obama had sought changes to ensure consistency with the "public interest" and his wider economic agenda.

The US has bilateral investment treaties with some 40 countries, but not with a number of key trading partners, including India and China. Although the US presentation of its model BIT could catalyse discussions with the two large Asian nations, it is unclear whether this will happen this year, given the complex and at times fraught

economic relationships involved. This week, for instance, Tim Geithner, the US Treasury secretary, had to ask Pranab Mukherjee, the Indian finance minister, to offer reassurance that his country was open to foreign capital after the Indian budget included controversial retroactive taxation measures.

BIT deals generally include a number of provisions aimed at guaranteeing market access for foreign investors on level terms with domestic companies, which could limit efforts by China and India to pursue so-called "indigenous innovation" policies that have angered foreign businesses. BITs place limits on expropriation, restrict domestic content targets and export quotas, and offer the right to use international arbitration, rather than domestic courts, in disputes with the government.

The US often takes a hard stance negotiating BITs, insisting that other countries adhere to its model.

In the revised plan presented this week, the US made several changes specifically designed for deals with "state-led economies", including measures to prevent the imposition of domestic technology requirements and allow the participation of foreign investors in setting standards to limit discrimination on the basis of technical regulations. In addition, the new plan by the US includes a series of new labour and environmental standards, including an obligation not to waive labour and environmental laws to encourage investment.

Calman Cohan, president of the Emergency Committee for American Trade, a business group, said he applauded the Obama administration's move as a sign of its "commitment to open markets, eliminate foreign barriers and protect US investment overseas". But Mr Cohan also said that the new language on labour and environmental standards "could be counterproductive" and he was disappointed that some of the "core protections" did not go further.

Meanwhile, Lori Wallach of Public Citizen's Global Trade Watch, which has fought US free trade agreements in the past, said Mr Obama's plan was "the same in all major respects as the deeply flawed old model".

SOFTWOOD LUMBER AGREEMENT

CHRONOLOGICAL

UPDATE

1. Current Agreement signed in 2006 by Harper and Bush Governments
    - 7 Year deal scheduled to end in Sept of 2012.
    - US producers complained that Canadian exporters were subsized by Crown Lands stumpage fees sold at bargain basement prices.
    - Canada won the first decision before NAFTA Panel.
    - US filed a subsequent petition to World Trade Organization and won.
    - Approximately $5.6Billion levied against the Canadian Producers.
    - $4.5Billion in levies returned back to the same producers.
    - SLA extremely important to softwood lumber producers on both sides of the border with the exception Canadian Mills along the Maine and New Hampshire international boundary.
2. August of 2011: USTR announced it was seeking $500Million in damages from BC Forest Industry before the London Court of International Arbitration. Decision is due this Summer.
3. Two other USTR filed disputes have been won by the US.
    - Dispute that Canada failed to calculate volume quotas properly by Provinces. $68Million export duties levied against the Federal Government.
    - Dispute that Provinces of Quebec and Ontario failed to justify market rates for Crown Lands Stumpage creating a breach of the agreement. $60Million levied against the respective Provinces.
4. SLA extended on Jan 23rd 2012 until Oct 2015.
    - Done within days after the Obama Administration rejected the Keystone Pipeline proposal.

DAT 2012.

Future

Softwood Lumber Agreement

NAFTA

&

Trans-Pacific Partnership

SLA: **Issues in need of being addressed in next round of negotiations.**

- **Subsidy calculation based on US weighted average stumpage cost by Region less the less the weighted average stumpage rate calculated for all Canadian Provinces by Region.**
  - **Settlements based on level financial injury collected by DOC by region and returned to injured claimants by region.**
  - **Theoretically, no countervailing duties or anti-dumping duties would be collected by the Canadian Government and redistributed back to their mills.**
  - **No more debate on what qualifies for a log under the agreement nor should there be a debate on Crown land Stumpage Values.**
- **All costs associated with Claims Process borne by losing party.**
- **Dispute Resolution Process must be fair, impartial and equitably defined without prejudice before a new signed agreement.**
  - **Independent, Judicially qualified third party must be chosen and mutually agreed to prior to a new agreement.**
  - **Decisions should not violate jurisdictional trade laws.**

NAFTA AND TPP:

- **Should incorporate SLA Dispute Resolution and Claims Process.**

Translation of article by Hirobumi Sengongi, Staff Writer with The Japan Agricultural News

1-2.Reality of ISDS (Final edition of a serial reports): Possible restriction on environment protection worried about even in the US.

The US government seeks for rules favorable to USA to create job opportunities. But, the deep-seated opposition against extreme free trade which only serves corporate benefits is seen even in the US.

We can find an example in the state of Maine. Many residents there are opposing pumping up of groundwater by a multinational mineral water company. People are worried about possible restriction on their right to preserve natural resources of the community, once ISDS takes effect. The citizen's committee on trade policy of the state is the only opposition at the public hearing on TPP held by the Federal Government. The committee is not only against Japan's participation but cautious about the TPP itself. They say TPP will restrict the regulatory right of the state government and the dispute settlement procedure in TPP may seriously hit the state. Therefore, they sense imminent danger of ISDS.

On the other hand, citizens worried about shortage of water by global warming are cautious about appropriation of water by a private corporation. There are five leading civil groups supported by fifteen groups. In 2008 when the multinational planned to expand its operation, the local referendum stopped it with 80% against the plan. And in 2009, two local governments passed local ordinances giving authority to restrict digging for groundwater. Sharon Treat, a state legislator and a member of the committee points out that ISDS would reverse the regulation of the local governments. Chris, the leader of an association to protect life supporting water resources also points out that development of FTA with EU and Switzerland, and expansion of TPP participating countries will spread use of ISDS and thus endanger regional resources.

In response to these progresses, the multinational is trying to roll back. They recognize it will be difficult to use ISDS because of their nationality and now try to pressure the state governor and legislature to enact a state regulation which enables them to demand compensation when their operation is restricted by local governments.

Chris is expressing his wariness that it is a domestic version of ISDS. Corporations already sued some state governments for compensation of tens of billions of US Dollars. Chris emphasized that lobbying and pressures of those corporations with financial power are totally different from citize's wish asking for the rearing of sustainable agriculture and manufacturing industry.

2-1.Interview with the Maine State Legislators, Sherman, Treat and Lotando (spelling unknown): Interviewed by Hirofumi SENBONGI.

Question: What are activities of the citizen's committee for trade policy like?

Sherman:

Free trade has both positive aspects and negative aspects. We hold the regular meeting every month, discuss the impact of the TPP and Korea/US FTA to citizens of the state of Maine and report to the public.

Treat:

Among other clauses, ISDS is likely to restrict the sovereignty of local governments. A private company can sue the federal government for abolition of regulations which protects local resources such as groundwater and for damage compensation including potential future profit. It will also be a problem that it is difficult to foresee the settlement which is subject to arbitrators even if the cases are the same. If not actually sued, the legislature may quail.

Lotando:

A Canadian mining company sued the US federal government using ISDS of

NAFTA and complained to the state of California of the restriction of opencast mining. It obviously tells that a trade agreement may make it difficult to preserve ground water.

Why do we need such an international arbitration system, while we have our own legal system in the US? The important is that the state government and local community have the right to decide its own policy.

Question: Why are you critical on the TPP?

Treat:

Corporations want to unify standards for environment and food safety of member countries in TPP Agreement. The state of Maine exports sea urchin to Japan and we are required to keep the sea water clean and preserve sea urchin.

Such a reality peculiar to the region must carefully be considered.

Secret negotiations are also a problem which hides possible impacts to our daily life. Even the state government cannot read the text till all the negotiations are complete. USTR keeps close dialogue with corporate representatives, but hardly has opportunities to listen to the state government.

Therefore, we demand slowdown of the negotiation, release of information to the public and equal opportunities for stakeholders to express opinions.

Question: What about the Korea/US FTA to which you are also cautious?

Treat:

We can share the concern of Korean people. The US demanded transparency in the process of pricing medicines in Korea. If such a system beneficial to pharmaceutical companies is adopted not only in Korea but in the US, citizen's right of access to medicines may be endangered.

Lotando:

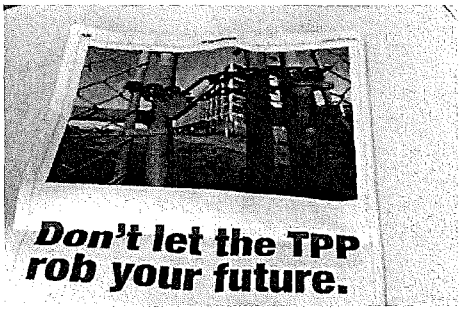
The democratic process of FTA negotiations is important, so that we may evaluate the impact to our daily life. And it is also indispensable that the government make efforts to explain the complicated clauses easily understood by as many citizens as possible.

THE WALL STREET JOURNAL.
WSJ.com

April 25, 2012, 11:08 AM JST

Lost in Translation: Anti-TPP Campaign Befuddles Washington

Japan's agricultural lobby has taken its campaign against a global free trade agreement to the U.S., buying a full-page advertisement in Tuesday's Washington Post opposing the Trans-Pacific Partnership. The ad is titled "Don't let the TPP rob your future," and features a picture of a padlocked factory on the back page of the newspaper's front section.



Peter Landers/The Wall Street Journal

A photograph of the anti-TPP ad, which ran in the Washington Post on April 24.

For American readers, it must have seemed a strange message. The advertisement doesn't say what the proposed free-trade agreement consists of or how it would "destroy jobs" for Americans. JRT asked a colleague who doesn't cover Asia to review it. The reaction: "What is it about? I have no idea what it means."

That captures the disconnect between the two countries over the issue. In Japan, TPP has become a household phrase, with newspapers, magazines and TV shows prominently featuring the pact. Prime Minister Yoshihiko Noda has made Japan's entry into the agreement a top priority, and is expected to discuss the matter when he meets American President Barack Obama in Washington next week. While advocates say the agreement would lift Japan's economy overall, it would likely require further opening of Japan's protected farm sectors — hence the advertising campaign.

In the U.S., however, the pact gets virtually no press, and is largely unknown.

For its part, the group taking out the ad, led by Japan's Central Union of Agriculture Co-operatives, seemed a little confused about U.S. developments. It told Japanese media that the Washington Post has a circulation of 670,000, but, alas, the U.S. capital's leading daily long ago fell below that mark. As of last September, its daily circulation was 507,000, according to the U.S. Audit Bureau of Circulations.

Read this post in Japanese/□□□□□はこちら≫

12

Public Health Association
AUSTRALIA

PHAA Issue Brief

Public Health and the Trans Pacific Partnership Agreement

April 2012

PHAA's policy position on trade agreements and health

While trade agreements can contribute to better health (under certain conditions), they also involve significant risks to health that need to be systematically assessed [1]. PHAA's policy on *Trade Agreements and Health* [2] argues that:

- Trade agreements should not limit or override a nation's ability to foster and maintain systems and infrastructure that contribute to health and well-being;
- Policy space should be preserved in trade agreements for governments to regulate to protect public health; and
- A fairer regime of trade regulation which addresses sustainability, economic development and equity (within and between countries) is a necessary condition for global population health improvement.

The Trans Pacific Partnership Agreement (TPPA)

- The TPPA is a regional trade agreement currently being negotiated between Australia, Brunei, Chile, Malaysia, Peru, New Zealand, Singapore, the United States and Vietnam.
- Decisions made in the TPPA negotiations will have global implications. Japan, Canada and Mexico have expressed interest in joining, and the agreement is likely to expand to include further countries (including more developing countries). It will also set a new benchmark for future trade agreements.

Public health issues at stake

Access to affordable medicines: Leaked U.S. proposals for the TPPA [3] would make medicines more expensive by:

- **increasing intellectual property rights** for pharmaceutical companies well beyond the World Trade Organizations' TRIPS Agreement. Proposed 'TRIPS-plus' provisions would keep medicines under patent for longer, broaden the application of patenting and delay the introduction of cheaper generic medicines [4, 5]. They would prevent developing countries from using many of the flexibilities available under the TRIPS Agreement.
- **undermining pharmaceutical reimbursement and pricing schemes**, by restricting the use of cost-effectiveness criteria, imposing independent appeals processes and requiring countries to permit advertising of prescription drugs via the internet [5].

Policy space for public health: The TPPA could tie the hands of governments to regulate industry in key areas of public health policy where governments will need to take strong action to address non-communicable diseases. For example:

- a proposed **'investor-state dispute resolution' provision** would enable foreign corporations to challenge governments in international tribunals when they introduce policies and laws that affect the value of their investments. The risks are clearly illustrated by Philip Morris Asia's challenge to the Australian Government's tobacco plain packaging laws through the ISDS clause in an investment treaty between Australia and Hong Kong [6].
- Many other chapters and provisions of the TPPA (e.g. regulatory coherence, transparency, cross-border services and technical barriers to trade chapters) will make it more difficult for governments to introduce policy interventions such as tobacco control policies, nutrition and alcohol labeling and restrictions on advertising of unhealthy goods [7].

The 2009 Report of the UN Special Rapporteur on the Right to Health stated that 'Developed countries should not encourage developing countries and LDCs to enter into TRIPS-plus FTAs and should be mindful of actions which may infringe upon the right to health.' [8]

THE HILL

On The Money
THE HILL'S Finance & Economy Blog

Last US sneaker manufacturer wants to maintain balance in new trade pact

By Vicki Needham - 03/10/12 01:51 PM ET

The last U.S. manufacturer of athletic shoes is working with a coalition of lawmakers to convince trade officials to preserve footwear duties in an Asia-Pacific agreement that they say will allow them to continue operating on American soil.

New Balance, which still produces about 25 percent or 7 million pairs of shoes here, and a group of New England lawmakers are insistent that the Trans-Pacific Partnership (TPP) maintain about 20 duties they argue will protect five U.S. factories from closing and moving overseas — three in Maine and two in Massachusetts.

The push comes amid opposition within the footwear industry, which operates largely outside the United States, and wants to see the tariffs on shoes either eliminated or phased-out within the trade agreement.

"We're not asking for special treatment," Matt LeBretton, who heads up the government affairs team at New Balance, told The Hill.

"We want a carve-out of the tariffs for the products we're making here, we aren't asking for special subsidies or tax incentives," LeBretton said.

Eliminating or phasing-out the tariffs would "decimate" what is left of the industry, he said.

LeBretton said the tariffs allow the firm to compete against much cheaper imported shoes, especially from Vietnam, in an already highly competitive industry.

While many shoe manufacturers have already moved their facilities overseas, New Balance, which has been in business for more than 100 years, continues to make shoes in the U.S. and they say they want to stay put.

Their plants employ 1,300 workers.

"We have a commitment to our domestic operations," LeBretton said.

Sen. Susan Collins (R-Maine), an advocate against the tariffs, said the company has "made a real effort" to involve their employees to become more productive and efficient while fighting a rising tide of low-cost imports into the United States.

"Obviously given that they pay good wages and benefits they're at a competitive disadvantage compared with what they would be paying if they did the work in China," Collins told The Hill.

Nine countries, right now, are part of the ongoing negotiations of the TPP agreement and one of them, Vietnam, is the fastest growing exporter of footwear in the world, a major concern for New Balance, because business costs are appreciable in the United States.

Vietnam pays a tariff on rubber footwear but that could go away under the TPP deal, jeopardizing the future of New Balance's business here.

Still, there are bigger voices arguing against those tariffs, such as the Footwear Distributors and Retailers of America and the American Apparel and Footwear Association, which are working to nix the duties, arguing that U.S. consumers are paying an unnecessary shoe tax on products that, the majority of which, aren't produced here anymore.

"An effective TPP will also benefit American consumers by eliminating duties and holding down prices," Matt Priest, president, Footwear Distributors and Retailers of America, said recently.

He said those tariffs amount to a $600-million tax that "makes no sense" because 99 percent of all shoes sold here are manufactured outside the United States.

LeBretton called fighting that push against the tariffs a "daunting task" arguing that 1 percent of manufacturers remaining need the protections to continue production.

The fight by New Balance highlights the White House's agenda to bolster manufacturing and keep jobs from leaving the United States.

Still, the Obama administration is in a tough spot and won't likely find it easy to attempt to help a microcosm of an industry that was thriving here before a mass exodus started in the 1980s as foreign countries opened up to U.S. businesses that wanted to establish manufacturing plants within their borders.

That is where a group of lawmakers come into play.

The possibility of the tariffs' elimination has pushed the issue up the agenda for New England lawmakers, who sent a letter to U.S. Trade Representative Ron Kirk in December asking him to maintain the tariffs or risk losing the rest of the shoe-making industry to outsourcing.

Sen. Olympia Snowe (R-Maine) prodded Kirk for a status on the talks over the tariffs during a Senate Finance Committee hearing on Wednesday.

"The concern is that the agreement will not exclude the reductions in imported products from Vietnam which is really the largest producer of rubber footwear and would have a severe impact on an industry and jobs with respect to New Balance," Snowe said.

"It would provide a severe disadvantage to this industry without question since Vietnam pays on average 46 cents an hour, whereas New Balance pays $10 an hour," he said.

Kirk tried to assure Snowe that the administration was working toward the best possible resolution.

"We have done everything we can or attempting to do in this TPP, whether it's footwear and others, to make sure we have a proper balance, that we continue to give American families the consumptive

15

benefits, but we help Americans that are still making products in doing what the president has simply said," Kirk said.

"What's remaining of our textile industry is vibrant. It's fully integrated in many cases," he said.

Snowe didn't sound convinced in a post-hearing release.

"Based on his answer today, he [Kirk] clearly doesn't grasp the gravity of the impact the Trans-Pacific Partnership agreement could have for these workers, their families and the specialized industry as a whole," she said.

"These are precisely the kinds of jobs that we must support, particularly since more than 28,000 jobs in the footwear industry have gone overseas in the past 15 years," she said.

"At a time when so many American manufacturers are struggling, New Balance has provided stability and economic opportunities in my home state of Maine."

Source:
http://thehill.com/blogs/on-the-money/international-taxes/215307-last-us-shoe-manufacturer-wants-to-maintain-balance-in-new-trade-pact

http://insidetrade.com/201204112395519/WTO-Daily-News/Daily-News/former-ustrs-support-expanding-tpp-membership-differ-on-sequencing/menu-id-948.html

Former USTRs Support Expanding TPP Membership, Differ On Sequencing

Posted: April 10, 2012

Six former U.S. trade representatives last week argued that expanding the Trans-Pacific Partnership (TPP) beyond the current nine participants is critical to broadening the economic and strategic value of an eventual TPP deal, but they disagreed on whether the U.S. should seek to conclude the negotiations before bringing in new players such as Mexico, Canada and Japan, which have all expressed an interest in potentially joining the talks.

Susan Schwab, who initiated the TPP talks as USTR under President George W. Bush, cautioned against bringing new countries into the negotations at this stage because it could delay the talks and potentially water down the high standards that the current participants are seeking.

"Negotiating TPP with the original nine as opposed to negotating with the 12 is a very, very different proposition, so I'm not sure you're not adding three, five or seven years onto the exercise that you wouldn't want to add on," Schwab said during an April 6 event with six former USTRs hosted by the Center for Strategic and International Studies (CSIS).

While the goal of the TPP was to create a high-standard trade agreement that could potentially be expanded into a free trade area of the Asia-Pacific, or even to encompass other regions of the world, this idea is predicated on first negotiating a precedent-setting agreement, according to Schwab. "I'm not sure you can achieve that high bar if Japan is sitting there in the first negotiating exercise," she said.

By contrast, Clayton Yeutter, who served as USTR in the Ronald Reagan administration, said he favored bringing in new countries to the TPP talks at this stage even if it slows down the negotiations to some extent. He downplayed the idea that there is a trade-off between completing the TPP this year and allowing new countries to join, saying that TPP countries are unlikely to meet their goal of concluding the talks this year even if no new countries are added.

Former USTRs Carla Hills and Mickey Kantor, who served under former Presidents George H.W. Bush and Bill Clinton, respectively, also appeared to reject the idea that the U.S. has to choose between bringing in new TPP members and concluding the deal in the near term.

They argued that it is possible to simultaneously move forward on the TPP talks and expand the group's membership by establishing an "open architecture" that would allow any country willing to meet the commitments of TPP to join the agreement, similar to the approach taken with the Information Technology Agreement and the Government Procurement Agreement in the World Trade Organization.

"You don't have to slow it down, you just have to keep the door open," Hills argued.

Still, countries such as Mexico and Japan have expressed a preference for joining the TPP talks while they are still ongoing in order to help shape the negotiations, as opposed to acceding to a completed agreement.

Speaking after the event, Schwab sought to distinguish the situation of Japan from that of Canada and Mexico, which have both communicated their desire to join the TPP and adhere to its emerging high standards.

She said it was possible to envision a scenario where a group of "almost ready" countries, such as Canada and Mexico, could be folded into the TPP negotiations before a deal is concluded, while Japan would probably join later. But she said it was difficult to speculate how this process would play out without knowing the confidential status of the TPP negotiations.

During the event, the debate over new TPP entrants focused largely on Japan's potential participation in the talks. Schwab noted that Tokyo has sensitivities on agriculture and Japan Post, and she also raised doubts that Japan's leaders are truly committed to joining TPP.

That point was echoed by Charlene Barshefsky, who served as USTR under Clinton. Barshefsky said Japanese officials with whom she has consulted have so far only conveyed their general interest in joining TPP but have not been able to point to any specific confidence-building measures Japan would be willing to take by the end of the year to show it is willing to meet the agreement's high standards.

"So until Japan sorts out its own internal situations -- of course, we don't know if they'll have the same prime minister -- then the U.S. should move forward with those that can," Barshefsky said.

Former USTR William Brock, who also served under Reagan, acknowledged that the Japanese government is divided about whether to join TPP. "But there are a lot of people in deep leadership roles that would give a lot to be able to do this and it would them help deal with some domestic issues that ... they have to deal with," he said.

Brock argued that even if the U.S. does not bring Japan into the TPP right away, it needs to send a clearer signal that it wants Japan to join the deal eventually. "We really need that country, and we're not playing any right cards at the moment, and I'm discouraged about it," he said.

Barshefsky agreed that the U.S. needs to clearly indicate to potential TPP members that "we want them in," and then work with each country to discuss areas where they may have difficulties living up to the agreement's high standards and find ways to resolve them.

Yeutter, who is also a former Agriculture secretary, argued that bringing Japan, Mexico and Canada into the TPP would increase the agreement's importance to U.S. agricultural exporters, but he cited several areas in which Japan and Canada need to show progress before they would be in a position to join the talks.

He said Japan needs to ease restrictions on imports of U.S. beef, but added that Tokyo appears to have "awakened" to this reality and may fix the problem soon. Japan currently limits its imports of U.S. beef to that from cattle under 20 months, but has launched a review process to assess whether the risk of consuming beef from U.S. cattle up to 30 months in age is higher than the risk of consuming beef from cattle no older than 20 months (*Inside U.S. Trade*, Dec. 23).

But Yeutter said Japan appears to be moving in the wrong direction on Japan Post, which "could jeopardize" its chance for joining TPP. Yeutter did not elaborate, but U.S. companies late last week objected to a new Japan Post reform bill that is expected to pass through the Japanese Diet later this month (*Inside U.S. Trade*, April 6).

Yeutter said Canada needs to address policies in its dairy and poultry sectors that are opposed by the U.S., Australia and New Zealand before it can join TPP. Canada currently limits foreign access to its dairy and poultry markets through a system of supply management.

While noting it is unlikely that other countries besides Mexico, Canada and Japan would be added in the "first tranche" of new TPP entrants, Yeutter said other potential participants that are attractive for U.S. agriculture exporters are Taiwan, the Philippines, Thailand and Indonesia.

During her remarks, Hills cited four potential risks of keeping the TPP small. First, doing so would not accomplish the administration's goal of bringing together developed and developing countries in Asia into a single trading community, she argued.

Second, it would negatively impact the poorest countries in Asia, such as Cambodia, Laos and Burma, by diverting trade from those nations to TPP members, a point also stressed by Kantor.

Third, completing the TPP with only the current membership would splinter the "ASEAN 10," a group that has been strategically important for the U.S. Finally, it could induce competing trade blocs in the Asia-Pacific region because China would not be included in the TPP, she said.

Kantor argued that the TPP should be expanded to bring in Japan, Canada, Mexico and the ASEAN countries with the goal of eventually including China. But Barshefsky pointed out that Indonesia, an ASEAN member, has shown no interest in participating in the TPP, and therefore it is preferable to move the TPP ahead with countries who are willing to participate.

WTO Orders U.S. to Dump Landmark Obama Youth Anti-Smoking Law

Posted: 04/ 9/2012 2:30 pm
Read more
>
WTO Cigarettes , WTO Trade , WTO Trade Policy , Health Care WTO , Obama WTO Smoking , Regulation Health WTO , Youth Smoking WTO , Politics News

A landmark U.S. health policy already was being struck down even as protestors surrounded the Supreme Court over the attack on President Obama's healthcare law. Behind closed doors in Geneva, a World Trade Organization (WTO) tribunal issued a final ruling ordering the U.S. to dump a landmark 2009 youth anti-smoking law.

The Obama administration's key health care achievement slammed by the WTO was the Family Smoking Prevention and Tobacco Control Act (FSPTCA), sponsored by Rep. Henry Waxman (D-Calif.). The ruling, issued Wednesday, was on the final U.S. appeal which means that now the U.S. has 60 days to begin to implement the WTO's orders or face trade sanctions.

This outrageous WTO ruling should be a wake up call. Increasingly "trade" agreements are being used to undo important domestic consumer, environmental and health policies. Instead, the Obama administration has intensified its efforts to expand these very rules in a massive Trans-Pacific Partnership (TPP) "free trade" agreement.

The WTO's ruling against banning the sale of flavored cigarettes isn't the only example of its attack on consumer protection and health laws. The U.S. has filed WTO appeals on two other U.S. consumer laws -- U.S. country-of-origin meat labels and the U.S. dolphin-safe tuna label -- both were slammed by lower WTO tribunals in the past six months. Yup, in short order we could see the WTO hating on Flipper, feeding us mystery meat and getting our kids addicted to smoking.

The challenged tobacco control U.S. law was designed to reduce teen smoking by banning "starter flavorings," since tobacco firms had begun marketing flavors like cola, chocolate, strawberry and clove. The 2009 law forced U.S. firms to cease sales of these products, whether imported or domestically produced.

Wednesday, the WTO sided with Indonesia, who claimed that the U.S. ban of their imported clove-favored cigarettes should not be allowed. A key reason was that the U.S. had not banned all flavored-cigarettes (namely menthols). Thus, they argued, the policy unfairly hit Indonesia. However, data showing that teens are more likely than adults to smoke cloves (while menthol smokers include vast numbers of adults) was dismissed.

Given these recent WTO rulings spotlighting just how dangerous the existing "trade" agreement model is for an array of non-trade public interest policies, you might expect that the Obama administration would finally start implementing candidate Obama's 2008 election pledges to renegotiate existing agreements and create a new model. Instead, the U.S. is pushing for completion this summer of a nine-nation TPP that contains the same rules. The deal would also empower foreign corporations to privately enforce these rules by suing the U.S. government directly before kangaroo courts, comprised of three private sector lawyers operating under UN and World Bank investor-state arbitration rules.

The American public is uniquely united against more-of-the-same trade deals. Thus, if only for political expediency, the administration must stand with the thousands of Americans who have signed a Consumer Rights Pledge calling on the U.S. to not comply with these illegitimate trade pact rulings, and to "knock it off" on the TPP negotiations that would greatly intensify this problem.

19

This ruling just adds to the growing evidence that today's "trade" agreements are no longer mainly about trade; they're about corporate power and influence. Chevron is using these corporate power grab terms to try to dodge paying $18 billion to clean up horrific contamination in the Amazon ordered after 18 years of U.S. and Ecuadorian court rulings. Philip Morris is using the system to attack Australian and Uruguayan cigarette plain packaging laws that were designed to discourage smoking.

So what can we do? First, we need to insist that our elected officials stop supporting these corporate power tools branded as trade agreements -- starting with the pernicious TPP proposal. To date, U.S. trade officials have refused even to make the draft TPP text public, even though the 600 official U.S. corporate trade advisers have full access. And, in the short term, we must urge the administration to ignore these WTO rulings.

If there is any silver lining to today's ruling, it is that it will confirm the views of growing numbers of consumers, citizens and governments that the WTO must be shrunk or sunk. There is a path forward: we must put the TPP on hold and renegotiate the WTO's mandate. It's time to craft a real 21st century trade policy.

Follow Lori Wallach on Twitter: www.twitter.com/PCGTW

20

Subject: NEWS: TPP :IUT: TPP Schedule For 2012 Taking Shape, Starting With Dallas Round In May

TPP Schedule For 2012 Taking Shape, Starting With Dallas Round In May

Posted: March 7, 2012

MELBOURNE – The 2012 schedule for the Trans-Pacific Partnership (TPP) negotiations is starting to take shape, and it appears to reflect a desire by TPP members – especially the United States – to drive ahead the negotiating process as much as possible before the talks could become more complicated by the participation of new members and an intensified presidential election campaign.

The U.S. has been pushing to wrap up as much as possible in the negotiations by summer, before a decision on new participants, but observers here say any real conclusions at that point are simply not possible then given the current state of play. There are also no signs that the talks could completely wrap up by the end of the year, which is the stated goal of TPP members.

After the current TPP round formally concludes here on March 9, TPP members will hold an inter-sessional meeting in Chile next month on intellectual property rights. Then, the twelfth full TPP round of talks will take place in Dallas from May 8-18, sources said, although a U.S. trade official said the exact location has not yet been determined.

The U.S. has also offered to host the formal round of negotiations taking place immediately after Dallas round. The United States appears to be targeting July 4 as the start of this round, which would be the thirteenth formal round of talks.

Having the same host for two consecutive rounds would be a change from the current setup, where various TPP members have alternated as hosts. One reason the U.S. may want to host that is that the host country gets to decide the agenda of a given meeting. The United States is really pressing to drive forward the negotiations over the next several months, sources said, and it will be easier to do so if it can shape the agenda for both the twelfth and thirteenth rounds.

Another possible reason, sources said, is that it is expensive to host a TPP round, and many TPP countries would prefer not to incur that cost.

At the May round in Dallas – where U.S. Trade Representative Ron Kirk formerly served as mayor -- negotiators are expected to discuss what their respective trade ministers can announce when they gather under the auspices of the Asia-Pacific Economic Cooperation (APEC) forum on June 4-5 in Kazan, Russia. For example, they could report on progress made since last November, when TPP countries unveiled an initial TPP framework deal that was very general.

Observers believe that starting perhaps after the Dallas round of talks, and certainly after the July round, it will become increasingly difficult for the United States to make tough political decisions on trade due to the intensifying presidential election campaign. This is could be one possible reason why the negotiating schedule is so packed in the near term, they speculated.

Moreover, they believe the United States wants to wrap up as much of the talks as it can before Japan, Canada and Mexico – which all have expressed interest in joining the talks – could realistically be in a position to do so. TPP members now say any new participant must accept whatever current members have already agreed to at the point that new participant joins. TPP members are adamant that they do not want to "reopen" negotiated text.

Most observers believe that trade ministers meeting in early June will not be in a position to announce that any new countries will join the talks at a specific date. Such an announcement, if it comes at all, is more likely to come from TPP leaders themselves when they meet in early September, again under the auspices of APEC.

This would give current TPP members more time to work through the tricky issue of new countries joining and more time to advance the negotiations before any new countries could possibly join, these observers said.

It is still not assured that any new countries will join the talks this year. However, observers agreed that Mexico, Canada and Japan are all mounting aggressive campaigns to convince TPP members to let them join while the talks

are ongoing. As there are no signs that the negotiations can wrap up this year, it may become awkward for TPP members to continue to deliberate on the possibility of new entrants much beyond September, which is a convenient date for an announcement anyway.

Assuming Japan signals that it actually would be willing to offer up reforms in its agricultural sector in the TPP added complication when it comes to Japan, however, is its political situation. Japanese Prime Minister Yoshihiko Noda, a strong proponent of Japan joining the TPP, also wants to advance an unpopular increase in Japan's consumption tax, which one observer said here is meant to raise money to provide relief to Japanese people who suffered from the tsunami and nuclear crisis last year.

The consumption tax issue is likely to come to a head in June, when it will become apparent that the Japanese Diet will not agree to an increase. At that point, many political analysts expect Noda to dissolve the Diet and call for new elections. Those new elections, in turn, would take place in August or September, and Noda may not be reelected.

Thus, just when the stars could be aligning for Japan to join the talks, Japan could be thrown into political turmoil, or elect a new prime minister who is less enthusiastic about the TPP talks or who would want to again review Japan's stance on TPP. One observer said that, in that scenario, TPP members could decide to just let Canada and Mexico join.

Opinions differ across TPP members on the issue of Japan. For instance, Australia – which has started bilateral trade negotiations with Japan only to see them stall due to Japan's refusal to make agricultural concessions – is extremely wary of Japan now joining TPP due to this experience. It would prefer Japan to conclude its bilateral talks with Australia, and then join, sources said.

New Zealand, on the other hand, is thrilled by the prospect that Japan could join the TPP talks. It sees that as the only way it could possibly achieve a free trade agreement with Japan, which has little interest in the New Zealand market. New Zealand wants an FTA with Japan to gain better access to that lucrative market after having unilaterally opened its market to Japan.

That said, observers here agree that the United States will essentially make the decisions when it comes to whether and when new countries join.

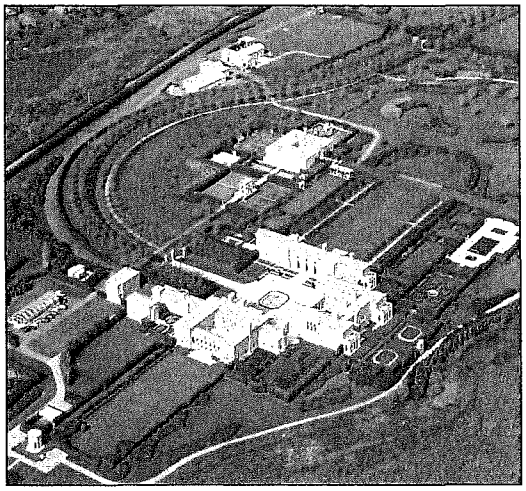
If TPP leaders do make an announcement in September on new countries joining, it could be convenient timing. This is because the Office of the U.S. Trade Representative, following the requirements of a lapsed fast-track law, is expected to formally notify Congress 90 days in advance of any new countries joining the talks.

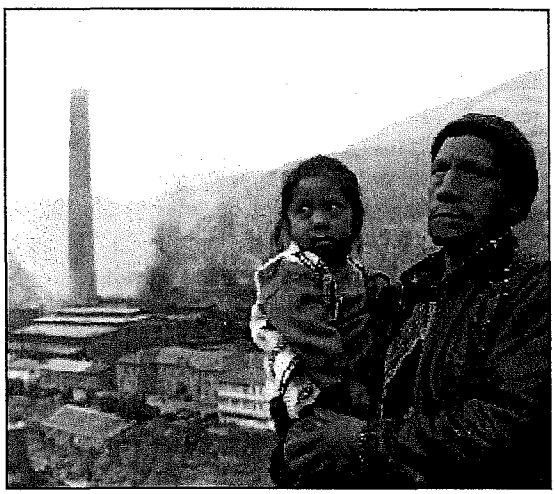
Issuing such a 90-day notification in September could be convenient because, for the balance of 2012, little is expected to take place in the TPP talks anyway due to the U.S. election campaign. Under this scenario, therefore, the 90-day layover between announcement and the actual joining of new members would not keep any new TPP countries from missing even more of the ongoing talks, because the talks would have dramatically slowed down anyway.

Updated – November 2011

Mining for Profits in International Tribunals

How Transnational Corporations Use Trade and Investment Treaties as Powerful Tools in Disputes Over Oil, Mining, and Gas





By Sarah Anderson,
Manuel Pérez-Rocha,
Rebecca Dreyfus,
and J. Alejandro Artiga-Purcell

Institute for Policy Studies

Key Findings

Investor-state lawsuits related to oil, gas, and mining disputes are on the rise – particularly in Latin America

- Transnational corporations are increasingly turning to international arbitration tribunals to resolve disputes over natural resource rights. At the most frequently used tribunal, the International Center for Settlement of Investment Disputes (ICSID), there are 137 pending cases. Forty-three of these cases are related to oil, mining, or gas. [1]
- By contrast, in 2000, there were only three pending ICSID cases related to oil, mining, or gas. There were only 7 such cases filed during the entire decades of the 1980s and 1990s.
- The 43 current extractive industries cases include: 14 related to oil, 10 related to gas, 14 related to mining (including 4 over gold), and another 5 related to combination oil/gas projects.

Latin American governments are being particularly targeted

- Latin American governments make up about 10 percent of the 157 ICSID member governments. And yet they are the targets of 68 (50 percent) of all ICSID cases and 25 (nearly two-thirds) of the 43 current extractive industries cases.

Regional breakdown of all ICSID cases related to oil, mining, and gas:

- Latin America: 25 (58%)
- Africa: 8 (19%)
- Eastern Europe: 5 (12%)
- Central Asia: 4 (9%)
- North America: 1 (2%) (the case is against Canada)

The increase in investor-state lawsuits related to extractive industries has coincided with an increase in commodity prices

- The price of oil rose steadily throughout the past decade, before plunging in 2008. However, by September 2011, it had rebounded to $100.8 per barrel, up from $25 in January 2000.[2]
- The price of gold has quintupled, from $282 per ounce in January 2000 to a record breaking $1,900 per ounce in September of 2011.[3]
- The price of gas rose from $86 per thousand cubic meters in January 2000 to roughly $140 (in the U.S. domestic market) in September 2011. In May, 2011 it had reached 257$ USD. [4]

The potential economic impact of investor-state lawsuits on Latin American countries is significant

- In 2009, the international gold mining firms Pacific Rim and Commerce Group each sued the Salvadoran government, demanding $77 million and $100 million respectively (the equivalent of nearly 1% of El Salvador's GDP). Although ICSID dismissed the Commerce Group case, El Salvador still had to pay $800,000 in legal fees.
- In March 2010, Chevron won about $700 million in a suit against Ecuador, the equivalent of 1.3% of that nation's GDP.
- The increase in investor-state lawsuits and the economic costs they incur on Latin American countries may prevent the creation of future environmentally and socially responsible legislation.

II. International Arbitration Tribunals and the Trade and Investment Treaties They Enforce

In past centuries, disputes over foreign investments were resolved either through the host country's domestic judicial system or through government-to-government processes. In Latin America, there was a particularly strong sentiment among governments that it would be an infringement on national sovereignty to take such matters out of the hands of national authorities.

In 1868, Argentine jurist Carlos Calvo formulated the "Calvo Doctrine," which became influential throughout the region. It prevented foreign investors from claiming more rights and privileges than those granted to national citizens, and barred foreign governments from breaking a sovereign state's laws to protect its citizen's private claim.[5] It also required foreign investors to file any dispute arising in a host country with that country's legal system, therefore subjecting the investors to domestic law.

In the past three decades, most countries in the region have shifted away from the Calvo Doctrine. This shift has coincided with increased pressure by economic powers like the U.S. and the European Union, as well as international institutions like the World Bank and International Monetary Fund (IMF) which have enforced a neoliberal agenda and openly advocated for Latin America to open its borders to free trade. [6] As a result, almost every government in the region –with a few exceptions- has accepted the argument that they would attract increased amounts of foreign investment if they allowed investors from other countries to bypass domestic courts and seek recourse through international dispute settlement mechanisms.[7] However, there is no evidence that providing investors with this supranational power has actually resulted in increased investment inflows to a particular country. In fact, the developing countries that have been the largest recipients of foreign investment (China, India, Brazil) have not signed such deals with the United States. Nevertheless, most countries in the world are now obliged to provide such sweeping foreign investor rights through an expanding web of international arbitration tribunals, bilateral investment treaties (BITs), and free trade agreements (FTAs).

International Center for Settlement of Investment Disputes (ICSID)

Foreign investors often have a choice of venue for international arbitration. This report focuses primarily on the International Center for Settlement of Investment Disputes (ICSID), which is associated with the World Bank.[8] ICSID is the most frequently used tribunal and it is the only one that publishes a registry of its cases. Other tribunals, such as the UN Commission on International Trade Law (UNCITRAL), have resisted even this small measure of transparency.

Private foreign investors can bring claims to ICSID against national governments, demanding compensation for actions that significantly diminish the value of their investments. Created in 1966, ICSID was almost dormant for the first 30 years of its existence. What brought it to life was the explosion of bilateral investment treaties (BITs). Worldwide, the number of signed BITs went from 1,000 in 1995 to more than 2,750 today.[9] Beginning with the 1994 North American Free Trade Agreement (NAFTA), free trade agreements signed by the United States have also included "investor-state" dispute settlement in their investment chapters.[10]

BITs and U.S. FTAs grant broad new rights to transnational corporations. Here are some of the main elements of a typical agreement, which have become highly controversial:

1. Investor-State Dispute Resolution

Private foreign investors can bypass domestic courts to sue governments directly in international tribunals.

2. Restrictions on "Indirect" Expropriation

Whereas expropriation in the past applied to physical takings of property, current rules also protect investors from "indirect" expropriation, interpreted to mean regulations and other government actions that significantly reduce the value of a foreign investment. Hence, corporations can sue over environmental, health, and other public interest laws developed through a democratic process. While the tribunals cannot force a government to repeal such laws, the threat of massive damages awards can put a "chilling effect" on responsible policy-making.

3. "Fair and Equitable Treatment" Standards

These terms have no definable meaning and are inherently subjective, allowing arbitrators to apply their own interpretations to government actions in countries with diverse histories, cultures and values systems.

4. National Treatment and Most Favored Nation Treatment

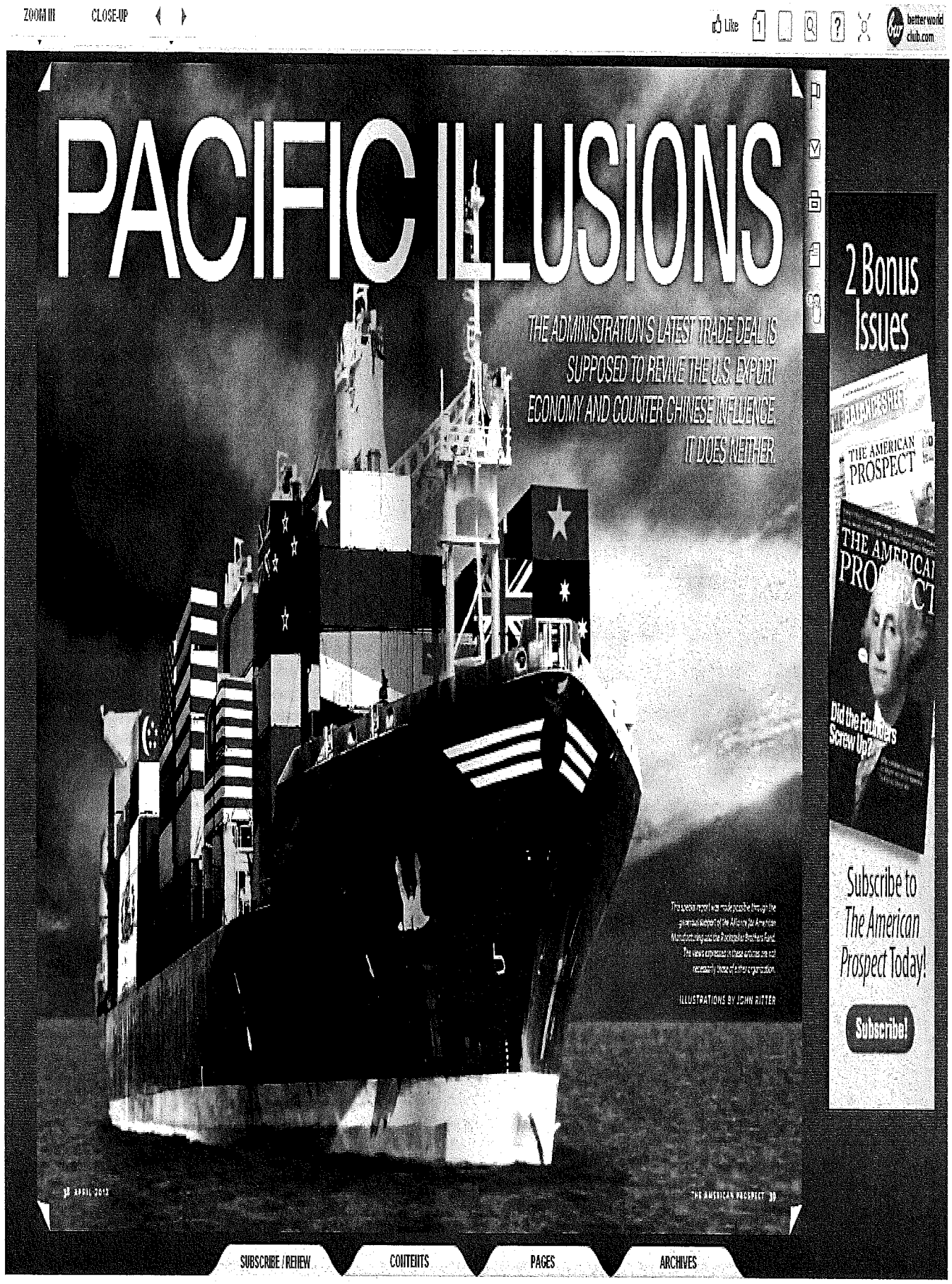
Governments must treat foreign investors and their investments at least as favorably as domestic investors and those from any third country. While this is touted as a basic principle of fairness, it strips the power of governments to pursue national development strategies used in the past by nearly every successful economy. Moreover, a regulatory action that applies to all corporations but has a disproportionate impact on a foreign investor could be targeted as a national treatment violation.

5. Ban on Capital Controls

Governments are banned from applying restrictions on the flows of capital, even though such controls helped some countries escape the worst of the global financial crisis of the late-1990s. Even the IMF has stopped demanding that governments lift controls on capital flows.

6. Limits on Performance Requirements

Governments must surrender the authority to require that foreign investors use a certain percentage of local inputs in production, transfer technology, and other conditions used in the past as responsible economic development tools.


ZOOM IN
CLOSE-UP
Like
better world club.com
PACIFIC ILLUSIONS
THE ADMINISTRATION'S LATEST TRADE DEAL IS SUPPOSED TO REVIVE THE U.S. EXPORT ECONOMY AND COUNTER CHINESE INFLUENCE. IT DOES NEITHER.
ILLUSTRATIONS BY JOHN RITTER
2 Bonus Issues
THE AMERICAN PROSPECT
Did the Founders Screw Up?
Subscribe to The American Prospect Today!
Subscribe!
SUBSCRIBE / RENEW
CONTENTS
PAGES
ARCHIVES

The Pacific Pivot

BY CLYDE PRESTOWITZ

On November 12, 2011, I listened as President Barack Obama told business leaders attending the Summit of the Asia-Pacific Economic Cooperation forum in Honolulu that "we've turned our attention back to the Asia Pacific region" and announced two vehicles for that return. These were the Trans-Pacific Partnership (TPP) Free Trade Agreement, now under negotiation and to be concluded by the end of this year, and the Pivot to Asia, meaning a redeployment of American priorities and military forces away from Europe and the Middle East to Asia.

The president said that Asia will be central to America's future prosperity and that it was imperative to correct unsustainable trade and financial imbalances while continuing to expand economic ties. This would require that all countries play by the same rules appropriate to the current global economy. The TPP, he said, would be a template for a "21st-century agreement" that would eventually be open to all the countries of the region. He emphasized that this kind of agreement can thrive only in an environment of security and stability, and he underscored that the Pivot to Asia "will allow America to keep its commitments to its allies" in a region characterized by competing territorial claims, uncertain energy supplies, and North Korea's nuclear threats.

In closing, however, he stressed that neither the Pivot nor the TPP is aimed at any particular country—which, of course, meant that it is. The country is China. But these initiatives are also about responding to the pleas of Asian friends, the importuning of U.S. global corporations, papering over inconsistent goals, denying American commercial decline, and clinging to the quasi-American empire.

Obama accurately posed the challenges. But do these twin policies accurately define American interests? Are they plausible strategies for achieving them? These key questions have received surprisingly little attention.

As it has evolved so far at least, the TPP is anchored in the same orthodox free-trade philosophy that has inspired every U.S. trade negotiation and agreement since the end of World War II. It is also following the same negotiation process as all the old deals. Indeed, the agenda and initial text were largely lifted from the failed Asia-Pacific Economic Cooperation trade agreement of the 1990s and the more recent U.S.–Korea Free Trade Agreement. These texts have been broadened a bit to try to cover some new topics like state-owned enterprises, but essentially they are no different from what has gone before both in substance and procedure. We can't know the result yet, but in the past, the U.S. trade imbalance has widened after each new agreement.

A New Sun

The foreign minister of a Southeast Asian country once told me that China is like a new sun entering the American solar system. All the planets, he said, are now shifting their orbital patterns, and the Asian planets especially are entering into orbit around the Chinese sun.

He was correct, and this fact has important implications for both the planets and the suns. This same foreign minister made the point that China's is a hierarchical worldview in which each country and person has an assigned position that is either

→ *Clyde Prestowitz is president of the Economic Strategy Institute. He served as counselor to the secretary of commerce in the Reagan administration and in that capacity led negotiations with Japan, China, and Korea. He also served as vice chair of President Clinton's Commission on Trade and Investment in the Asia Pacific Region as well as on the advisory board of the Export/Import Bank. He blogs at Foreignpolicy.com.*

ART BY JOHN RITTER (SOURCE PHOTOS, PG. 38-39: IL-FEDE; THIS PAGE: ALEXEJ BUKIN / FOTOLIA)

28

up or down. In this hierarchy, he said, my country's position is definitely down, and we therefore prefer not to be controlled by China. On the other hand, he added, there are nice economic benefits in China's orbit. So, we'd like to be in that orbit but with U.S. gravity keeping it wide and loose.

Just so. The rest of Asia is growing, thanks to its Chinese connections, but also fears being overwhelmed. This concern of smaller Asian nations has been exacerbated by the recent rapid displacement of U.S.-made products and technologies in world markets. Despite keeping several of its 11 aircraft carriers and more than 100,000 troops in the region and being the biggest buyer of Asia's exports, America is said somehow to be ignoring Asia. Thus some governments, such as Singapore, Malaysia, and Vietnam, call for the U.S. to demonstrate renewed commitment by entering into more free-trade agreements and security arrangements. This is partly sincere but is also partly special pleading aimed at allowing them to continue their free ride on America's unilateral security commitments and open markets.

These countries, observing America's mounting trade deficits with Asia, also fear a possible American shift toward protectionism. They hope to use free-trade agreements to lock in their access to the U.S. market. As for the United States, it has long treated the Pacific Ocean as an American lake and taken on unilateral responsibility for defending its Asian allies while patrolling the Chinese coast and keeping China confined within its own shores.

Anxious to keep the planets in proper orbit around the American sun, the U.S. foreign-policy establishment insists that there can be only one solar system and argues that China must become a "responsible stakeholder" in this American system, implying that China is somehow not yet fully civilized and that America must be both mentor and disciplinarian as it brings the Chinese celestial body into orbit around itself.

Thus the logic of the new Pacific initiative: a free-trade agreement that includes many of the Asia-Pacific nations along with the United States, but one that is too demanding for a developing and mercantilist nation like China to enter yet. The military Pivot, meanwhile, has America taking on responsibility for defending Asian claims disputed by China; our enhanced role keeps pace with the modernization of China's forces and maintains U.S. hegemony until such time as China can be declared fully civilized, if ever. Unfortunately, the logic falls apart when the details of the TPP are measured against actual Asian economic practices and geopolitical threats.

TEREX / FOTOLIA

STEEL TRAP

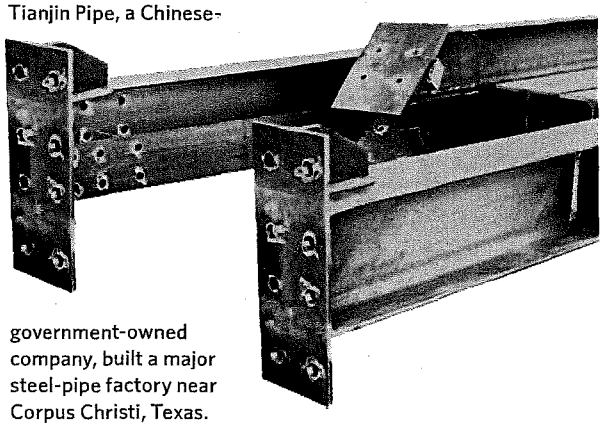
The two landmark bridges of America's West Coast—the Golden Gate and the San Francisco-Oakland Bay Bridge—were built in the 1930s out of American-made steel. Today, the new Bay Bridge that workers are assembling to replace the quake-weakened original is made of steel from China.

If we factor in America's far higher rates of productivity and the cost of shipping steel from China, U.S.-made steel costs no more than its Chinese counterpart. The Chinese price advantage is entirely the consequence of that nation's mercantilist policies—that is, of the huge subsidies that the Chinese government gives to those export industries, such as steel, that it designates "national champions." Indeed, a large and growing number of Chinese manufacturers are actually state-owned enterprises.

Which is one reason why United Steelworkers President Leo Gerard is apprehensive about the proposed Trans-Pacific Partnership (TPP), which would extend free-trade privileges to Vietnam—like China, a communist autocracy whose major manufacturing exporters also routinely receive governmental subsidies and are often state-owned enterprises as well.

China was admitted to the World Trade Organization in 2001 on the condition that the government would scale back its ownership of and subsidies to exporting enterprises. Instead, the number and scale of those enterprises has grown. "Even when we strike deals with countries that are supposed to follow these rules, like China, they don't follow them," Gerard says. "Vietnam has the same system as China." As Scott Paul, the executive director of the Alliance for American Manufacturing, puts it, "Throwing the gates of free trade open to state-owned enterprises is an oxymoron."

Even if the TPP penalizes signatory nations that export products of state-owned enterprises, as the Steelworkers urge, there remains the problem of state-owned enterprises investing directly in the United States. Over the past couple of years, Tianjin Pipe, a Chinese-government-owned company, built a major steel-pipe factory near Corpus Christi, Texas. The Chinese government paid for the cost of constructing the factory—a massive subsidy that gives Tianjin a considerable competitive advantage over companies such as U.S. Steel, which can claim no such subsidy from Uncle Sam.



Labor activists and domestic steel-industry officials are concerned that the TPP could open the door to Asian state-owned enterprises setting up shop in the United States, particularly as Asian nations accumulate fortunes that they seek to invest. More broadly, union leaders know that America's previous trade deals have resulted in diminishing jobs and declining incomes for American workers. "We've never had a trade deal that's created a net increase in jobs in America," Gerard says.

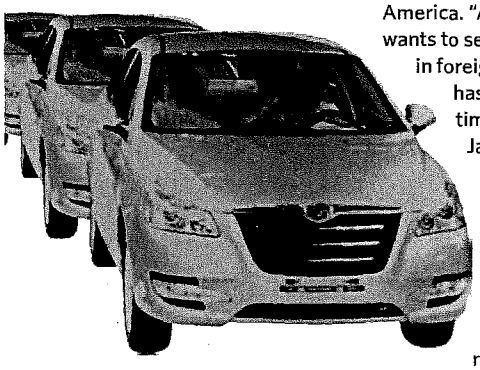
The Steelworkers president is heartened by the Obama administration's new emphasis on boosting domestic manufacturing. "I have nothing but positive comments for the president for his in-shoring campaign," Gerard says. But his enthusiasm is tempered by the push for a new trade agreement. "It will take a lot of magic to create a deal that will actually do what the previous deals just promised," Gerard says. "We'll judge the deal when it emerges: Will it create jobs for manufacturing workers, or will it just give the multinationals more protection?"

—HAROLD MEYERSON

AUTO-DESTRUCTION

As trade agreements go, the proposed Trans-Pacific Partnership (TPP) is distinctly beta. Once enacted, its terms are hard to change, but with the consent of the initial signatory governments, any other nation in the region can join.

That's precisely what worries the U.S. auto industry and the United Auto Workers. Their fear is that Japan could join the TPP. Indeed, even as the nine nations continue negotiating the terms of the deal, Japan has already signaled that it would like to sign on. This February, Japanese trade officials met with their American counterparts



to seek approval to join the process.

The problem, as the auto industry both here and in other nations sees it, is that the Japanese economy is the most closed economy of any advanced nation. Only 4.5 percent of the cars sold in Japan are manufactured abroad, whereas in the U.S. and other wealthy nations, the figure averages roughly 40 percent. Of the 30 nations in the Organization for Economic Cooperation and Development, Japan ranks dead last in auto imports by a very wide margin.

Japan excludes foreign cars not through tariffs but through every other means imaginable—investment laws that effectively bar foreign manufacturers from opening plants in Japan, prohibitions on existing auto dealerships selling foreign cars, and a series of technical regulations that also keep imports out.

"If Japan is serious about joining," says Matt Blunt, the former governor of Missouri who is now the president of the American Automotive Policy Council, which was established and is funded by the Detroit Big Three, "it needs to demonstrate it is serious about opening the marketplace." Blunt notes that auto manufacturers' frustration with Japan is hardly limited to America. "Anybody that wants to sell its products in foreign markets has had a difficult time selling in Japan," he says. "Korea has announced it will cease trying to sell its cars in Japan."

Should the nine nations now negotiating the TPP let Japan enter the process, the decision will surely make those negotiations both more complicated and more difficult. As a member of the World Trade Organization, Japan has long been pledged to follow free-trade rules yet has managed to do so without opening its home market to imports. Should it join the TPP and still maintain its closed economy, Japan will make the accord even more dangerous to the American economy.

—HAROLD MEYERSON

The Japanese Role Model

The call for a 21st-century trade agreement also grows out of long-standing U.S. frustration with most of its late-20th-century trade relationships in Asia. This goes back to the U.S. postwar occupation of Japan. Then, U.S. leaders advised Japan to produce labor-intensive goods like clothing, because Japan's plentiful supply of inexpensive labor would give it a cost advantage in those kinds of items. American free-trade doctrine held that countries should not protect or subsidize favorite industries but should rather specialize in producing what they could do best and cheapest while trading for the rest.

The Japanese rejected this advice. As former Ministry of International Trade and Industry Vice Minister Naohiro Amaya once told me, "We Japanese did the opposite of what [the American authorities] told us." Thus, Japan rejected direct foreign investment, imposed high tariffs and other protective barriers, compelled a high rate of savings, and channeled the savings through the state-controlled banking system into capital-intensive industries with large economies of scale and rising technology input such as steel, shipbuilding, autos, and later semiconductors and consumer electronics, to name a few. Japan further intervened regularly in currency markets to keep the yen cheap versus the dollar as both a subsidy to Japanese exports and an extra tariff on imports. It also provided a wide range of special loan and investment facilities along with outright subsidies to promote investment in and exports by the targeted industries.

This was an export-led mercantilist growth model. Unlike the Anglo/American model in which market outcomes are ends in themselves, this model saw the market as a means to an end, as a tool that could be sharpened if it was not producing the desired result. It was also a tool that aimed to produce chronic trade surpluses and accumulation of dollar reserves.

Japan soon became a model for Asia. Singapore's first prime minister, Lee Kuan Yew, advised his people to learn from Japan. They did, and so did the people of Korea, Taiwan, Malaysia, Hong Kong, and Thailand, which became known as the Asian Tigers as they duplicated Japan's success. Then in 1992, China's Deng Xiaoping declared that "to get rich is glorious," and China became the last Tiger or perhaps the first Dragon.

What cannot be overemphasized about this progression is the fact that these countries all adopted an economic-development philosophy that is the opposite of America's and of the free-trade doctrine on which the World Trade Organization (WTO) and its conception of globalization are based. While operating within a structure that presumes free trade is always a win-win proposition, most East Asian nations have embraced neo-mercantilism, which understands globalization frequently to be a zero-sum proposition (win-lose).

While producing miracles in Asia, this circumstance resulted in an unbalanced form of globalization in which the U.S. market was mainly open while Asian markets were relatively protected, and often-subsidized Asian products flooded U.S. markets. After more than 100 years of trade surpluses, the United States went into constant deficit in 1976. By 1981, when I became one of the main U.S. trade negotiators, the deficit was $16 billion ($11 billion with Japan). I was told that the deficit was unsustainable and that it was my job to fix it. By 1987, the U.S. textile, steel, auto, semiconductor, machine tool, and consumer electronics industries, among others, had all been savaged and laid off millions of workers as the U.S. trade deficit grew to $161 billion ($60 billion with Japan). After a dip following Japan's U.S.-forced yen

AP IMAGES

30

revaluation in 1986–1987, the U.S. trade deficit hit $230 billion in 1998. By the end of last year, it was $558 billion, of which $295 billion was with China and more than $400 billion was with all of Asia.

Behind these statistics is the loss of entire U.S. production industries such as consumer electronics and the loss of millions of jobs and billions in investment (the $558 billion deficit of 2011 represents a loss of six million to nine million jobs). These alarming trends led to virtually constant negotiations to open Asian markets and stop "unfair" trade. Trade talks were also initiated as a way to reward allies and entice doubters and adversaries toward our model. What these talks did not do was reverse Asian neo-mercantilism.

Negotiating American Commercial Decline

Between 1960 and today, there have been four full-fledged rounds of global negotiations under the aegis first of the General Agreement on Tariffs and Trade (GATT) and then of the WTO that engaged the United States and the Asia-Pacific countries. In addition, there was a continuing series of talks with Japan under rubrics such as the Market Oriented Sector Specific Initiative (MOSS, ridiculed as More of the Same Stuff), the Semiconductor Negotiations, the Nippon Telegraph and Telephone talks, and more. There was the creation of the Asia-Pacific Economic Cooperation association, founded in the early 1990s to spread liberal democratic ideals within the Pacific Rim through trade and investment. There were the negotiations both to bring China into the WTO and for America to grant it permanent "most favored nation" treatment. The North American Free Trade Agreement and bilateral free-trade agreements with Peru, Chile, Singapore, Australia, and Korea are also part of this saga of trade deals that only widened trade imbalances.

Each of these projects had its causes, purposes, and dynamics, but certain critical patterns repeated. The premise was that all participants embraced the same free-trade philosophy and rules and that if the rules were set properly, the results would automatically be satisfactory for all. The fundamental difference in philosophy between laissez-faire, free-trade America and export-driven Asia was never directly confronted. One reason for this was that free trade was a kind of religion of U.S. policymakers, for whom any management of results was original sin. Another was that America was long considered economically invulnerable. Yet another was that the purpose of the deals was usually more to cultivate geopolitical allies, to stimulate development of struggling neighbors, or to facilitate U.S. investment abroad. But the agreements were always sold to the U.S. Congress and public as arrangements that would increase U.S. exports, reduce trade deficits, and create jobs.

They never did. Rather, the trade deficit relentlessly rose, offshoring of U.S.–based production and jobs accelerated, and trade became a drag on growth of U.S. gross domestic product as well as a cause of rising income inequality. As economic strategy, the trade deals and their logic were unsuccessful, or irrelevant, or both.

Enter China

Nothing illustrates this folly better than the case of China. By the turn of the century, negotiations to bring China into the WTO had been going on for more than a decade and were now coming to conclusion. The big question was whether the United States would accord China the same permanent most-favored-nation (rebranded as PNTR, or permanent normal trade relations) treatment it accorded other members of the WTO. Some analysts warned that the then–$68 billion trade deficit with China would grow dramatically. But their testimony was drowned out by that of laissez-faire economists, CEOs, trade negotiators, think-tank heads, and political leaders, all of whom emphasized that China was no Japan; the Chinese actually welcomed foreign participation in their economy. The China lobby further argued that America's exports to China were bound to increase more rapidly than China's to America because China would be dramatically reducing its tariffs and trade barriers, while America would be making no cuts at all.

That, of course, turned out to be utter nonsense. By the time China joined the WTO in 2001, its trade surplus with the United States had jumped to $83 billion. As noted above, by the end of 2011, it had climbed to $295 billion despite an endless series of "strategic and economic dialogues" and cabinet-level trade and development discussions reminiscent of the Japan experience. The reality is that U.S.–Asia trade imbalances tend to grow and accelerate regardless of negotiations and deals—or more likely because of them.

But since the charade of shared principles means that failure to fulfill the rosy forecasts cannot be attributed to systemic differences, it has to be blamed on flawed agreements, which then requires negotiation of new agreements covering more items such as protection of intellectual

THE TRANS-PACIFIC PARTNERSHIP FOLLOWS THE FREE-TRADE ORTHODOXY OF OTHER RECENT DEALS SUCH AS NAFTA. WITH EACH SUCCEEDING DEAL, OUR TRADE DEFICIT WIDENS.

property, banking regulations, or other elements that might possibly serve as market barriers. Thus have talks and deals proliferated, providing few jobs for America aside from lifetime employment for its trade negotiators.

Why U.S. Trade Policy Fails

There are, however, two clear purposes that all the deals have served. The first is the geopolitical grand strategy objectives of the United States. By making the United States the market of last resort, the trade agreements have helped persuade allies to accept U.S. hegemony. The second purpose served is that of U.S. businesses that profit immensely from outsourcing and offshoring to Asia but that need the security provided by Uncle Sam to do so. These realities reveal the flaws in U.S. trade efforts—misplaced priorities, a false doctrine, and false assumptions.

THE LOGIC OF THE OBAMA PIVOT TO THE PACIFIC FALLS APART WHEN MEASURED AGAINST THE REALITY OF ASIAN ECONOMIC MERCANTILISM AND ACTUAL GEOPOLITICAL THREATS.

Most misplaced has been the geopolitical priority with its subordination of long-term economic interests to short-term political/military objectives. Washington continually makes concessions, refrains from insisting on application of the GATT/WTO rules, or backs away from taking actions to counter mercantilism on national-security grounds. In the 1980s, the Reagan administration declined to invoke GATT rules against European subsidization of the Airbus, because Secretary of State George Shultz said doing so would shatter the North Atlantic Treaty Organization. Today, Washington declines to respond to China's blatant currency manipulation. Why? It thinks it needs the Chinese to help with problems like Iran and North Korea. It doesn't understand that erosion of U.S. wealth-producing capacity is the most important national-security threat.

A corollary is the false premise that mercantilists who intervene to distort markets should not face retaliation because they are only hurting themselves and will eventually see that and abandon their policies. Studies have shown that the Airbus subsidies helped rather than hurt the European Union economy. The Airbus killed off all the U.S. commercial aircraft makers except Boeing and cost the U.S. economy many thousands of jobs that won't be recovered even if Europe stops the subsidies. All the evidence of the past 200 years suggests that mercantilism works and that mercantilists win.

Keys to the Kingdom

The trade deals that the U.S. has been negotiating do not reach the most important elements of Asian mercantilism. For starters, because of foreign-currency intervention policies, the dollar tends to be chronically overvalued versus the currencies of most Asian countries. Although the WTO vaguely calls for not using currency policy to offset tariff reductions, the truth is that currency policy is not seriously covered by any international trade agreement. Thus currency manipulation can be and is used to keep markets protected in the face of apparent market-opening agreements.

A second major element is a set of investment packages aimed at inducing the offshoring of production and research-and-development facilities. China, Singapore, Malaysia, and many others offer big tax holidays, free land, cut-rate utilities, free worker training, sweetheart loans, and big capital grants to companies as enticements to invest. Nor are the Asian countries alone. Others such as France, Ireland, and Israel play the same game. In the United States, some of the individual states do this, but their resources and authority (they can't grant holidays on federal taxes) are limited, and Washington doesn't play. So it often happens that businesses whose U.S. operating costs are internationally competitive will nevertheless offshore production in order to get the incentives. These packages are not covered in any of the free-trade agreements.

A third element is antitrust or competition policy. The biggest barrier to getting into many markets is control of distribution chains by powerful cartels that often have cozy ties to governments. Take autos. In America, foreign automakers can sign up any Detroit auto company dealer to sell its cars as well. Not so in Japan or Korea. Again, antitrust is not covered by any of the free-trade deals.

Fourth are "buy national" and indigenous technology-development policies aimed at giving advantages to domestically based production and making market access conditional on developing designated technologies in the market. WTO rules on this apply unevenly, and many countries in Asia exert pressures that favor those producing and developing locally. General Electric, for instance, recently transferred its avionics business into a Chinese joint venture to ensure access to China's state-controlled aircraft market. Even when banned by agreements, these policies operate in practice because countries with strong bureaucracies wielding broad discretionary authority can easily intimidate companies.

Value-added taxes, which tax transactions at each stage of production and distribution, are

common in most countries and are rebated for exports while being added to imports. They thus constitute a kind of subsidy for exports and an additional tariff on imports. Because it has no value-added tax, the United States is particularly disadvantaged in international trade.

There is also the implicit economic nationalism of public exhortation that plays to cultural pride. The leaders of Asian countries constantly preach the importance of making things domestically, attracting investment, developing indigenous technology, buying locally, and contributing to the national welfare. This is somewhat intangible and yet very powerful. It is, of course, not covered in agreements and probably can't be. But it is a game that the United States simply doesn't play and should.

Right Impulse, Wrong Strategy

America needs to try something new. The Obama administration is right to be seeking a comprehensive 21st-century U.S. trade and globalization policy. Such an effort should begin with a reassessment of national security and geopolitical priorities. It should recognize that the decline of U.S. influence in Asia is not due to lack of military power and presence but rather to eroding competitiveness. Regaining economic strength has become a matter of the highest geopolitical priority. We can no longer subordinate trade to national-security considerations, because trade *is* national security.

A 21st-century treaty would include provisions to prevent or counter currency manipulation. Measures could range from emergency tariffs to surcharges on foreign buying of U.S. Treasury securities to application or development of alternative international currencies. The point is to do something beyond whining.

Similarly, a 21st-century deal would include some disciplines on investment incentive packages that countries use to encourage offshoring. These are nothing more than indirect export subsidies and a way to circumvent the WTO prohibition of direct export subsidies.

In the same manner, any new deal should include strong anti-cartel provisions that would be adjudicated and enforced by impartial institutions and would measure actual market access to previously closed systems.

A 21st-century agreement would include strong penalties for violations of market-access commitments. Even the existence of five-year industry-planning schemes, for example, should trigger investigation of market-access impact.

SCANRAIL / FOTOLIA

MICROELECTRONICS: CHINA IN THE CHIPS

Many American fans of Apple products have been appalled to learn both of dismal working conditions in the plants of Apple's Chinese contractors and the fact that the facilities that produce iPhones and iPads no longer have counterparts in the United States. Steve Jobs famously—or infamously—told President Barack Obama, "Those jobs are not coming back."

Could the Trans-Pacific Partnership change that? If anything, the TPP will only accelerate the outsourcing process. Member countries are far more likely to serve as export platforms both to the emerging markets of East and South Asia and to the U.S. than as importers of U.S.-made goods.

"Consumer electronics was one of the worst-hit industries by NAFTA, with manufacturers taking advantage of its investment provisions to move production to Mexico," says Celeste Drake, a trade specialist at the AFL-CIO. "Now it's gone to China, and there are no guarantees that what's left in the U.S. won't go to Malaysia or Vietnam or other low-wage countries in the agreement."

But even the one large sector of microelectronics that still has a strong manufacturing presence in the U.S., the semiconductor industry, is backing the TPP. Firms like Intel, Micron, and Advanced Micro Devices control half the globe's $300 billion market, and two-thirds of their capacity is still in the U.S. Intel even plans to add more than 1,000 jobs next year after completing a new $5.2 billion chip plant in Arizona, which Obama toured the day after his State of the Union address.

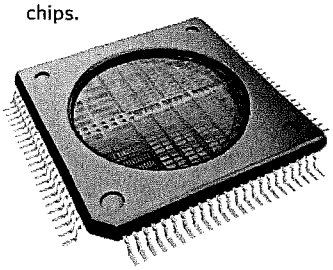
Makers of the advanced computer chips that power consumer electronics have traditionally supported a tough U.S. trade policy. Semiconductor producers benefitted from trade negotiations during the Reagan years that pushed back against Japanese mercantilism and preserved a dynamic domestic industry. A rare U.S. industrial policy, the SEMATECH collaborative, also helped.

Yet the industry today wants to expand in Asia to be close to assemblers like Apple and to tap into the burgeoning Chinese market. Chip makers covet the investment guarantees and government assurances against work stoppages in the proposed deal. More significantly, the industry is desperate to impose on China the TPP's promised protections for intellectual property and encryption coding, which safeguard the most expensive chips. The Chinese are notorious for stealing trade secrets through reverse engineering.

The Semiconductor Industries Association (SIA) believes that China will eventually sign on to an agreement initially negotiated with weak partners like Vietnam. "They want to grow their own domestic market," says Ian Steff, a vice president at SIA. "The only way they can do that is by adapting some of these international practices, like not forcing people to turn over this technology."

Yet it is hard to imagine a serial currency manipulator and World Trade Organization rule violator like China following this wishful script. China and other mercantilist host governments typically demand technology transfer to build homegrown firms in key industries; where technology isn't transferred, it's often stolen.

Domestic capacity in semiconductors has national-security implications. No nation wants missiles or telecommunications dependent on foreign-made chips.



Companies in China have been importing scrap computers, stripping out the computer chips and circuit boards, and exporting refurbished chips to the U.S. market. In 2010, federal investigators busted the Clearwater, Florida–based VisionTech for selling $16 million of chips reimported from China to more than 1,000 customers, including the Department of Defense.

It's likely these early-stage companies will eventually copy the technology transferred to China or other East Asian nations through the computer-chip plants facilitated by the TPP. Eventually, some will emerge as powerhouses in the global industry. Then we may find ourselves decrying our military's dependence on Chinese chips—and not the other way around.

—MERRILL GOOZNER

Finally, the primary goal of any 21st-century deal must be to reduce the U.S. trade deficit, to increase production in and exports from America in a measurable way, to increase the flow of technology and investment to America, and to increase U.S. competitiveness. It needs to be results-oriented, not just based on nominal compliance with processes.

The TPP and the National Interest

How does the TPP measure up? Poorly is the answer. For starters, it is more of a geopolitical effort than a trade/globalization effort. At a White House meeting last year, I asked why we were doing a TPP in view of the fact that we already have free-trade agreements with four (Peru, Chile, Australia, Singapore) of the eight other countries included in the current talks and that those four plus the United States account for more than 85 percent of the trade at stake in the TPP. The reply was that we needed to demonstrate our commitment and engagement in Asia. There was no mention of creating jobs or contesting mercantilist policies that disadvantage our economy.

WHAT THREAT IS THE PIVOT MEANT TO COUNTER? IS CHINA GOING TO INVADE AMERICA? PATROL OUR COASTLINES? INVADE JAPAN AND KOREA? NO, NO, AND NO.

The countries currently participating are an unlikely group, with mostly small economies excepting the United States. They are playing a charade in talking free trade but not practicing it in the sense that American leaders mean the term. Australia, New Zealand, America, Peru, and Chile largely share a free-trade philosophy, but the likes of Singapore and Malaysia embrace strategic industrial policy and export-led growth, and Vietnam is dominated by state-owned enterprises.

The negotiating agenda is a list of familiar tunes: better intellectual-property protection, further tariff reduction, government procurement, rules of origin, etc., ad nauseam. Nothing on currencies, investment incentives, antitrust, pressure tactics, or anything else that might impede the continued practice of mercantilism under the facade of a free-trade agreement. The chapter on labor practices is likely to be minimal, while the capital rights will help dismantle important regulatory protections. There is no way that this deal could serve as a meaningful template and docking agreement for creating a truly integrated 21st-century free-trade area around the Pacific Rim. Nor is there any apparent economic benefit to the United States. There may be benefits for the U.S. companies seeking to invest and produce in Asia, but is that in the American national interest?

Pivot or Pirouette

The TPP also fails as geopolitics. What exactly is the threat the Pivot is meant to counter? Is China going to invade America? Is it going to patrol our coastlines as we patrol its shores? Is it going to invade Japan and Korea? No, no, and no. What about North Korea: Is it going to invade us? Can its bombs reach us? No, and no. Might it invade South Korea or shoot a bomb at Japan? Barely possible, but we already have troops and weapons in place to deal with that. Moreover, North Korea is surrounded by powerhouses like Russia, China, South Korea, and Japan. So why the need for a flexing of U.S. muscles?

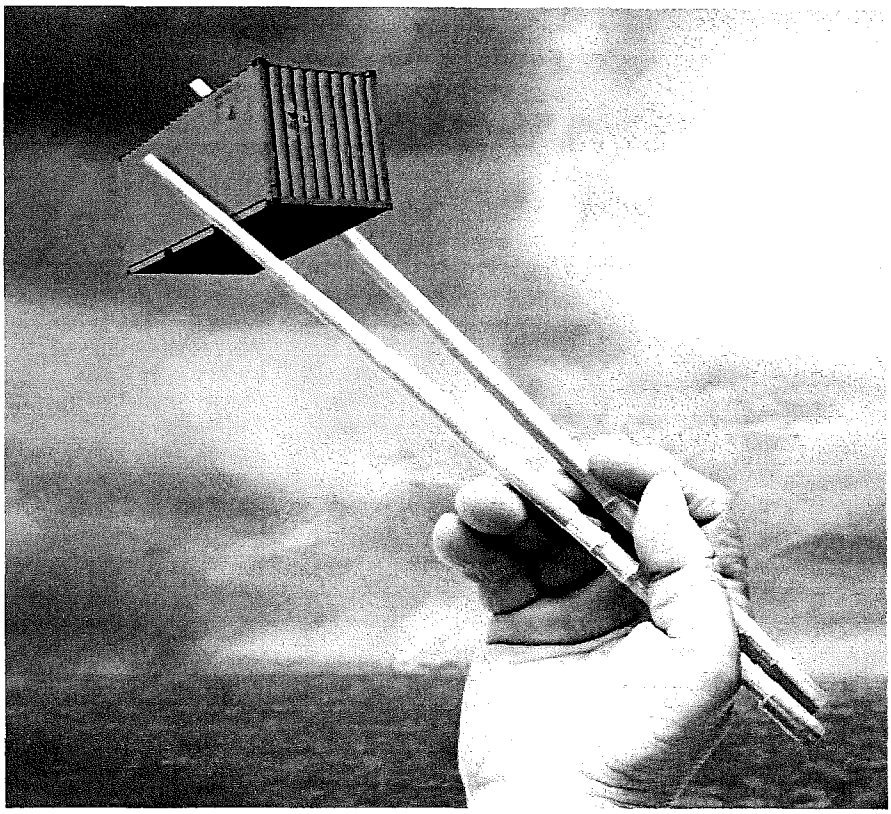
One answer is that China is modernizing its forces and that while they may not threaten America directly, they have threatened certain claims of countries friendly to us, like the Philippines. We therefore need to support our friends. Maybe, but the rights and wrongs of claims over reefs in the Pacific are unclear. We need to be careful, and, anyhow, nothing is preventing our friends from allying to resist Chinese pressure—except, of course, one thing. They all are doing business like crazy in China and don't want to risk antagonizing it. So they find it convenient to urge Uncle Sam to increase its security presence while they concentrate on getting rich. Out of habit, pride, and the priority given to geopolitics, America's knee-jerk reaction is to saddle up.

It's a bad response. For starters, it puts us in a no-win position. China is growing and has a rising stream of wealth and capabilities. It will easily be able to increase and modernize its forces. Conversely, we must reduce military spending. Why give China reason to think we are challenging it to an arms race while our position weakens and theirs strengthens? We could well wind up doing a pirouette rather than a pivot, simulating a get-tough policy with little to back it up. But more important, America's main job now must be to invest and make more in America. The Pivot not only distracts from that, it is like writing a military insurance policy against the risks of offshoring for all the companies moving production and jobs to Asia. Why do that when we want them to produce and hire in America? By taking full responsibility for Asian security, we are subsidizing the very mercantilists whose competitive inroads we're trying to reverse.

It's clear that America does need a new 21st-century set of rules for trade and globalization as well as new national-security policies and priorities. It's also clear that the combination of the TPP and the Pivot are not that. Sadly, they look suspiciously like more of the same old stuff. ▣

The Myth of the Level Playing Field

BY JEFF FAUX



"Our workers are the most productive on Earth, and if the playing field is level, I promise you: America will always win." —BARACK OBAMA, STATE OF THE UNION ADDRESS, JANUARY 24, 2012

The Trans-Pacific Partnership (TPP) is the latest act in the tragic farce of American trade policy. Earlier versions included the 1993 North American Free Trade Agreement (NAFTA), the U.S.–designed World Trade Organization, the opening of the U.S. market to China, and the signing of more than a dozen additional bilateral free-trade deals, including last year's agreements with South Korea, Colombia, and Panama.

The script does not change. The president, congressional committee chairs, and lobbyists representing U.S. importers and foreign exporters announce that the proposed trade deal will create millions of new high-paying jobs for Americans. They assure the public that American workers will be protected from unfair competition from countries that exploit labor and/or subsidize exports. Editorials denounce opponents as protectionist ignoramuses.

The agreement is approved with the votes of Republicans and centrist Democrats. The trade deficit grows. Our foreign debt worsens. More U.S. jobs are offshored—not just low-wage jobs but engineering, research, and other high-wage occupations that can be performed anywhere in the world with a computer. As the bargaining position of American workers weakens, wages stagnate and fall. Then, bemoaning the loss of good jobs, our elites fly off to negotiate the next trade deal—promising that this one will be different, for sure.

The classical 19th-century argument for free trade was that it provides cheaper goods to consumers of both of the trading partners. But in order for the logic to work, economists had to make the heroic assumption of permanent full employment between the trading partners. Since joblessness is a chronic condition of the modern world, the argument is obviously disconnected from reality. So, our governing class has come up with another rationalization. It goes like this: American workers are the world's most efficient. Therefore, opening up more national markets to global competition benefits them, so long as the playing field is "level."

Barack Obama's reference to the level playing field in his 2012 State of the Union echoed George W. Bush, who proclaimed in his 2006 State of the Union, *"With open markets and a level playing field,* no one can outproduce or outcompete the American worker."

Bush in turn channeled Bill Clinton's argument for NAFTA back in 1993: "The North American Free Trade Agreement is an essential part of the economic strategy of this country: expanding markets abroad and providing *a level playing field for American workers to compete and win in the global economy.*"

The boast that American workers are naturally superior to other workers and would therefore "win" in any fair competition is problematic at best and at worst, a pander to our national delusion of exceptionalism. Yet it has been useful for bullying progressives and even some trade unionists—intimidated by the threat of being dismissed as "protectionists"—into endorsing free-trade agreements in exchange for language promising that workers' rights will be strengthened and enforced.

But even if Americans are the world-champion workers, it still leaves open the question of what we mean by fair competition. Ideally, it would require the same relationship among worker

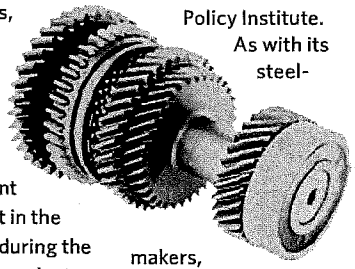
← *Jeff Faux, founder of the Economic Policy Institute and now its distinguished fellow, is the author of* The Global Class War. *His book* The Servant Economy *(Wiley) will be published in June.*

ART BY JOHN RITTER (SOURCE PHOTOS: KARA; LEUNGCHOPAN / FOTOLIA)

35

PARTS LESS THAN THE WHOLE

As bad as things were for U.S. automakers in the years leading up to the government's 2009 bailout of General Motors and Chrysler, they were worse for auto-parts manufacturers, which make up the largest segment of the U.S. auto industry. Fully 75 percent of the jobs lost in the auto industry during the past decade were lost by auto-parts workers, who saw their numbers decline from 857,000 to 467,000. More alarming still, while the domestic auto assemblers have clearly, if incompletely, recovered since the 2009 bailout, the same can't be said of domestic parts suppliers. Employment in domestic auto assembly rose by 3.3 percent between 2009 and 2010 but only by 0.1 percent in auto parts, chiefly because the auto-parts industry, even more than auto assembly, has been offshored—primarily, to China.

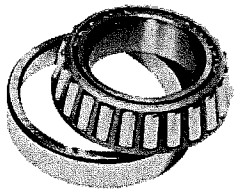


America's auto-parts annual trade deficit with China has increased tenfold during the past decade—from roughly $1 billion to $10 billion. During this time, yearly Chinese government subsidies to the auto-parts industry have risen from virtually nothing to $8.7 billion, according to a study from the Economic Policy Institute. As with its steelmakers, the Chinese government has identified its auto assembly and auto-parts exporters as national champions, eligible for a vast array of government funding programs.

As Chinese wages rise, a number of manufacturing sectors currently located in China have commenced moving to other Asian nations with lower pay scales. That's already happening in such labor-intensive industries as textiles, which have seen considerable migration to Bangladesh and Cambodia. Auto-parts factories are considerably smaller than auto assembly plants and are already spreading across some of the East Asian nations included in the proposed Trans-Pacific Partnership (TPP).

Trade agreements stipulate the percentage of a product that has to be made within a nation for that country to be able to claim duty-free, or reduced-tariff, entry into another nation where the product can be sold. Under the North American Free Trade Agreement, a car nominally assembled in Mexico is required to have 62.5 percent of its value produced in Mexico for it to be sold in the U.S. without tariffs. The recently ratified U.S.-Korea trade pact has just a 35 percent threshold, which is the level that has also been proposed for the TPP.

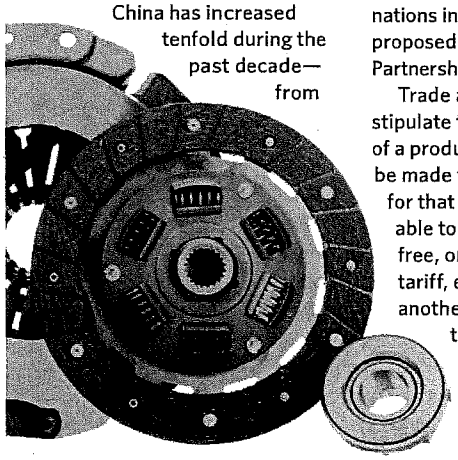
But the TPP is an agreement among nine nations, not two. A car with parts made in Vietnam that come to 25 percent of its value and parts made in New Zealand that come to an additional 10 percent of its value could be sold with no added tariff in the U.S., even if the other 65 percent of



the car's value comes from state-subsidized Chinese auto-parts makers. In other words, the TPP's domestic content standard for autos could be a back door to Chinese auto parts continuing to flood the U.S. market—and continuing to eviscerate the domestic supply chains of the U.S. auto industry.

A better deal would raise the standard of domestic content well above the 35 percent mark. Over time, that might lead parts manufacturers to open plants again in the United States.

—HAROLD MEYERSON



productivity, worker wages, and working conditions in every nation. Below-average wages could exist only under conditions of below-average efficiency. Subsidies, industrial policies, access to training, and similar assistance would have to be equalized as well.

Short of this ideal, which the U.S. itself does not reach (wages and conditions of work in Mississippi are lower than they are in Michigan), a reasonable standard would require that the rights of workers in trade agreements roughly parallel the rights of investors. In every trade agreement since NAFTA, investor privileges have been specified in detail. They override national law and carry heavy penalties for violation. Private corporations can sue governments and have their cases arbitrated by panels of experts drawn from an international pool of corporate-friendly economists and lawyers.

In contrast, the language of worker rights is vague and passive. Standards and enforcement depend on national law and practice. Neither labor unions nor any other nongovernment entity has the right to sue over violations. In 20 years, no serious complaint of violations of even these weak labor standards has been successfully pursued to the point of penalties.

A Fig Leaf

In September 2011, anticipating the TPP negotiations, the leaders of the trade-union federations of Australia, Chile, Malaysia, New Zealand, Peru, Singapore, and the United States outlined their conception of what a level playing field for workers should look like. It was, as one U.S. trade unionist put it, "hardly revolutionary"—it fell short of giving workers parity with investors. Still, it called for more-enforceable protections against oppression of labor unions and workplace discrimination, and it would somewhat reduce the playing field's tilt toward corporate investors.

The TPP is still being negotiated—in secret. But all of the signals tell us that its final version will not even remotely reach the modified standard of the trade-union proposal.

In November 2011, the Office of the U.S. Trade Representative reported that the participating governments have already agreed to "provide substantial legal protections for investors and investments of each TPP country in the other TPP countries ... a minimum standard of treatment, rules on expropriation, and prohibitions on specific performance requirements" as well as NAFTA-type provisions that allow individual companies to sue to overturn national laws that conflict with the privileges given to the firms

SAIDIN B. JUSOH; JACKF; SERGEY GORUPPA / FOTOLIA

under the treaty. As in previous trade deals, the major bone of contention is the U.S. insistence on enforceable protections—not for American workers but for patents and copyrights and other corporate intellectual property.

In January 2012, the process of negotiating a labor chapter was begun with the U.S. submitting a draft proposal. It is based on the language of the labor provision of the 2007 agreement with Peru, which congressional Democrats and the Bush administration agreed to in May of that year. The Peru model was followed in last year's trade deals with South Korea, Colombia, and Panama.

On paper, the Peru labor chapter was a modest improvement over the NAFTA template, in that it committed both countries to the International Labour Organization's (ILO) 1998 Declaration of the Fundamental Principles and Rights at Work—the right to join a union and collective bargaining, the abolition of forced and child labor, and a prohibition against workplace discrimination.

However, the ILO also has a list of conventions, which define the rules that make the principles enforceable. Thus, for example, the principles call on countries to "respect" workers' rights to join a union, while the conventions specify that it should be a union of their choice and deny governments the power to interfere with or arbitrarily dissolve them. Given that in many countries, governments control trade unions for the benefit of employers, this is a critical distinction.

The ILO conventions are specifically excluded from the U.S. draft of the TPP. Sources inside the administration insist that its draft improves on the Peru system. According to the industry newsletter *Inside U.S. Trade*, the proposal states that TPP countries "should take measures to reduce trade in products made through forced or child labor" and should apply their national worker protections to free-trade and export-processing zones.

Like the Peru model, however, it relies on the individual governments to protect their workers from exploitation. Unfortunately, for many governments in less developed countries and investors in developed countries, exploiting labor is the point—cheap workers represent these nations' comparative advantage. As then-Peruvian President Alan Garcia told a cheering Chamber of Commerce the night that the U.S.-Peru trade deal was signed: "Come and open your factories in my country so we can sell your own products back to the U.S."

Owen Herrnstadt, trade and globalization director of the machinists' union, asks, "If under these labor chapters, workers can still be intimidated, fired, or even murdered for trying to form a labor union, how effective can they be?" The answer is, hardly effective at all. Almost 20 years after NAFTA, companies violate Mexico's labor laws with impunity, and the government still suppresses efforts to organize unions that are independent of management. After seven years of the Central America Free Trade Agreement, workers joining an independent union in Guatemala, El Salvador, or Honduras still risk their life. After two years of the Peru agreement, that country's government collaborates in the exploitation of workers on the farms from where half of America's asparagus comes. The Peruvian government has not only failed to live up to its promise to strengthen Peru's laws protecting labor; it has weakened them.

Moreover, even the tiny improvement of the United States' TPP labor proposal over the Peru agreement will certainly be watered down in the negotiations. None of the other governments are enthusiastic. Countries like Malaysia and Singapore are hostile, and the inclusion of Vietnam, where unions are an arm of the government and labor oppression is rampant, and Brunei, which has a large number of mistreated foreign workers and is ruled by a 600-year-old autocratic sultanate, mocks the assumption that governments will take labor-protection rules seriously.

As for the U.S. negotiators, there is little evidence that they will use the enormous leverage of the American market to make significant progress in leveling the playing field for labor. Congressional Republicans are already complaining that Obama's draft is too strong. Even before the negotiations begin, administration officials are signaling their TPP counterparts that they are willing to back off. Deputy National Security Adviser Michael Froman assured *Inside U.S. Trade* in January that the Obama team would push for "a high standard labor agreement" but then suggested that labor protections were not that important because the benefits of free trade to American workers would go far beyond whatever the content of the labor chapter turned out to be.

Given that with every trade agreement, imports grow faster than exports, more U.S. jobs are shipped overseas, and American wages drop to meet the increased global competition, the argument is transparently absurd. It reveals that for the U.S. governing class, the notion of a level playing field for American workers is still largely a fig leaf to justify the true economic purpose of U.S. trade policy—profit opportunities for multinational investors.

THE TPP WILL HELP ACCELERATE THE EVOLUTION OF A TWO-TIER WAGE SYSTEM —WHEREBY YOUNGER WORKERS GET HIRED FOR LESS—INTO THREE TIERS AND MORE.

Downward Wage Pressure

With the world's huge and growing labor supply, there will continue to be more workers looking for jobs than there are jobs looking for workers. So the boss almost always has the bargaining advantage that can turn into exploitation and abuse. A global economy needs worker protections at least as much as a national economy.

Twenty years ago, when the exposure of American workers to a deregulated, dog-eat-dog global labor market began, one might have been excused for thinking that the principal model for the developing world was the United States and to some extent Western Europe. Therefore, free trade would produce Western-style democracy and elevate the political power of workers in our trading partners. But today the model is China, whose comparative advantage lies not just in lower wages but also in the authoritarian deployment of its massive labor force.

GLOBALIZATION, OF COURSE, WILL NOT GO AWAY. BUT THE INTERESTS OF AMERICAN WORKERS REQUIRE AN ENTIRELY NEW U.S. STRATEGY TO DEAL WITH IT.

The New York Times recently described how the Chinese contractor that assembles iPhones for Apple responded to a last-minute decision to change the screen: "A foreman immediately roused 8,000 workers inside the company's dormitories. ... Each employee was given a biscuit and a cup of tea, guided to a workstation and within half an hour started a 12-hour shift fitting glass screens into beveled frames. Within 96 hours, the plant was producing over 10,000 iPhones a day."

This is what a competitive labor market looks like in the global economy. So the impact of TPP on labor markets and conditions is all too predictable.

The offshoring of work will accelerate. Vietnam—where wages are lower than China—will take from what little is left of the bottom end of U.S. manufacturing. Malaysia and Singapore will pull from somewhat higher up the value-added ladder. While the populations and economic potential of the nations thus far in the TPP seem modest, the experience with NAFTA demonstrated how easy it will be for other nations to use TPP as a disguised export platform for selling to the U.S. Last year's trade deals opened up this loophole further, allowing up to 65 percent of the content of South Korea's auto exports to the U.S. to come from China and other nations (and probably North Korea). The TPP will have a similar clause. Given that all of the TPP partners have strong economic ties to China, Japan, and Indonesia, the new trade deal will become a channel for imported components originating in those larger countries as well.

To keep their jobs, American industrial workers will take cuts in pay and see middle-class benefits like pensions and health care disappear. The TPP will help accelerate the evolution of a two-tier wage system—whereby younger workers get hired for less—into three tiers and more. Because labor markets are connected, the downward pressure in manufacturing wages will spread to other sectors as well, and from private to public employment.

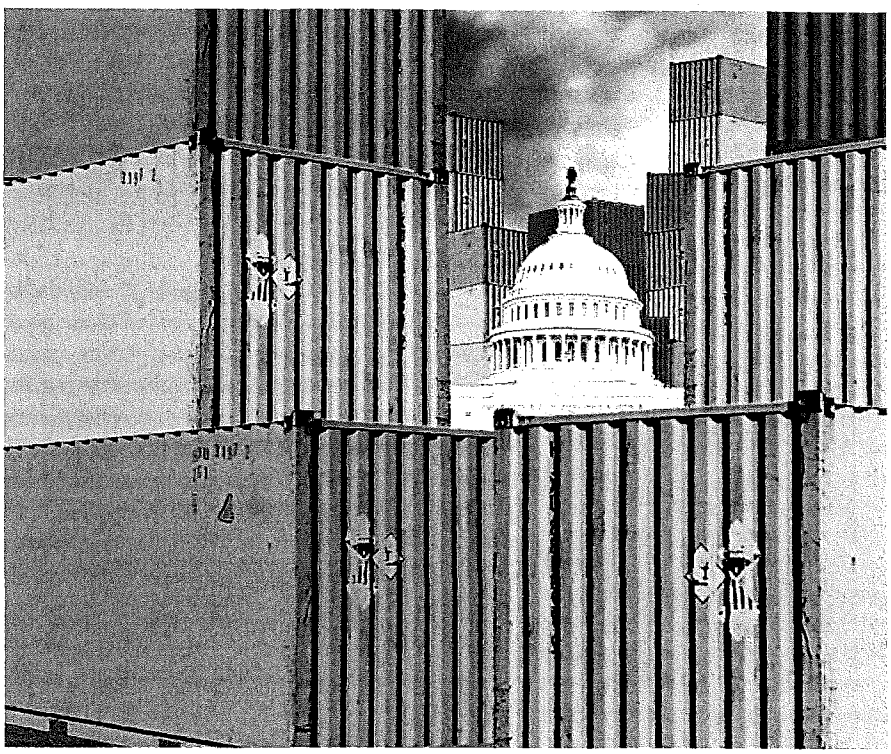
Wage depression also will expand out to workers in the large, extended labor force in countries with which we already have free-trade agreements. Among those dragged down in this quickening race to the bottom will be workers in Mexico, where lack of job opportunities is a major factor in the vicious internal drug wars that have already claimed some 50,000 lives in the last five years. As hard times there get harder, social instability is bound to spill over our borders in some form.

Pursuing worker rights and protections in a brutally competitive global marketplace is a noble and worthy cause. But the last 20 years have shown us that it cannot be achieved with marginal feel-good addendums to trade agreements whose transparent purpose is to build a 21st-century world economy on the model of 19th-century laissez-faire. The false promise of a global, level playing field is not just a "second best" policy solution in an imperfect world. It is counterproductive; it encourages Americans to accept trade policies that undermine their living standards on the basis of an economic fairy tale—that the benefits of unregulated markets are so large that workers do not need protection.

Globalization, of course, will not go away. But the interests of American workers require an entirely new strategy to deal with it. For starters, we need to freeze all efforts to expand trade—including the TPP negotiations—until we have a clear and credible investment strategy that makes American goods and services globally competitive while generating higher wages and living standards at home. If this requires what *The Wall Street Journal* calls "protectionism," so be it. To build a realistic strategy, American policymakers need to distinguish between the interests of multinational corporations with American names, and American workers and businesses that want to produce in the United States. Finally, the United States should not enter any new agreements that do not provide for enforceable rights for workers that are at least as strong as those for investors and should renegotiate existing ones that do not. Then, and only then: Let the trade competition begin. ▣

A Stealth Attack on Democratic Governance

BY LORI WALLACH



It takes quite a "trade" agreement to undermine financial regulation, increase drug prices, flood us with unsafe imported food and products, ban Buy America policies aimed at recovery and redevelopment, and empower corporations to attack our environmental and health safeguards before tribunals of corporate lawyers. Trade, in fact, is the least of the Trans-Pacific Partnership (TPP).

Backdoor deregulation and imposition of new corporate investor and patent rights via trade negotiation began in the 1990s with the World Trade Organization (WTO) and North American Free Trade Agreement (NAFTA). But the TPP now threatens a slow-motion stealth attack against a century of progressive domestic policy. At stake is nothing less than a democratic society's ability to regulate a market economy in the broad public interest.

Under the framework now being negotiated, U.S. states and the federal government would be obliged to bring our existing and future policies into compliance with expansive norms set forth in 26 proposed TPP chapters. These include domestic policy on financial, health-care, energy, telecommunications, and other service-sector regulation; patents and copyrights; food and product standards; land use and natural resources; professional licensing and immigration; and government procurement.

The obligation that signatory countries "ensure conformity of their laws, regulations and administrative procedures" to these terms would be strongly enforced, including by our own government. Failure to do so would subject the U.S. to lawsuits before dispute-resolution tribunals empowered to authorize trade sanctions against the U.S. until our policies are changed. Attacks against our non-trade laws could also be launched by any "investor" that happens to be incorporated in one of these countries. The TPP is being designed so that other nations—China, Japan, you name it—could join in the future.

We know this much only thanks to a combination of text leaks and grilling of negotiators. As trade lawyer Gary Horlick, a former U.S. trade official with four decades in the game, recently noted at a conference on global business: "This is the least transparent trade negotiation I have ever seen." In fact, a recent text leak revealed that the parties were required to sign a memorandum of understanding that forbids the release of negotiating documents for four years *after* a deal is done or abandoned.

Such an extreme proposal could only get this far under cover of unprecedented secrecy. Executive-branch trade officials and corporate allies are making important policy decisions that could affect us all in myriad ways, without public access to any documents or details or input from members of Congress serving on key committees whose jurisdiction is directly implicated. The involved governments have ignored a global "release the texts" campaign led by unions and civil-society groups. This is especially appalling for the Obama administration, given its stated priority of enhancing government transparency. The opaque process has contributed to a near-total absence of press coverage.

Meanwhile, more than 600 business representatives serving as official U.S. trade advisers have full access to an array of draft texts and an inside role in the process. The strategy is to squelch informed debate until a deal is signed and any alterations become difficult.

The implications for the principle and practice of democratic governance are dire. Not only would a vast array of decisions affecting our daily lives be made in venues where we have no role, but even if the U.S. wanted to make changes to the adopted pact it would require consent by all signatory countries. Thus, accompanying the imposition of specific retrograde policies would be an

← ***Lori Wallach*** *is the director of Public Citizen's Global Trade Watch.*

ART BY JOHN RITTER (SOURCE PHOTO: KARA / FOTOLIA)

unprecedented shift of power toward locking in corporate rule insulated against the normal means of democratic accountability such as elections, advocacy, and public protest.

If this description of the proposed TPP sounds far-fetched, consider the consequences of trade pacts sold under the appealing brands of "trade expansion" and "free trade." Canada is threatening key aspects of the Dodd-Frank financial-reregulation package as violating NAFTA. The European Commission staff contends that the proposed financial-transaction tax conflicts with European WTO commitments. Billions in U.S. stimulus money leaked offshore because of limits on Buy America procurement preferences already established in past trade pacts. Last year alone, the WTO struck down U.S. dolphin-safe tuna and country-of-origin meat labeling as well as the ban on candy-flavored cigarettes, which is aimed at curbing youth smoking, as violating U.S. trade obligations.

Now, the TPP threatens to combine the most damaging elements of past pacts and expand on them. With the later addition of Japan, China, Russia, Indonesia, and other Pacific Rim nations, it could encompass many of the world's largest nations. This is precisely the vision that TPP former U.S. trade officials and corporate lobbyists presented to the Obama transition team in their ultimately successful push to get the new administration engaged in these talks.

Not surprisingly, the idea for a Pacific region NAFTA-on-steroids originated in the alliance between the George W. Bush administration and U.S.-based multinationals eager to increase offshoring while rolling back domestic consumer-safety, financial, environmental, and other safeguards. After a pause (ostensibly premised on Obama's establishing his own trade policy), the new administration renewed negotiations. The operating text, though, is the one drafted by Bush officials, which shouldn't come as a surprise since so many of the career trade officials were involved with NAFTA and the original TPP negotiations.

The fact that the TPP is not mainly about trade or the countries now at the negotiating table is also demonstrated by the fact that the U.S. already has bilateral free-trade agreements with four of the nations engaged in the process (Australia, Singapore, Chile, and Peru) making up about 80 percent of all TPP nations' combined gross domestic product. These existing deals eliminate most traditional trade barriers, like tariffs. Given the limited opportunity for expanded U.S. exports, it is worth examining more closely who stands to benefit from the TPP.

Investor Rules to Facilitate Offshoring and Undermine Domestic Law

Past U.S.–sponsored agreements have included a set of extreme foreign-investor rights, and U.S. negotiators are looking to use TPP to expand these terms. This package includes many special protections that incentivize offshoring of U.S. jobs, by eliminating risks typically associated with relocating to developing countries with rock-bottom wages.

Under the U.S. investment model for free-trade agreements, relocating firms are guaranteed a "minimum standard of treatment" that extends beyond being treated the same as local firms. They also are granted new rights to obtain compensation from host governments for loss of "expected future profits" due to health, environmental, zoning, labor, or other policies. Compensation can be obtained for indirect or "regulatory" takings, a concept championed by conservatives but generally not recognized under the robust property rights provided by U.S. law.

The U.S. proposes that this chapter also forbid host countries from limiting capital transfers. This removes a prospective complication for U.S. firms considering relocation and poses a risk to global financial stability. In an era when even the International Monetary Fund has reversed its traditional opposition to capital controls, imposing such limits via a trade pact is both disingenuous and reckless policy.

The chapter also would establish new rights for foreign investors to acquire land, natural resources, factories, and more. All performance requirements, including domestic content rules, would be forbidden. This ban on signatory countries using this key industrial policy tool would be absolute, not just applied to investors from those nations.

These extraordinary rights would also be provided to foreign firms investing in the U.S., including subsidiaries of, say, Chinese firms incorporated in Vietnam. This raises concerns about our ability to determine what sorts of investment from what sorts of countries are best for the U.S., and to regulate foreign firms operating here so that they conduct business on equal terms with domestic firms.

Most stunningly, these new rights in a public treaty could be privately enforceable. The U.S. is pushing for inclusion of "investor state" enforcement. This little-known mechanism allows foreign firms to bypass domestic court systems and directly sue governments for cash damages (our tax dollars) over alleged violations of their new rights before U.N. and World Bank tribunals. These bodies would be staffed by private-sector attorneys who rotate between serving as

40

"judges" and bringing cases for corporations.

Conservative critics of the International Criminal Court's jurisdiction in human-rights cases have been curiously silent about this more substantial assault on our sovereignty and judicial system. The scope of domestic policies that would be exposed to such attacks is vast, including government procurement decisions, regulatory permits, intellectual-property rights, and regulation of financial instruments such as derivatives.

Avoiding domestic courts not only eliminates major risks for firms seeking to relocate but inclusion of this regime in past pacts is establishing an alarming two-track system of justice. Chevron is now asking one of these corporate tribunals to invalidate 18 years of U.S. and Ecuadorian court judgments that resulted in the company being ordered to pay for the cleanup of horrific Amazonian toxic contamination. In other trade courts, Philip Morris International is attacking Australian and Uruguayan cigarette plain-packaging policy.

Under similar NAFTA provisions, more than $350 million has been paid to investors by governments in disputes over such issues as toxic-waste-dump permits, logging rules, and bans on toxic substances. Currently, there are more than $12 billion in pending corporate attacks on environmental, transportation, and public-health policy under existing U.S. free-trade agreements—and the proposed TPP would create vast new opportunities for litigation. Even when governments win, they waste scarce budgetary resources defending national policies against these corporate attacks.

Buy America Procurement Banned

The pact's procurement chapter would require that all firms operating in any signatory country be provided equal access to U.S. government procurement contracts over a certain dollar threshold. These rules constrain how our national and state governments may use our tax dollars in local construction projects and purchase of goods. They also limit what specifications governments can require for goods and services and the qualifications for bidding companies. Requiring that electricity come from renewable sources or that uniforms meet sweat-free standards could be forbidden. Rules excluding firms that refuse to meet prevailing wage requirements or that are based in countries with terrible human- or labor-rights records could be challenged.

Effectively, these rules eliminate important policy tools for job creation, development of green-economy capacity, and the building of demand for preferred business practices. Even in strictly commercial terms, this is lunacy. The U.S. procurement market in 2010 was more than seven times that of all the TPP countries combined. Thus, in exchange for opportunities for some large U.S. firms to bid on a smaller pool of foreign contracts, we would be trading away the ability to ensure that billions in U.S. government expenditures are channeled back into our economy to create jobs and foster our own cutting-edge industries.

Backdoor Financial Deregulation

U.S. trade officials engaged in the TPP are seeking to extend older trade deals' ban on capital controls, even as Massachusetts Representative Barney Frank, the ranking Democrat on the Financial Services Committee, has demanded a review of whether the past pacts require changes. U.S. negotiators are also pushing for additional limits on domestic financial regulation. These constraints would undermine policies being implemented by many countries to get banks, insurance, and securities firms under control.

This includes a prohibition on bans of risky services and financial products. The provision would enable litigants to challenge purely domestic policies that set limits on financial firms' size, the types of services a firm may offer, and the legal entity through which a service or product may be provided. This would, for instance, foreclose many policy tools aimed at dealing with "too big to fail" banks and shadow banks, limiting risk via firewalls or requiring derivatives only be sold on exchanges. These would be absolute bans on certain forms of regulation that countries would be forbidden to "adopt or maintain," not requirements to treat domestic and foreign firms the same.

Higher Medicine Prices

The notion that any free-trade agreement would expand monopoly rights for "rent seeking" (excess profits) would induce Adam Smith and David Ricardo to rotate in their graves.

But that's exactly what our current trade policy does, and the TPP is poised to go further. According to a study conducted by the University of Minnesota, U.S. drug prices increased $6 billion when WTO patent rules required the U.S. to change its patent term from 17 to 20 years. The TPP would be even more of a gift to drug companies at the expense of consumers and taxpayers.

Leaked negotiating texts show that the TPP would extend monopoly controls over drug-safety testing data, which could cut off millions of people from access to life-saving drugs. (Even when a patent monopoly ends, lower-cost generics cannot be marketed because the safety data is withheld.) A majority

MORE THAN SIX HUNDRED BUSINESS REPRESENTATIVES SERVING AS OFFICIAL U.S. TRADE ADVISERS HAVE FULL ACCESS TO DRAFT TEXTS AND AN INSIDE ROLE IN THE PROCESS.

of target TPP countries are developing nations with significant HIV/AIDS rates, so this is a particularly depraved proposal. Thanks to a leak, we know that U.S. negotiators are proposing to roll back even the modest trade-pact access to medicine reforms obtained during the George W. Bush administration.

The U.S. proposal could also undermine the drug formularies of Australia, New Zealand, and other countries that have successfully controlled drug costs. This could also boomerang home. State officials participating in the development of formulary rules for Medicare and Medicaid have reacted with alarm about how this proposal could undermine hard-won gains in the epic health-care reform battle.

THE TPP IS NOT REALLY ABOUT TRADE. IT'S ALL ABOUT GIVING INVESTORS THE RIGHT TO EVADE REGULATORY REQUIREMENTS IN THE U.S. AND OVERSEAS.

And There's More ...

Even given the lack of access to actual negotiating texts, we know that the scope of domestic-policy space that could be foreclosed by this deal is immense.

The pact's coverage of the service sector would include basically anything you can't drop on your foot, from an education to health care. The rules would not be limited to *trade* in services but would limit how we can regulate foreign-owned service firms operating here, including critical sectors like health, energy, education, water, and transportation. Even local land use and zoning policy is implicated.

These rules would even cover the movement of natural persons across borders to deliver a service, otherwise known as immigration and visa policy. Some past U.S. trade deals have guaranteed specific numbers of U.S. work visas. Other countries are demanding the same in the TPP. Whatever your views of these issues, it's a bad idea to make immigration policy behind closed doors as the byproduct of a trade pact whose terms cannot be altered without consent of all parties.

Several chapters impose limits on product environmental, health, and safety standards. The U.S. has proposed a new "regulatory coherence" chapter that would require each signatory country to establish an agency to do cost-benefit analysis of regulation. Constraints on food and product safety and inspection are also being negotiated, including a requirement that the U.S. accept imported food that does not meet our safety laws.

Consider seafood, much of which is imported from TPP target countries. Before WTO and NAFTA, half of the seafood consumed here was imported. Today that figure is 84 percent, while the Food and Drug Administration tests only 0.1 percent of it. Democratic Representative Rosa DeLauro of Connecticut uncovered that, even with lax inspection, last year the FDA issued numerous import alerts for Vietnamese seafood detained for misbranding, E. coli, antibiotic residues, microbial contamination, and other serious safety problems. The TPP could undercut even our current safety rules.

The same provisions deemed to be a threat to Internet freedom and innovation found in the discredited Stop Online Piracy Act are lurking in the TPP. This includes a requirement that each country establish large mandatory fines for unintentional, noncommercial, small-scale copying of Internet content protected by copyright. Also forbidden would be circumvention of digital locks, even for lawful uses such as playing a DVD that you purchased and run using Linux. As well as exposing us all to personal liability, these measures could stifle competition, given the threat of multimillion-dollar lawsuits.

Why Obama, Why Now?

All this invites the obvious question: Why are Obama trade negotiators pushing this deal now? Certainly the White House policy team does not want international preemption of the domestic agenda it is fighting to enact. Nor must the Chicago re-election campaign team be celebrating a deal that will infuriate its base while benefitting only Obama's most implacable corporate opponents.

The hopeful explanation is ignorance made possible by the elite fealty to a failed conception of free trade and the extraordinary secrecy that has forestalled the external alarms that might otherwise sound. Those in the U.S. government positioned to know the expansive non-trade policy implications are also those who support this approach, including many Clinton-era retreads connected to the passage of NAFTA.

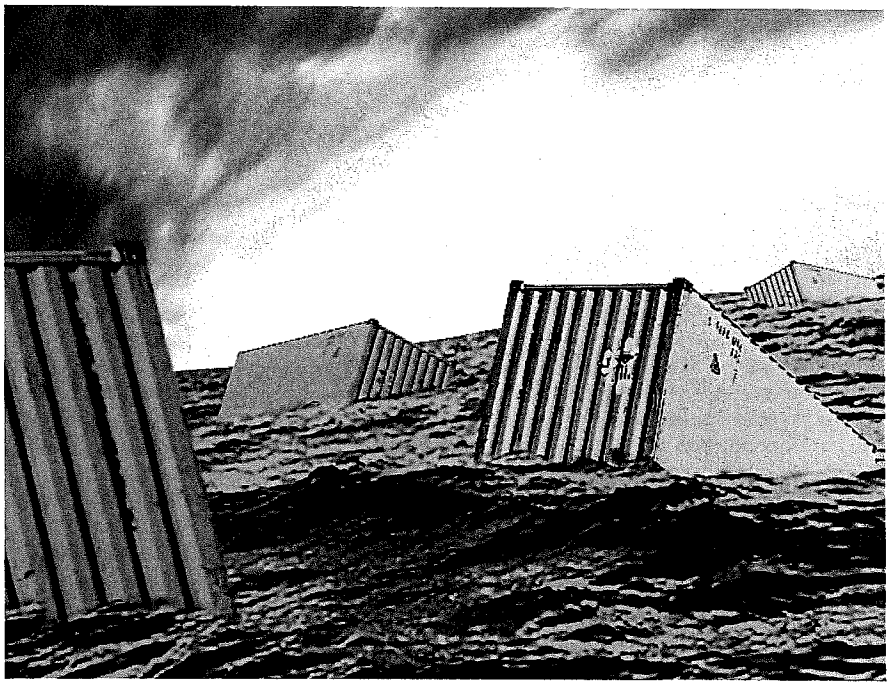
Yet if these talks result in the adoption of a final agreement based on the framework now under negotiation, it could commit our country to a devastating future path.

The only good news is that past attempts to use the Trojan Horse of trade negotiation to impose and lock in massive deregulation have been foiled. Citizen activism and publicity derailed the proposed Free Trade Area of the Americas in 2005, the aborted Multilateral Agreement on Investment in 1998, and the original attempt to negotiate a free-trade area for Asia-Pacific Economic Cooperation nations, many of which are parties to the TPP. Now, as then, the public, policymakers, and the press can help derail these deceptive attempts to undermine democracy by awakening to the threat before it is too late. ▣

42

Not a Great Deal for Asia

BY KEVIN P. GALLAGHER



The Trans-Pacific Partnership is best understood as President Barack Obama's extension of the Bush-era doctrine of "competitive liberalization." Frustrated with pushback at the World Trade Organization by nations like China, Brazil, India, and South Africa, the United States seeks a coalition of the willing to import a commercial framework that rewards private firms at the expense of the common good. That policy regime is ailing in the U.S. and gets worse when exported.

The Trans-Pacific Partnership (TPP) certainly isn't about raising standards of living. The most ambitious estimates of the gains from the TPP suggest that participating nations will gain a mere one-tenth of 1 percent of the gross domestic product. Sixty percent of the projected gains go to Vietnam and the United States, and the other 20 percent goes to Malaysia—largely because the U.S. already has trade pacts with the other proposed big players in the TPP.

However, the proposed deal is far from popular in Asia. In exchange for the small portions of trade and growth that will go to some big exporters and foreign investors, each TPP nation will have to give up many of the policies they use to make trade and foreign investment work for employment, growth, and financial stability.

Two of the more strategic globalizers in recent years, the Vietnamese and Malaysian governments, played an important role in inserting their nations in the global economy and spreading the gains across their societies. Vietnam, a key destination for foreign firms to locate and re-export, has been able to translate that investment into employment and growth while also shielding itself from financial shocks. A major study by the Singapore-based Institute for South Asian Studies found that Vietnam's attraction of foreign investment has increased both savings and capital formation, strongly contributing to the country's China-like per-capita growth rates of well over 5 percent per year.

Unlike the United States, Vietnam has accomplished broadly distributed growth by such strategies as requiring joint ventures or local content standards that link food-processing industries to local farmers and connect global automotive and motorcycle industries with domestic providers of inputs. The institute's analysis of foreign investment in Vietnam showed that these policies helped Vietnam's rural society diversify into manufacturing and expanded employment and livelihoods.

Similar policies have helped fuel Malaysia's industrial growth. Both Vietnam and Malaysia have prudently regulated cross-border financial flows to make sure investors don't desert their nations with the whims of speculative global capital markets. In the wake of the East Asian financial crisis of the late 1990s, Malaysia put restrictions on transfers of capital out of the country. Though laissez-faire advocates attacked the controls at the time, these policies, according to the U.S. National Bureau of Economic Research, helped Malaysia recover from the crisis better than many other nations in the region. Standard & Poor's found that similar measures in Vietnam helped cushion that country from the 2008 global financial crisis.

Vietnam and Malaysia, in sum, have a managed form of globalization that the TPP would undermine. Both countries have made themselves attractive to U.S. investors and exporters through government policies that have led them into global markets, spread the benefits of integration, and maintained financial stability. Yet the investment and financial-services provisions in the TPP would restrict the ability of these nations to use joint ventures, local content rules, and regulation of cross-border financial flows to spread benefits, stimulate local manufacturing, promote employment, and provide financial stability.

It may be difficult to grasp that the TPP could harm the broader economic interests of both the U.S. and smaller Asian nations. But if balanced development requires a managed form of

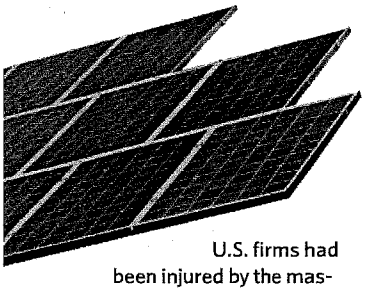
← ***Kevin P. Gallagher*** *is an associate professor of international relations at Boston University and senior researcher at the Global Development and Environment Institute, Tufts University.*

ART BY JOHN RITTER (SOURCE PHOTO: KARA / FOTOLIA)

BLOCKING OUT THE SUN

First Solar lives up to its name. The firm, based in Tempe, Arizona, is the largest solar-cell producer in the U.S. and one of the largest in the world. But after a decade in which production surged 20 percent or more every year, sales growth of First Solar's thin-film cells is slowing, and the company has begun layoffs among its 1,200 U.S. manufacturing workers in California and Ohio.

The reason? It's the same one that led seven domestic manufacturers last October to file a trade complaint against China for dumping solar cells on the U.S. market. The International Trade Commission (ITC) earlier this year unanimously ruled that



U.S. firms had been injured by the massive state subsidies by the Chinese government.

Tellingly, First Solar didn't sign the complaint. While it rhetorically backs a "level playing field" in trade, its plant in Malaysia (it also has one on the drawing boards for Vietnam) will benefit from the tariff-free trade provisions of the proposed Trans-Pacific Partnership (TPP). Both Malaysia and Vietnam could become export platforms for the booming part of First Solar's business—installation, which already accounts for 40 percent of its orders and accounted for three-quarters of the company's growth last year.

Installers, who benefit from cheap cells, are actively opposing anti-dumping duties on the Chinese. "Rather than being in the panel-manufacturing business, which is a commodity, we're in the systems-installation business and looking at the U.S., India, and the Middle East as our primary markets," says Alan Bernheimer, a firm spokesperson.

The same thing is happening in wind-turbine and wind-tower production. The ITC in February determined that four domestic wind-tower makers are losing sales to China and Vietnam because those nations' companies dump products in the U.S. "at less than fair value." Another wind-industry producer—American Superconductor of Massachusetts—saw sales collapse after its major Chinese customer stole the secrets to its software and electrical systems.

While a booming installation business for these technologies in the U.S. would be good—they are relatively well-paying jobs in the building trades, fabrication, and sales—it makes no sense to abandon the highest value-added segment of the business—the actual production of solar cells and wind turbines and their components, both hardware and software.

Failure to develop industrial and trade policies to retain the manufacturing side of these green-technology businesses will leave the U.S. energy sector dependent on foreign firms, which will ultimately reap the reward from owning the intellectual property that comes from being on the cutting edge. It also abandons any hope of turning green tech into a thriving export sector, which would help meet President Barack Obama's goal of doubling exports over the next five years.

Far from helping, the TPP will simply make it easier for Vietnamese, Malaysian, and Chinese companies to pursue their strategic goals. "It's common in China trade cases to see them try to circumvent the trade remedies—like by claiming a false country of origin like Malaysia or Vietnam," according to Tim Brightbill, an attorney who represents the solar companies in the trade case.

"It's a fool's game," says Rob Scott, a trade economist at the Economic Policy Institute. "If those countries are going to have preferential tariffs, China will simply ship products to them to take advantage of it." Although Chinese firms now produce more than half of all global solar cells, Malaysia is nominally the No. 1 exporter to the U.S.

An investigation in 2010 by the Senate Finance Subcommittee on International Trade chaired by Senator Ron Wyden, a Democrat from Oregon (SolarWorld, the lead plaintiff in the trade case, manufactures in Hillsboro, a suburb of Portland), found that Chinese manufacturers across numerous industries circumvented anti-dumping duties by using transshipment platforms in other countries. Demonstrating Wyden's point, Shenzhen Sunpower of Shenzhen, China, in its Internet advertising, offers "third-country certificates of origin" from Taiwan, Malaysia, Indonesia, Bangladesh, Thailand, Vietnam, and Sri Lanka, the report said.

—MERRILL GOOZNER

capitalism, then a trade deal like the TPP, which strengthens investors and weakens governments, can harm Asians and Americans alike.

Look no further than Mexico, where the NAFTA agreement brought the opposite of what treaty-less Vietnam and Malaysia have achieved. As my own research with Tim Wise from Tufts University and Mexican economist Eduardo Zepeda has shown, that agreement has produced slow growth, weak domestic investment, anemic job creation, and increased economic vulnerability. All the while, foreign firms have been suing Mexico over government policies in the same private tribunals that are proposed under the TPP.

Before launching the TPP, the Obama administration named a panel of experts to report to the U.S. Department of State's Advisory Committee on Economic Policy. We were to make recommendations to the administration regarding how to revamp the investment provisions in NAFTA-like deals. (I had the privilege of serving on the panel.) While the full panel could not agree on comprehensive recommendations, I joined a number of the experts to put together a document on changing U.S. trade agreements to enhance employment, democracy, and development. Among other things, we recommended that future deals replace the investor-led dispute system with the "state to state" process analogous to the rest of the treaty and the World Trade Organization's procedures; strengthen provisions to ensure that treaties protect the environment and workers' rights; and provide mechanisms to enable nations to regulate foreign capital.

In January 2011, more than 250 economists from across the globe told the Obama administration that trade deals that required nations to rip open their financial systems for footloose finance were out of step with economic research and a threat to financial stability both in the U.S. and in countries with which it trades. More than 100 economists exclusively from TPP countries echoed these concerns in a March 2012 letter urging TPP negotiators in Australia to leave nations with the policy space to deploy regulations on cross-border capital in the TPP.

In launching his Pacific initiative, President Obama promised to move away from the old model of U.S. trade deals toward one that "addresses new and emerging trade issues and 21st-century challenges." Addressing employment generation, equitable growth, and financial stability should top the list of those challenges, but in the proposed TPP, the means don't serve the proclaimed ends. The agreement grants too many rights to footloose firms and investors at the expense of the majority. ▣

ELENATHEWISE / FOTOLIA