

Sen. Troy Jackson, Chair  
Sen. John Patrick  
Sen. Roger Sherman  
Rep. Sharon Treat, Chair  
Rep. Jeff McCabe  
Rep. Bernard Ayotte

Robert Umphrey  
Stephen Cole  
Michael Herz  
Dr. Joel Kase



John Palmer  
Linda Pistner  
Harry Ricker  
Jay Wadleigh

*Ex-Officio*  
Mike Karagiannes  
Wade Merritt  
Pamela Taylor

*Staff:*  
Lock Kiermaier

STATE OF MAINE

## Citizen Trade Policy Commission

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### **DRAFT AGENDA**

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

**1 PM Meeting called to order**

**I. Welcome and introductions**

**II. Discussion of 2014 CTPC Assessment**

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

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

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

**VI. Articles of interest (Lock Kiermaier, Staff)**

**3:30 PM Adjourn**

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## Citizen Trade Policy Commission

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### Description of Proposed 2014 Assessment

March 17, 2014

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **John F. Piotti**

1075 Albion Road

Unity, ME 04988

### Summary of Qualifications

Proven leader and entrepreneurial builder of organizations, with:

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

### Employment Record

#### **MAINE FARMLAND TRUST**

Belfast, ME

July 2006 to present

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

#### **MAINE HOUSE OF REPRESENTATIVES**

Augusta, ME

December 2002 to 2010

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

#### **COASTAL ENTERPRISES, INC (CEI)**

Wiscasset, ME

September 1995 to June 2006

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

### **UNITY BARN RAISERS**

Unity, ME

May 1996 to June 2006 *part-time*

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

### **UNITY CONSULTING**

Unity, ME

May 1991 to September 1995

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

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

### **MAINE SCIENCE & TECHNOLOGY COMMISSION**

Augusta, ME

July 1988 to April 1991

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

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

### **MASSACHUSETTS WATER RESOURCES AUTHORITY ADVISORY BOARD**

Boston, MA

July 1985 to June 1988

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

## Education

### **MASSACHUSETTS INSTITUTE OF TECHNOLOGY**

Cambridge, MA

September 1979 to June 1985

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

## Current Organizational Involvement

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

## Past Organizational Involvement

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

## Of Special Note

- 2005 Eisenhower Fellow. One of only eight Americans receiving this prestigious award. Traveled to Sweden and Brussels to study sustainable development and European Union agricultural policy.
- 2006 Fleming Fellow. One of thirty State Legislators from across the country chosen to participate in year-long leadership development program.
- Author of *From the Land: Maine Farms at Work*. (Besaw Publishing, 2010)
- One of *Maine Magazine's* "fifty persons who have done the most for Maine." (2013)

## Personal Interests & Background

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

## **Karen Hansen-Kuhn**

### **Institute for Agriculture and Trade Policy**

#### **Director International Strategies Trade and Global Governance**

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

#### **Recent Blog posts include:**

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

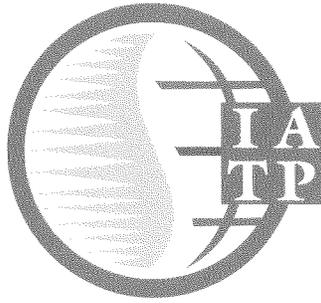
- Obama administration told to stop expanding "corporate rights" in trade agreements  
Published March 5, 2014
- Agriculture in TPP: Repeating NAFTA's mistakes Published February 3, 2014
- Fast track targets local foods efforts Published January 28, 2014
- We're fed up! Published January 24, 2014
- Fast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

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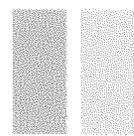
<http://www.iatp.org/about/staff/karen-hansen-kuhn#sthash.5TPdhK0j.dpuf>

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

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



INSTITUTE FOR AGRICULTURE AND TRADE POLICY



HEINRICH BÖLL FOUNDATION

TTIP Series

# Promises and Perils of the TTIP

Negotiating a Transatlantic  
Agricultural Market

By Karen Hansen-Kuhn and Dr. Steve Suppan

Institute for Agriculture and Trade Policy

October 2013

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

By Karen Hansen-Kuhn and Dr. Steve Suppan

Published October 2013

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## Executive summary

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

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

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

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

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

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

- **FOOD SAFETY:** Differing food safety standards have been the subject of trade disputes between the U.S. and

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

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

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

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

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

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

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

If this is truly to be a “high standards” agreement, and if there is any hope that “harmonization” does not mean shifting standards towards the lowest common denominator, then the U.S. and EU governments need to start from a thorough redefinition of “regulatory coherence” that prioritizes human and environmental well-being over market openings. That seems entirely improbable given statements made by the governments up to this point. Improbable isn’t the same thing as impossible though. The current approach is a political choice; alternatives are entirely possible. If not, and the talks

are to continue along the lines of other recent trade agreements, then civil society and policymakers should seriously consider putting a halt to the TTIP.

## Introduction

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

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

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

The political context is not neutral at all. Industry lobby groups and their political allies continue to launch strident attacks on both sides of the Atlantic on rules that limit their ability to buy

and sell goods and services. As leaders from both regions have made clear, the regulations set in this trade agreement will set the standard for free trade agreements of the future.

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

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

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

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

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

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

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

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

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

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

## Food safety, livestock and plant health in the TTIP

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

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

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

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

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

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

If investor-state does apply to SPS issues in the TTIP, U.S. investor lawsuits and threats thereof will find a varied reception among EU member state governments. For example, in

Italy, the Minister of Agriculture is seeking to ban the planting of GM crops, even while acknowledging that such a ban might be illegal under EU law.<sup>14</sup> EU member states are required to accept the scientific opinions of the European Food Safety Authority (EFSA) as binding, unless a government can show that EFSA failed to consider relevant science. NGOs and some EU member states have argued that EFSA risk assessments are incomplete, since they do not review the ecological effects of GMOs, such as the rise of pesticide-resistant "superweeds," but instead only review toxicological literature and biotech-company supplied data.<sup>15</sup>

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

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

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

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

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

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

#### Genetically modified organisms (GMOs)

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

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

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

#### Livestock growth hormones, poultry carcass rinses and mad cow disease

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

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

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

#### Mad cow disease: a bargaining chip?

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

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

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

#### Human tolerance for agricultural pesticides on agricultural crop exports

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

#### Nanotechnologies and nanomaterials

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

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

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

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

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

## Chemical policy reforms and TTIP\*

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

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

We are only now coming to understand the full impacts of the use of industrial chemicals in and on our food.<sup>44</sup> Their use in both agriculture and consumer products results in daily exposure to an array of chemicals that builds up in the food chain. We are also exposed to some of these same chemicals from other consumer products and building materials. Of

particular concern are chemicals recognized as hormone disrupters that impact the delicate hormone balance in the human body.

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

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

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

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

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

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

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

years old. Denmark is phasing out the use of four phthalates (DEHP, DBP, DIBP and BBP) in shower curtains, table cloths and other consumer goods because of their impacts as endocrine disruptors. In March, the European Parliament approved a resolution introduced by Swedish Member Asa Westlund calling for the EU to designate endocrine disruptors as “substances of very high concern” under its Regulation on Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) process.<sup>53</sup>

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

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

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

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

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

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

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

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

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

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

## Procurement policies and local foods

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

As part of this movement toward local foods, new governmental programs are emerging that include bidding preferences for sustainable and locally grown foods in public procurement programs. In the United States, the 2008 Farm Bill specifically authorized public schools to include geographic preferences for locally grown unprocessed foods in their purchasing decisions.<sup>61</sup> This goes beyond the Buy America provisions for those programs that for the most part require purchases of U.S. foods (allowing, of course, for imports of fruits and other foods not produced in the United States). The Farm to School programs (which are funded through USDA and state governments) take those kinds

of preferences a step farther, including bidding criteria for fresh foods that are sustainably produced and grown locally. Chicago Public Schools even included preferences for antibiotic free, locally grown chicken in its school lunch program, which reaches students in 473 schools.<sup>62</sup>

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

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

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

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

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

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

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

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

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

Thirty-seven of the 50 U.S. states are part of the GPA. Governments at every level jealously guard their government procurement rights. The issue is already one that is expected to generate tension in the TTIP negotiations. The EU outlined

its general objectives on public procurement in a "non paper" prepared in advance of the first round of negotiations for TTIP. It states that,

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

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

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

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

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

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

## TTIP and financial services

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

But financial and commodity market rules, with relatively few exceptions, are written to be applied systemically, and not specifically to agriculture. There are a few exceptions, such as the Commodity Futures Trading Commission (CFTC) position-limit rule to limit financial speculation on agricultural and non-agricultural commodities. That issue has received considerable support from NGOs in favor of tighter regulations and strident opposition from the financial and non-financial firm members of the International Swaps and Derivatives Association, who have sued to prevent the implementation and enforcement of the CFTC rule.<sup>76</sup> However,

commodity derivatives contracts comprise less than one percent of the value of all derivatives contracts, so regulators' focus has been squarely on systemic rules and their cross-border application.<sup>77</sup>

Following the near bankruptcy of the global financial system in 2008-2009 resulting from losses in OTC derivatives contracts by banks without reserves to cover these losses, the Group of 20 industrialized country leaders committed in September 09 to prevent future default cascades by requiring that all "standardized OTC derivatives" be paid for through central clearing houses. Centralized clearing, complete reporting of OTC trades and increased capital reserve required for the banks and other major financial institutions are supposed to prevent the contagion of bilateral OTC defaults to the entire financial system.<sup>78</sup>

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

At the same time, the regulatory process for the European Markets in Financial Instruments Directive (MiFID) has unfolded along related, but somewhat different, lines. The draft MiFID would allow each EU member state to establish position limits for the share of commodity derivatives contracts that a financial entity can control.<sup>79</sup> The draft also allows an option for EU member states to allow a continuation of the current practice of "position management," in which the trading venues, not government regulators, "manage" contract position. Since trading venues benefit in fees by maximizing the volume of trade, this form of "self-regulation" has been ineffective in preventing excessive financial speculation in commodity contracts.

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

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

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

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

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

However, the Fed is also pressuring U.S. banks to set aside more and more secure reserves (Tier One capital) to cover trading losses.<sup>82</sup> If the Fed reserves rule applies to U.S. banks

as well as to foreign ones, any retaliation could be directed at the Fed rule within the framework of a TTIP investor-state dispute settlement process, e.g., Deutsche Bank suing the U.S. government. The Fed loaned European private banks and the European Central Bank about \$16 trillion at ultra-low interest rates between 2007 and 2010 to save the transatlantic financial institutions from bankruptcy.<sup>83</sup> It seems unlikely that the banks would sue under the Fed capital reserve rule. But they well might sue under the TTIP due to the implementation of a CFTC rule that they claim had impaired anticipated bank profits.

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

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

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

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

In general, U.S. and EC negotiators’ insistence that neither regulation, legislation nor the public interest will be compromised by the threat of investor-state litigation under the TTIP and other free trade agreements is unconvincing.<sup>90</sup> The FTA current impasse of the EU-Canada over financial services<sup>91</sup> may well be the future of the TTIP negotiations, as proposals for financial service market access contain embedded prohibitions against specific kinds of rules.

How might a financial services chapter affect the cross-border regulation of agricultural derivatives? If the final MiFID exempts OTC derivatives from position limit calculations, the European affiliates of U.S. OTC dealers and European headquartered OTC dealers would continue business as usual to the detriment of commercial hedgers and consumers, unless the CFTC barred them from U.S. markets due to the OTC exemption in MiFID. How long would it take a large European OTC dealer broker, such as Barclays, to sue the CFTC for violating the “general framework” of mutual recognition of market rules under a TTIP financial services chapter? Because there is so much at stake, NGOs will raise such questions about a TTIP financial services chapter and agricultural commodities even in the absence of access to the negotiations text. Adding a financial services chapter that is “fully enforceable” by investor-state lawsuits, will change the balance of power among the economic sectors in the U.S. and the EU. The financialization of the global economy, i.e., the dominance of goods and services provision by mega-banks, arguably has triggered the Great Recession in which we still live.<sup>92</sup>

## Conclusions

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

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

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

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

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

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

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

2. Proposals to protect or weaken the EU's use of the Precautionary Principle in setting food and chemical safety standards.
3. Definitions of the goods and services to be included in discussions on procurement, and whether emerging preferences for locally and sustainably grown foods will be protected in those accords.
4. Proposals to harmonize Dodd-Frank rules on commodity markets with rules authorized under the Market in Financial Instruments Directive, the Market Abuse Directive and other EU wide legislation.

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

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

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

## Endnotes

1. From World Trade Organization database on International Trade and Market Access Data.
2. See William Waren, "Is the Trans Pacific Partnership trade agreement draft chapter on regulatory coherence an environmental hazard?" Friends of the Earth Issue Brief, 2013 for more on this issue.
3. "Froman Calls On EU Regulators To Be More Like Their U.S. Counterparts," Inside US Trade, October 1, 2013.
4. Since the July talks, the EU published versions of some of its initial position papers (which has already been leaked), along with contact information for negotiators. It is not yet clear if they will continue to provide updated summary information along those lines.
5. <http://www.usda-eu.org/trade-with-the-eu/trade-agreements/us-eu-organic-arrangement/>
6. According to Rep. Alan Grayson, who was allowed to view but not copy edited versions of the text for the Trans Pacific Partnership, 500 of the Trade Committee Advisors represent corporations or trade associations, and 100 represent unions, farmers and other civil society groups.
7. DG Trade: Trade Negotiations Step by Step, September 2013. [http://trade.ec.europa.eu/doclib/docs/2012/june/tradoc\\_149616.pdf](http://trade.ec.europa.eu/doclib/docs/2012/june/tradoc_149616.pdf).
8. "EU initial position paper on SPS matters for the TTIP negotiations- Without prejudice," June 20, 2013. <http://www.iatp.org/documents/european-commissions-initial-position-papers-on-ttip>.
9. 2013 Report on Sanitary and Phytosanitary Measures, Office of the U.S. Trade Representative, March 2013, at 5. <http://www.ustr.gov/sites/default/files/2013%20SPS.pdf>.
10. "U.S.-EU trade talks reveal different approaches to agriculture", Food Chemical News, August 23, 2013.
11. "USTR Creates Largely Separate Teams For TTIP, Partly By Tapping New Leaders," Inside U.S. Trade, July 11, 2013.
12. E.g. Robert E. Scott, "No Jobs From Trade Pacts," Issue Brief #369, Economic Policy Institute, July 18, 2013. [www.epi.org](http://www.epi.org).
13. "Ways & Means and Ag members press Froman for Enforceable SPS Measures," Inside U.S. Trade, August 27, 2013.
14. "Italian ag minister seeks biotech crop ban," Food Chemical News, July 19, 2013.
15. E.g. "Europe's food agency accused of junk science: New report calls for GM maize to be banned", Friends of the Earth Europe, July 29, 2009. [http://www.foeeurope.org/press/2009/Jul29\\_Europe%27s\\_food\\_agency\\_accused\\_junk\\_science.html](http://www.foeeurope.org/press/2009/Jul29_Europe%27s_food_agency_accused_junk_science.html).
16. "UK environment ministers says Europe 'missing out' on biotechnology," Food Chemical News, June 28, 2013.
17. "Novel food review stumbles over cloning," EurActiv, March 29, 2011, updated April 15, 2013. <http://www.euractiv.com/cap/novel-foods-review-stumbles-clon-news-503610>.
18. "European Commission's initial position papers on the TTIP," Institute for Agriculture and Trade Policy, July 2, 2013. See the SPS position paper in <http://www.iatp.org/documents/european-commissions-initial-position-papers-on-ttip>.
19. [http://www.gao.gov/key\\_issues/food\\_safety/issue\\_summary#t=0](http://www.gao.gov/key_issues/food_safety/issue_summary#t=0)
20. "FDA spells out FSMA importer requirements, third-party accreditation rules", Food Chemical News, August 2, 2013.
21. "U.S.-EU trade talks reveal different approaches to agriculture", Food Chemical News, August 23, 2013.
22. William Freese and David Schubert, "Safety Testing and Regulation of Genetically Engineered Foods", Biotechnology and Genetic Engineering Reviews, Vol. 21, November 2004. [http://www.centerforfoodsafety.org/files/freese\\_safety\\_testing\\_and\\_regulation\\_of\\_genetically\\_engineered\\_foods\\_nov212004\\_62269.pdf](http://www.centerforfoodsafety.org/files/freese_safety_testing_and_regulation_of_genetically_engineered_foods_nov212004_62269.pdf).
23. Stephen Clapp, "USDA biotech regulatory overhaul postponed until November", Food Chemical News, July 12, 2013.
24. <http://www.regulations.gov/#!documentDetail;D=USTR-2013-0019-0053>
25. Excessive Speculation in Agricultural Commodity Markets: Selected Writings 2008-2011, Institute for Agriculture and Trade Policy, April 2011. <http://www.iatp.org/documents/excessive-speculation-in-agriculture-commodities>.
26. Daryll E. Ray and Harwood D. Schaefer, "Corn exports: a case of unrealized expectations and farm policies that did not deliver", Policy Penings, September 6, 2013. <http://agpolicy.org/weekcol/684.html>.

27. U.S. Grains Council submission to the U.S. Trade Representative, May 10, 2013. <http://www.regulations.gov/#!documentDetail;D=USTR-2013-0019-0053>.
28. North American Meat Association letter to the U.S. Trade Representative, May 10, 2013. <http://www.regulations.gov/#!documentDetail;D=USTR-2013-0019-0235>.
29. "An Exceptional Vote of the Codex Alimentarius Commission: the fallout to come," Global Food Safety Monitor, October 1, 2013. <http://us5.campaign-archive1.com/?u=26fee7f7d268bc1c653da58929id=5d37c1767e>.
30. Kimberly Kindy, "US pilot program fails to stop contaminated meat", Washington Post, September 8, 2013. [http://www.washingtonpost.com/politics/usda-pilot-program-fails-to-stop-contaminated-meat/2013/09/08/60f8bb94-0f58-11e3-85b6-d27422650fd5\\_story.html](http://www.washingtonpost.com/politics/usda-pilot-program-fails-to-stop-contaminated-meat/2013/09/08/60f8bb94-0f58-11e3-85b6-d27422650fd5_story.html).
31. "More disclosure and data needed to clarify impact of changes to poultry and hog inspections" General Accountability Office, August 22, 2013. <http://www.gao.gov/products/GAO-13-775>.
32. Jacqui Fatka, "USDA poultry inspection rule examined", Feedstuffs, September 9, 2013.
33. "U.S., EU to Focus TEC on Future Regulations, Not Current Fights" Inside U.S. Trade, October 27, 2009.
34. <http://us5.campaign-archive1.com/?u=26fee7f7d268bc1c653da58929id=83abb2f3a2#madcow>.
35. "Analysis: U.S. Mad Cow risk communication plan overwhelmingly successful" Global Food Safety Monitor, Institute for Agriculture and Trade Policy, May 24, 2012. <http://us5.campaign-archive1.com/?u=26fee7f7d268bc1c653da58929id=83abb2f3a2#madcow>.
36. <http://www.regulations.gov/#!documentDetail;D=USTR-2013-0019-0154>.
37. "EU approves use of lactic acid to clean beef carcasses", Food Chemical News, February 8, 2013.
38. Ranchers Cattlemen Action Legal Fund/ United Stockgrowers of America [R-CALF USA] v. USDA, May 30, 2012. <http://www.r-calfusa.com/BSE/120619PlaintiffsResponseToMay30Order.pdf>.
39. <http://www.regulations.gov/#!documentDetail;D=USTR-2013-0019-0009>.
40. For a short overview of agri-nanotechnology products, see Will Soutter, "Nanotechnology in Agriculture," June 11, 2013. <http://www.azonano.com/article.aspx?ArticleID=3141>.
41. <http://www.regulations.gov/#!documentDetail;D=USTR-2013-0019-0193>.
42. For an introduction to the complexities of agreeing on a regulatory definition for nanomaterials, see "Definition of the term nanomaterial", Nanowerk, June 6, 2013. <http://www.nanowerk.com/spotlight/spotid=30804.php>.
43. "Food, Agriculture Groups Blast U.S. Approach to SPS Disputes in TPP", inside U.S. Trade, May 9, 2013.
44. Information on hormone disruptors and obesity drawn from factsheet on Chemicals and Obesity, by Kathleen Schuler, Institute for Agriculture and Trade Policy, July 8, 2013. [http://www.iatp.org/files/2013\\_07\\_08\\_Obesogens.pdf](http://www.iatp.org/files/2013_07_08_Obesogens.pdf).
45. Thayer KA, Heindel JJ, Bucher JR, Gallo MA. Role of environmental chemicals in diabetes and obesity: a National Toxicology Program workshop review. *Environmental Health Perspectives*. 2012; 120(6):779-89.
46. Calafat AM, Kuklennyik, Reidy J et al. Urinary concentrations of bisphenol A and 4-nonylphenol in a human reference population. *Environmental Health Perspectives*. 2005;113(4):391-395.
47. Schonfelder G, Wittfoht W, Hopp H et al. Parent bisphenol A accumulation in the maternal-fetal-placental unit. *Environmental Health Perspectives* 2004;110(211):A703-A707, and Ikezaki Y, Tsutsumi O, Takai Y et al. Determination of bisphenol A concentrations in human biological fluids reveals significant early prenatal exposure. *Hum Reprod*. 2002;17:2839-2841.
48. Hunt, PA, Koehler KE, Susiarjo M et al. Bisphenol A exposure causes meiotic aneuploidy in the female mouse. *Current Biology*. 2003;13:546-553.
49. Wetherill, YB, Petre C, Monk KR et al. The Xenoestrogen Bisphenol A Induces Inappropriate Androgen Receptor Activation and Mitogenesis in Prostatic Adenocarcinoma Cells. *Molecular Cancer Therapeutics* 2002;1:515-524; Markey, CM, Luque EH, Munoz de Toro M et al. In Utero Exposure to Bisphenol A Alters the Development and Tissue Organization of the Mouse Mammary Gland. *Biology of Reproduction*. 2001;65:215-1223; and Munoz-de-Toro M, Markey C, Wadia PR et al. Perinatal exposure to bisphenol A alters peripubertal mammary gland development in mice. *Endocrinology*. 2005;146(9):4138-47.
50. Sathyanarayana S. Phthalates and children's health. *Current Problems in Pediatric and Adolescent Health Care*. 2008; 38:34-39.
51. Henriette Jacobsen, "Parliament wants endocrine disruptors added to REACH priority list," EurActive.com, March 15, 2013. <http://www.euractiv.com/health/parliament-calls-better-protecti-news-518501>.
52. Understanding REACH, European Chemicals Agency website. <http://echa.europa.eu/web/guest/regulations/reach/understanding-reach>
53. Statement by Carroll Muffett, Center for International Environmental Law (CIEL) on behalf of CIEL, Friends of the Earth and Sierra Club before U.S. House of Representatives Committee on Energy and Commerce Subcommittee on Commerce, Manufacturing and Trade hearing on The U.S.-E.U. Free Trade Agreement: Tipping over the Regulatory Barriers, July 24, 2013. [http://www.ciel.org/Publications/Muffett\\_Statement\\_24July2013.pdf](http://www.ciel.org/Publications/Muffett_Statement_24July2013.pdf).
54. Bill Waren, Sinister partners: transatlantic trade agreement & toxic chemicals, www.foe.org, June 21, 2013.
55. Muffett, p. 9.
56. USTR, 2013 Report on Technical Barriers to Trade, p. 63, April 2013.
57. Final Report of the U.S.-EU High Level Working Group on Jobs and Growth, February 11, 2013, <http://www.ustr.gov/about-us/press-office/reports-and-publications/2013/final-report-us-eu-hlwg>.
58. These are among 380 comments submitted to USTR on TTIP, available at <http://www.regulations.gov/#!docketDetail;D=USTR-2013-0019>. Also see Annex 1 to this report.
59. Note for the Attention of the Trade Policy Committee on the Transatlantic Trade and Investment Partnership, Annex 2 – Initial Position Paper: Chemicals in TTIP, June 20, 2013, EC Trade Policy Committee. Available at <http://www.iatp.org/documents/european-commissions-initial-position-papers-on-ttip>.
60. Muffett, p. 15-16.
61. Farm to Institutions Initiatives factsheet, United States Department of Agriculture, available at <http://www.usda.gov/documents/6-Farmtoinstitution.pdf>.
62. Helena Bottemiller, "Chicago Schools Make Big Antibiotic Free Poultry Purchase," Food Safety News, November 2, 2011.
63. See [www.farmtoschool.org](http://www.farmtoschool.org) for comprehensive information and contacts on those initiatives.
64. Stacy Sobell, "School Food Success: Oregon Lawmakers Pledge to Spend +\$1M on Local Ingredients," Cvilleats.com, September 17, 2013.
65. Jill Richardson, What Do Other Countries Eat for School Lunch? May 2009. <http://www.lavidalocavore.org/diary/1709/what-do-other-countries-eat-for-school-lunch>.
66. Kevin Morgan and Roberta Sonnino, "Rethinking School Food: the Power of the Public Plate," in *State of the World 2010: Transforming Cultures from Consumerism to Sustainability*, The Worldwatch Institute, p. 74.
67. <http://goodfoodla.org/policymaking/good-food-procurement/>.
68. WTO, The plurilateral Agreement on Government Procurement (GPA), [http://www.wto.org/english/tratop\\_e/gproc\\_e/gp\\_gpa\\_e.htm](http://www.wto.org/english/tratop_e/gproc_e/gp_gpa_e.htm).
69. Note for the Attention of the Trade Policy Committee on the Transatlantic Trade and Investment Partnership, Non-paper on Public Procurement. Available at <http://www.iatp.org/documents/european-commissions-initial-position-papers-on-ttip>.
70. Steve Suppan, "U.S. judge thwarts commodity market reform," Institute for Agriculture and Trade Policy, October 10, 2012. <http://www.iatp.org/blog/201210/us-judge-thwarts-commodity-market-reform>
71. Suppan, "Ag swaps: a tiny boat on the vast financial data sea," Institute for Agriculture and Trade Policy, September 5, 2012. <http://www.iatp.org/blog/201209/ag-swaps-a-tiny-boat-on-the-vast-financial-data-sea>.
72. E.g. Michel Barnier, "Interdependent swaps markets need interactive cross-border rules," Speech 13/638, European Commission, July 15, 2013.
73. MiFID2: set to fail on food speculation," Friends of the Earth et al., April 2013. [http://www.foeeurope.org/sites/default/files/makefinancework\\_mifid\\_loopholes\\_june2013.pdf](http://www.foeeurope.org/sites/default/files/makefinancework_mifid_loopholes_june2013.pdf).
74. "Position Limits for Derivatives," Better Markets, March 28, 2011. <http://www.bettermarkets.com/sites/default/files/CFTC%20Position%20Limits%20CL%20As%20Submitted%20Hi%20Res.pdf>.
75. <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2012-406#BKMD-7>, Articles 51 and 51a.
76. David Bicchetti and Nicolas Maystre, "The synchronized and long-lasting structural change on commodity markets: evidence from high-frequency data," MPRA Paper No. 37486, March 20, 2012. <http://mpra.ub.uni-muenchen.de/37486/>

77. Suppan, "The long and winding road to global derivatives market reform," Institute for Agriculture and Trade Policy, July 17, 2013. <http://www.iatp.org/blog/201307/a-long-and-winding-road-to-global-derivatives-market-reform>.
78. Suppan, "Upping the ante in the TTIP: Let's add financial services and call your bluff," Institute for Agriculture and Trade Policy, August 7. <http://www.iatp.org/blog/201308/upping-the-ante-in-the-ttip-let%E2%80%99s-add-financial-services-and-call-your-bluff>.
79. "USTR Creates Largely Separate Teams for TTIP Party By Tapping New Leaders," Inside U.S. Trade, July 12, 2013.
80. "Barnier Says TTIP Deal 'Won't Work' If It Leaves Out Financial Regulations," Inside U.S. Trade, July 15, 2013.
81. "TABC Submission to USTR on the T-TIP," Transatlantic Business Council, May 10, 2013, at 18. <http://transatlanticbusiness.org/eu-us-trade-agreement/>.
82. Michael R. Crittenden, "Fed Boosts Pressure On Banks Over Capital Levels," Wall Street Journal, August 19, 2013.
83. James Felkerson, "\$29,000,000,000,000, "A Detailed Look at the Fed's Bailout by Funding Facility and Recipient," Working Paper No. 698, Levy Economics Institute, December 2011. [http://www.levyinstitute.org/pubs/wp\\_698.pdf](http://www.levyinstitute.org/pubs/wp_698.pdf).
84. "Recent developments in investor-state dispute settlement (ISDS)," UN Conference on Trade Development, May 2013. [http://unctad.org/en/PublicationsLibrary/webdiaepcb2013d3\\_en.pdf](http://unctad.org/en/PublicationsLibrary/webdiaepcb2013d3_en.pdf).
85. "OCC's Quarterly Report on Bank Activities and Derivatives Trading: First Quarter 2013," Office of the Comptroller of Currency at 1. <http://www.occ.gov/topics/capital-markets/financial-markets/trading/derivatives/dq113.pdf>.
86. Dennis Kelleher, Stephen Hall and Katelynn Bradley, "Setting the Record Straight on Cost-Benefit Analysis and Financial Reform at the SEC," Better Markets, July 30, 2012, 42. <http://www.bettermarkets.com/sites/default/files/Setting%20The%20Record%20Straight.pdf>.
87. Elizabeth Olson, "Growth in Global Disputes Brings Big Checks for Law Firms," The New York Times, August 28, 2013.
88. "Froman Expects 'Real' TTIP Negotiations To Begin At October Round," Inside U.S. Trade, August 2, 2013.
89. E.g. "Unravelling the spin: a guide to corporate rights in the EU U.S. trade deal," Corporate Europe Observatory, July 9, 2013. <http://corporateeurope.org/trade/2013/07/unravelling-spin-guide-corporate-rights-eu-us-trade-deal>.
90. Scott Sinclair, "The EU wants a wide-open banking system. We should say no," Canadian Centre for Policy Alternatives, June 18, 2013. <http://www.policyalternatives.ca/publications/commentary/eu-wants-wide-open-banking-system-we-should-say-no>.
91. Simon Johnson, "The Quiet Coup", The Atlantic, May 2009. <http://www.theatlantic.com/magazine/archive/2009/05/the-quiet-coup/307364/>.



## **COMMITTEE on WAYS and MEANS**

### **Hearing Advisory**

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

***1100 Longworth House Office Building at 9:30 AM***

**Washington, Mar 27** | [0 comments](#)

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

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

#### **BACKGROUND:**

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

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

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

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

#### **FOCUS OF THE HEARING:**

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

#### **DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:**

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

#### **FORMATTING REQUIREMENTS:**

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

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

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

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

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

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

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

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Posted in Press Releases on March 25, 2014 | [Preview](#) 
  - [Camp Statement on Fourth Anniversary of ObamaCare](#)  
Posted in The Prescription Pad on March 21, 2014 | [Preview](#) 

**Article notes: March 31, 2014**  
**Citizen Trade Policy Commission**

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

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

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

**Obama Nominates Former SOPA Lobbyist to help lead TPP Negotiations**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

This press release from USTR Michael Froman strongly endorses President Obama’s 2014 Trade Agenda by stating that “President Obama’s trade strategy for 2014 is driven by a commitment to create jobs, promote growth, and strengthen the middle class through the creation of new export opportunities for American farmers, workers and businesses.”

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## Altec CEO Calls For Passage Of TPA Legislation

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

Birmingham, AL (PRWEB) February 20, 2014

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

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

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

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

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

Electronic Frontier Foundation

March 3, 2014

## Obama Nominates Former SOPA Lobbyist to Help Lead TPP Negotiations

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

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

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

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

## TPP Talks at a Standstill

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

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

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

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

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

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

The Council of State Governments

Knowledge Center

# From the Expert: A Transatlantic Partnership for Tomorrow's World

Wednesday, March 5, 2014 at 09:38 AM

By **Vital Moreira**, Chair of European Parliament's Committee on International Trade

The Transatlantic Trade and Investment Partnership represents an extraordinary opportunity to stimulate economic growth and job creation in both the European Union and the United States. Not only that, this ambitious venture has the potential to reshape our bilateral trade and investment relations and to develop global rules on trade for years to come.

There is, therefore, more at stake than just a regular free trade agreement. This 12-nation agreement with the trans-Pacific region and the European Union is expected to be a game changer.

The EU and the U.S. have the largest and the most integrated economic relationship in the world, but there is still great scope for exploiting its full potential. First of all, we still need to dismantle traditional tariff barriers and to make headway on market access issues in other areas, such as public procurement, services and investment. We already have very low tariff arrangements in place, but a number of tariff peaks remain.

Second, our main focus in the negotiations has to be to tackle the so-called "behind the border" barriers, such as differences in regulations, standards and certifications.

Third, we need to work together on developing global rules and standards in a number of areas where they do not exist or are insufficient. For example, sustainable development, customs and trade facilitation, competition and state-owned enterprises, raw materials and energy, small and medium-sized enterprises and transparency.

This partnership makes a lot of sense and both parties have a great deal to win with an ambitious trade and investment agreement, but negotiations will not be easy. As close as we are, some well-known differences of interests, of public visions and constitutional mismatches exist. Just take public procurement as an example: The EU will look for substantially enhanced access to the U.S. market, both at the federal and at state levels, as U.S. companies do not face the same level of market constraints at the state level in the EU.

Political decision-makers, stakeholders and the public in general need, first and foremost, to be aware of the huge benefits and opportunities offered by this agreement and then to commit themselves, throughout the negotiations, in order to reach a successful conclusion of the agreement. It is also important to remain realistic; not all regulatory divergences between the EU and the U.S. can be eliminated at a stroke. The partnership should be designed as a "living agreement" that will evolve over time into greater regulatory convergence.

The most sensitive issues around EU-U.S. trade talks and consultation with stakeholders, such as the one recently raised in the EU on investor-to-state dispute settlement, need to be addressed in an open and convincing way. Both sides have been clearly stating that the agreement is not about deregulation and it is not intended to lower levels of food safety or consumer protection. This means there will be no compromise whatsoever on the existing high levels of protection and that each side will maintain the right to regulate environmental, safety and health issues.

The Transatlantic Trade and Investment Partnership has a broader dimension than a normal free trade agreement and public support will be crucial to make this initiative a reality. The partnership is a two-way street, a give-and-take, but there are two things this agreement cannot change: our constitutions and the minds of our citizens. Sensitivities and differences, profound as they might be, should not get in the way of the big-picture benefits that will result from these negotiations.

Ultimately, with the Transatlantic Trade and Investment Partnership, we will work together for growth and jobs, as well as for asserting a common transatlantic leadership in tomorrow's world.

Boston Globe 3/12/14

## EU seeks to halt use of famed cheese names for US foods

By Mary Clare Jalonick

| ASSOCIATED PRESS

MARCH 12, 2014

**Kraft would have to stop using the label Parmesan on its pasta topping if Europe gets its way in ongoing trade talks.**

WASHINGTON — Would Parmesan by any other name be as tasty atop your pasta? A ripening trade battle might put that to the test.

As part of trade talks, the European Union wants to ban the use of such European names as Parmesan, feta, and Gorgonzola on cheese made in the United States.

The argument is that the American-made cheeses are shadows of the original European varieties and cut into the sales and identity of the European cheeses. The Europeans say Parmesan should come only from Parma, Italy, not from those familiar green cylinders US companies sell. Feta should be only from Greece, even though feta isn't a place. The European Union argues it "is so closely connected to Greece as to be identified as an inherently Greek product."

So, a little "hard-grated cheese" for your pasta? It doesn't have quite the same ring as Parmesan.

US dairy producers, cheesemakers, and other food companies are fighting the idea, which they say would hurt the \$4 billion domestic cheese industry and confuse consumers.

"It's really stunning that the Europeans are trying to claw back products made popular in other countries," says Jim Mulhern, president of the National Milk Producers Federation, which represents dairy farmers.

The European Union would not say exactly what it is proposing or whether it will be discussed this week at a new round of talks on an EU-US free trade agreement.

European Commission spokesman Roger Waite would say only that the question "is an important issue for the EU."

That's clear from recent agreements with Canada and Central America, where certain cheese names were restricted unless the cheese came from Europe. Under the Canadian agreement, for example, new feta products manufactured in Canada can only be marketed as feta-like or feta-style, and they can't use Greek letters or other symbols of Greece.

The European Union is expected to make similar attempts to restrict marketing of US-made cheeses, possibly including Parmesan, Asiago, Gorgonzola, feta, fontina, Muenster, Neufchatel, and Romano.

And it may not be just cheese. Other products could include bologna, Black Forest ham, and Valencia oranges.

The trade negotiations are important for the EU because Europe is trying to protect its share of agricultural exports and pull itself out of recession. The ability to exclusively sell some of the continent's most famous and traditional products would prevent others from cutting into those markets.

A bipartisan group of 55 senators wrote to US Trade Representative Michael Froman and Agriculture Secretary Tom Vilsack this week, asking them not to agree to any such EU proposals.

Companies that mass-produce cheese are also fighting. Kraft Foods Group says cheese names are considered generic in the United States. "Such restrictions could not only be costly to food makers, but also potentially confusing for consumers," spokesman Basil Maglaris says.

TITLE: EU FEAR OF US HORMONE MEAT, GM FOOD SOWS DIVIDE IN TRADE TALKS

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> SOURCE: Reuters

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> AUTHOR: Robin Emmott

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> URL: <http://www.reuters.com/article/2014/03/12/eu-usa-trade-idUSL6N0M920R20140312>

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> DATE: 13.03.2014

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> Europe's reluctance to buy hormone meat or genetically modified food from the United States has exposed an "enormous gulf" that threatens the world's biggest trade pact, industry and labour groups told EU and U.S. negotiators on Wednesday.

>

> Eight months into talks to create a transatlantic pact encompassing almost half the world's economy, divisions remain over opening up to each others goods, rules governing the names of foods and genetically modified food.

>

> "There is an enormous gulf between the EU and U.S. positions," said Michael Dolan, a lobbyist for the U.S. Teamsters union, who rejected the idea that the European Union should be the only market to call Greek-style cheese 'feta'.

>

> He warned that a trade deal "is likely to be smaller, more modest than its ambitions, because of so many intractable issues," telling negotiators in a forum also open to reporters.

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> Tensions over food, which have bedevilled many trade talks around the world, risk eroding already fragile public support for a deal that proponents say would increase economic growth by around \$100 billion a year on both sides of the Atlantic.

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> Negotiators aim to finalise a deal by the end of this year.

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> Mindful of the huge protests surrounding global trade talks in the 1990s, EU and U.S. negotiators holding a fourth round of talks this week in Brussels took the unusual step of not only receiving lobbyists but also letting in the media.

>

> What little awareness there is about the "Transatlantic Trade and Investment Partnership" (TTIP) could be distorted by anti-globalisation protesters, EU ministers have warned.

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> At risk is a pact creating a market of 800 million people where business could be done freely, building on the almost \$3 billion of transatlantic trade in goods and services each day.

>

> Difficulties over agriculture bode poorly for the talks because EU-U.S. negotiators are seeking a far more a sophisticated agreement, going beyond farm goods to bring down barriers across all industries and businesses.

>

> Even animal welfare is sensitive in a proposed accord where both sides would recognise each others standards to oil the wheels of commerce. Europeans said they consider U.S. standards concerning the slaughter of animals as being far lower than in the EU.

>

> STEAKHOUSE PLEASURES

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> Even without such issues, U.S. farmers complain that the farm trading relationship is unfairly skewed in Europe's favour and want it addressed in the trade talks.

>

> The European Union exported \$16.6 billion of farm goods to the United States in 2012, much more than the \$9.9 billion that U.S. farmers sent to Europe, partly because of EU rules banning imports of genetically modified food for human consumption.

>

> "Our trade could be way bigger," said Douglas Nelson, an adviser for farm group CropLife America. Floyd Gaibler of the U.S. Grains Council said: "The TTIP is a way to normalise trade with the European Union."

>

> But barely a week goes by that EU Trade Commissioner Karel De Gucht, who handles commerce issues for the EU's 28 member states, states that European regulation of genetically modified food will not change even if a deal is done with Washington.

>

> The European Union is also closed to U.S. beef from cattle raised with growth hormones. Some Europeans are worried about what impact GM crops and hormone beef - often dubbed "Frankenstein Food" - might have on health and the environment.

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> "The United States and the European Union have the highest standards of food safety. How is it that we have such different ideas about how

to achieve those standards?" said John Brook, regional director of the U.S. Meat Exports Federation.

>

> "Have you ever heard about a European on holiday in the U.S. not eating meat? Everyone raves about the experience of eating in a U.S. steak house," he said

## Ambitious 2014 U.S. Trade Agenda Hailed

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

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

"President Obama's trade strategy for 2014 is driven by a commitment to create jobs, promote growth, and strengthen the middle class through the creation of new export opportunities for American farmers, workers, and businesses," said U.S. Trade Representative **Michael Froman**. "In the coming year, USTR will continue to execute the President's trade vision that relies on opening markets, leveling the playing field for American workers and producers, and fully enforcing our trade rights around the world."

Mulligan said the USTR agenda dovetailed well with USCIB's own [2014 Global Trade and Investment Agenda](#). Key goals in the USCIB agenda include:

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

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

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

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

### **About USCIB:**

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

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

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## **NATIONAL FOREIGN TRADE COUNCIL, INC.**

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**FOR IMMEDIATE RELEASE** Contact: Nicole L'Esperance

March 4, 2014 The Fratelli Group for NFTC

202-822-9491

### **NFTC Welcomes Administration's 2014 Trade Agenda**

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

"However, in order to ensure that these agreements and future agreements benefit the U.S. economy, businesses and workers, we need Congress to pass Trade Promotion Authority (TPA) legislation. We are pleased to see that passage of TPA is a top priority for the Administration, and we urge Congress to act as soon as possible this year.

"We also welcome the Administration's commitment to build off the recent momentum in Bali and continue to actively pursue and be a key player in negotiating multilateral agreements through the WTO.

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

The Financial Times

March 14, 2014 9:00 pm

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> Transatlantic trade talks hit German snag

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> By Shawn Donnan in Brussels and Stefan Wagstyl in Berlin

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> Germany has introduced a stumbling block to landmark EU-US trade negotiations by insisting that any pact must exclude a contentious dispute settlement provision.

>

> The <sup>3</sup>investor-state dispute settlement<sup>2</sup> mechanism, or ISDS, would allow private investors to sue governments if they felt local laws threatened their investments. Public opposition to its inclusion has grown in both Europe and the US since the launch last year of negotiations over a transatlantic trade area.

>

> Earlier this year, the European Commission suspended negotiations over the ISDS clause to allow for a 90-day public consultation exercise, expected to be launched within days.

>

> That move was intended to help defuse some of the opposition and explain why an arbitration mechanism was needed. But opposition to ISDS has only grown since then.

>

> Now, in the biggest blow yet to those seeking its inclusion in the deal, Berlin has decided that it will push for the exclusion of the ISDS provisions in the deal.

>

> A spokesman for the economy ministry in Berlin said on Friday that the government had relayed its position to officials in Brussels, where negotiators have ended a week of talks over the proposed Transatlantic Trade and Investment Partnership (TTIP).

>

> Earlier in the week, Brigitte Zypries, a junior economy minister, told the German parliament that Berlin was determined to exclude arbitration rights from the TTIP deal.

>

> <sup>3</sup>From the perspective of the [German] federal government, US investors in the EU have sufficient legal protection in the national courts,<sup>2</sup> she told parliament.

>

> The German position pits Berlin against the commission, the US and

business groups. All of them argue that the transatlantic deal is an opportunity to update arbitration rights that already feature in existing bilateral investment treaties and are often open to abuse.

>

> Such ISDS provisions have been a feature of investment treaties since the late 1950s, when the first was included in a bilateral agreement between Germany and Pakistan. But their use by companies as an avenue to seek compensation for government decisions has grown in recent years.

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> In some cases, they have been used to combat perceived gross injustices against specific investors. Repsol, the Spanish oil company, was able to seek compensation from Argentina under an investment treaty after its local operations were seized by the government in Buenos Aires.

>

> They have also been used to challenge broader government policy or regulatory decisions, however. Vattenfall, the Swedish energy company, is currently seeking compensation from Germany for Berlin's decision to phase out nuclear power following the Fukushima disaster in Japan. In another well-publicised case, Philip Morris International is seeking compensation from Australia for lost income because of the introduction there of plain-packaging laws for tobacco products.

>

> The German position may still be open to some negotiation particularly if both the EU and the US agree to allow arbitration only in extreme cases.

> Berlin's final stand may also depend on the European consultation process.

> But Berlin's move is a sign of the complicated political context the transatlantic deal faces in Europe.

>

> Nicole Bricq, France's trade minister, has raised concerns before over the ISDS provision. Germany has until now backed its inclusion in the new pact.

> But Berlin has also been confronted with growing public scepticism in recent months over the transatlantic deal as a whole, and the ISDS provision in particular.

>

> At a press conference to mark the close of the fourth round of negotiations on Friday, Dan Mullaney, the leading US negotiator, declined to comment on the German decision.

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> Ignacio Garcia Bercero, the EU's chief negotiator, also refused to comment on it. But he pointed out that the EU's original mandate to

negotiate specifically included an ISDS provision and had been approved by member states, including Germany.

>

> <sup>3</sup>We are working on the basis of the mandate that has been given to us,<sup>2</sup> said Mr Garcia Bercero.

>

> The provision is opposed by consumer groups and environmentalists on both sides of the Atlantic. They argue that the very threat of litigation could challenge everything from food safety standards to a ban on fracking now in place in France. They also argue that the court systems in both the US and EU are mature enough not to be a concern to foreign investors.

>

> Business groups argue, however, that including proper safeguards for investors in a new pact is crucial to help encourage the flow of investment across the Atlantic.

>

> <sup>3</sup>If you want to attract investors, you need to have all of the positive signals on your side,<sup>2</sup> said Hendrik Bourgeois, vice-president of European affairs for GE, the US industrial group, and chairman of the American Chamber of Commerce to the EU.

>

> Business groups and trade negotiators on both sides also argue that including the provision is vital as a precedent for other deals. Both the EU and the US have launched investment discussions with China, and the EU is expected to begin talks on an investment treaty with Myanmar next week.

> Including investor protection provisions in those deals would be more difficult if they were excluded from the EU-US agreement, negotiators and lobbyists say.

>

> The US conducted public consultations on the subject in 2009, leading to the agreement with Congress of a model investment treaty that includes robust investor-protection provisions.

>

> The European Commission hopes its consultations will do the same. But some now fear that the EU's consultations may feed the opposition.

> <sup>3</sup>It is important to us that this [EU] public consultation is not a referendum on ISDS. It is important that [ISDS] is included in the agreement,<sup>2</sup> said Luisa Santos, director of the international relations department of the BusinessEurope lobby group. <sup>3</sup>Excluding it is not the answer.<sup>2</sup>

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# Congress of the United States

Washington, D.C. 20515

March 14, 2014

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

Dear Ambassador Froman:

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

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

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

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

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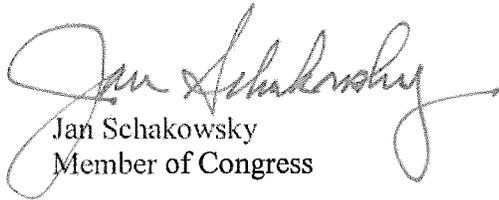
The Honorable Michael Froman  
March 14, 2014  
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These changes, coupled with patent requirements for surgical, diagnostic, and therapeutic methods of treatment go beyond the requirements of the TRIPS agreement and could prevent or delay the availability of affordable options for the treatment of a vast number of diseases including HIV/AIDS, Tuberculosis, Malaria, Cancer, Rheumatoid Arthritis, Multiple Sclerosis, Hepatitis C, and other serious illnesses.

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

Thank you for your attention to our concerns.

Sincerely,



Jan Schakowsky  
Member of Congress



Barbara Lee  
Member of Congress



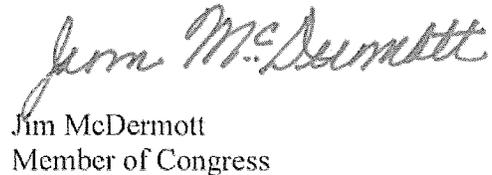
George Miller  
Member of Congress



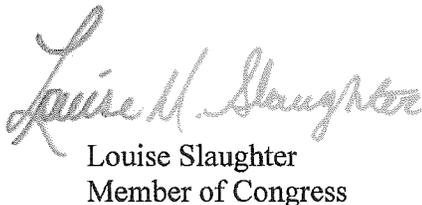
Rosa DeLauro  
Member of Congress



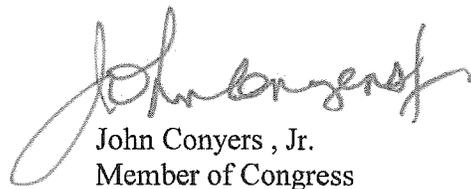
Michael H. Michaud  
Member of Congress



Jim McDermott  
Member of Congress



Louise Slaughter  
Member of Congress

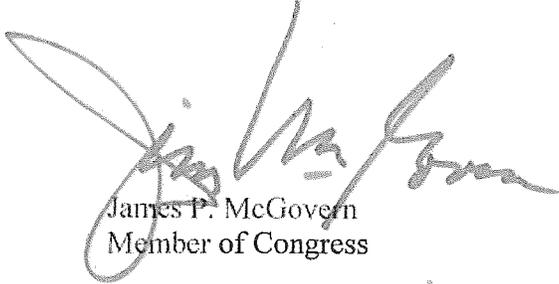


John Conyers, Jr.  
Member of Congress

The Honorable Michael Froman

March 14, 2014

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James P. McGovern  
Member of Congress



Keith Ellison  
Member of Congress



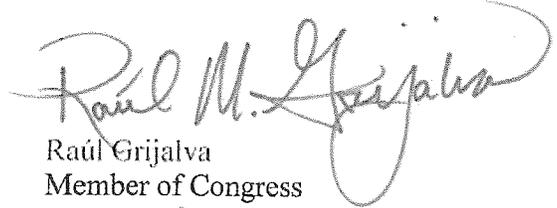
Henry C. Johnson, Jr.  
Member of Congress



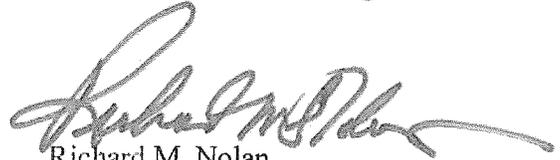
Mark Pocan  
Member of Congress



Donna Edwards  
Member of Congress



Raúl Grijalva  
Member of Congress



Richard M. Nolan  
Member of Congress



Steve Cohen  
Member of Congress

**USTR Newsletter; March 14, 2014**

**March 4** - United States Trade Representative Michael Froman issued the following statement regarding President Obama's 2014 Trade Policy Agenda that was delivered to Congress. USTR is the lead agency responsible for the development and implementation of the President's Trade Policy Agenda. USTR also sends the Annual Report on trade developments over the past year, including in the World Trade Organization.

**"President Obama's trade strategy for 2014 is driven by a commitment to create jobs, promote growth, and strengthen the middle class through the creation of new export opportunities for American farmers, workers, and businesses,"** said Ambassador Froman. **"In the coming year, USTR will continue to execute the President's trade vision that relies on opening markets, leveling the playing field for American workers and producers, and fully enforcing our trade rights around the world."**

Complete Text of USTR 2014 Trade Policy Agenda and 2013 Annual Report:

<http://www.ustr.gov/sites/default/files/2014%20Trade%20Policy%20Agenda%20and%202013%20Annual%20Report.pdf>

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

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

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

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

We also invite members of the public to submit comments on the negotiations in an email to [comment@ustr.eop.gov](mailto:comment@ustr.eop.gov).

## TRADE IN GOODS

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

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

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

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

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

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

For more information on industrial and manufacturing trade, visit [www.ustr.gov/trade-topics/industry-manufacturing](http://www.ustr.gov/trade-topics/industry-manufacturing). For more information on agricultural trade, visit [www.ustr.gov/trade-topics/agriculture](http://www.ustr.gov/trade-topics/agriculture).

## **TEXTILES AND APPAREL**

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

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

For more information on textiles and apparel trade, visit [www.ustr.gov/trade-topics/textiles-apparel](http://www.ustr.gov/trade-topics/textiles-apparel).

## NON-TARIFF BARRIERS AND REGULATORY ISSUES

- We seek to eliminate or reduce non-tariff barriers that decrease opportunities for U.S. exports, provide a competitive advantage to products of the EU, or otherwise distort trade, such as unwarranted sanitary and phytosanitary (SPS) restrictions that are not based on science, unjustified technical barriers to trade (TBT), and other “behind-the-border” barriers, including the restrictive administration of tariff-rate quotas and permit and licensing barriers, which impose unnecessary costs and limit competitive opportunities for U.S. exports.
- While maintaining the level of health, safety and environmental protection our people have come to expect, we seek greater compatibility of U.S. and EU regulations and related standards development processes, with the objective of reducing costs associated with unnecessary regulatory differences and facilitating trade, *inter alia* by promoting transparency in the development and implementation of regulations and good regulatory practices, establishing mechanisms for future progress, and pursuing regulatory cooperation initiatives where appropriate;
- We seek to build on key principles and disciplines of the WTO Agreement on Technical Barriers to Trade (TBT) through strong cross-cutting disciplines and, as appropriate, through sectoral approaches, to achieve meaningful market access, and establish ongoing mechanisms for improved dialogue and cooperation on TBT issues;
- We seek to build on key principles and disciplines of the World Trade Organization (WTO) Agreement on the Application of Sanitary and Phytosanitary Measures (SPS) to achieve meaningful market access, including commitments to base SPS measures on science and international standards or scientific risk assessments, apply them only to the extent necessary to protect human, animal, or plant life or health, and develop such measures in a transparent manner, without undue delay; and to establish an on-going mechanism for improved dialogue and cooperation addressing bilateral SPS issues.

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

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

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

For more information on TBT, visit [www.ustr.gov/trade-agreements/wto-multilateral-affairs/wto-issues/technical-barriers-trade](http://www.ustr.gov/trade-agreements/wto-multilateral-affairs/wto-issues/technical-barriers-trade).

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

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

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

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

## RULES OF ORIGIN

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

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

For more information on rules of origin, visit [www.ustr.gov/trade-agreements/wto-multilateral-affairs/wto-issues/customs-issues/rules-origin](http://www.ustr.gov/trade-agreements/wto-multilateral-affairs/wto-issues/customs-issues/rules-origin).

## TRADE IN SERVICES

- **We seek to obtain improved market access in the EU on a comprehensive basis, and address the operation of any designated monopolies and state-owned enterprises, as appropriate; and**
- **We seek to reinforce transparency, impartiality, and due process with regard to authorizations to supply services, obtain additional disciplines in certain services sectors, and improve regulatory cooperation where appropriate.**

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

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

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

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

## **ELECTRONIC COMMERCE AND INFORMATION AND COMMUNICATION TECHNOLOGY (ICT) SERVICES**

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

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

For more information on e-commerce and ICT, visit [www.ustr.gov/trade-topics/services-investment/telecom-e-commerce](http://www.ustr.gov/trade-topics/services-investment/telecom-e-commerce).

## **INVESTMENT**

- **We seek to secure for U.S. investors in the EU important rights comparable to those that would be available under U.S. legal principles and practice, while ensuring that EU investors in the United States are not accorded greater substantive rights with respect to investment protections than U.S. investors in the United States;**
- **We seek to ensure that U.S. investors receive treatment as favorable as that accorded to EU investors or other foreign investors in the EU, and seek to reduce or eliminate artificial or trade-distorting barriers to the establishment and operation of U.S. investment in the EU;**
- **We seek to provide and maintain meaningful procedures for resolving disputes between U.S. investors and the EU and its Member States that are in keeping with the goals of expeditious, fair and transparent dispute resolution and the objective of ensuring that governments maintain the discretion to regulate in the public interest.**

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

For more information on investment, visit [www.ustr.gov/trade-topics/services-investment/investment](http://www.ustr.gov/trade-topics/services-investment/investment).

## **CUSTOMS AND TRADE FACILITATION**

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

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

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

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

For more information on customs and trade facilitation, visit [www.ustr.gov/trade-agreements/wto-multilateral-affairs/wto-doha-negotiations/trade-facilitation](http://www.ustr.gov/trade-agreements/wto-multilateral-affairs/wto-doha-negotiations/trade-facilitation).

## GOVERNMENT PROCUREMENT

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

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

For more information on government procurement, visit [www.ustr.gov/trade-topics/government-procurement](http://www.ustr.gov/trade-topics/government-procurement).

## LABOR

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

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

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

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

For more information on trade and labor, visit [www.ustr.gov/trade-topics/labor](http://www.ustr.gov/trade-topics/labor).

## ENVIRONMENT

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

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

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

For more information on trade and the environment, visit [www.ustr.gov/trade-topics/environment](http://www.ustr.gov/trade-topics/environment).

## INTELLECTUAL PROPERTY RIGHTS

- **We seek to obtain, consistent with U.S. priorities and objectives, appropriate commitments that reflect the shared U.S.-EU objective of high-level IPR protection and enforcement, and to sustain and enhance joint leadership on IPR issues;**
- **We seek new opportunities to advance and defend the interests of U.S. creators, innovators, businesses, farmers, and workers with respect to strong protection and**

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

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

For more information on intellectual property rights, visit [www.ustr.gov/trade-topics/intellectual-property](http://www.ustr.gov/trade-topics/intellectual-property).

#### **STATE-OWNED ENTERPRISES**

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

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

#### **SMALL-AND MEDIUM-SIZED ENTERPRISES (SMES):**

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

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

For more information on SMEs, visit [www.ustr.gov/trade-topics/small-business](http://www.ustr.gov/trade-topics/small-business).

## TRANSPARENCY, ANTICORRUPTION AND COMPETITION

- **We seek to obtain improved transparency in the administration of EU and Member State trade and investment regimes, and rules that ensure trade- and investment-related measures are adopted and applied in an open and transparent manner that provides meaningful opportunities for public comment, notice, and review;**
- **We seek to obtain appropriate commitments on anticorruption;**
- **We seek to address matters of mutual interest regarding competition policy and process and to further improve cooperation on competition policy.**

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

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

## DISPUTE SETTLEMENT

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

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

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

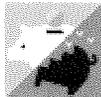
For more information on dispute settlement, visit [www.ustr.gov/trade-agreements/wto-multilateral-affairs/wto-issues/dispute-settlement](http://www.ustr.gov/trade-agreements/wto-multilateral-affairs/wto-issues/dispute-settlement).

New York Times

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## On the Wrong Side of Globalization

By **JOSEPH E. STIGLITZ**



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The Great Divide is a series about inequality.

Trade agreements are a subject that can cause the eyes to glaze over, but we should all be paying attention. Right now, there are trade proposals in the works that threaten to put most Americans on the wrong side of globalization.

The conflicting views about the agreements are actually tearing at the fabric of the Democratic Party, though you wouldn't know it from President Obama's rhetoric. In his State of the Union address, for example, he blandly referred to "new trade partnerships" that would "create more jobs." Most immediately at issue is the Trans-Pacific Partnership, or TPP, which would bring together 12 countries along the Pacific Rim in what would be the largest free trade area in the world.

Negotiations for the TPP began in 2010, for the purpose, according to the United States Trade Representative, of increasing trade and investment, through lowering tariffs and other trade barriers among participating countries. But the TPP negotiations have been taking place in secret, forcing us to rely on leaked drafts to guess at the proposed provisions. At the same time, Congress introduced a bill this year that would grant the White House filibuster-proof fast-track authority, under which Congress simply approves or rejects whatever trade agreement is put before it, without revisions or amendments.

Controversy has erupted, and justifiably so. Based on the leaks — and the history of arrangements in past trade pacts — it is easy to infer the shape of the whole TPP, and it doesn't look good. There is a real risk that it will benefit the wealthiest sliver of the American and global elite at the expense of everyone else. The fact that such a plan is under consideration at all is testament to how deeply inequality reverberates through our economic policies.

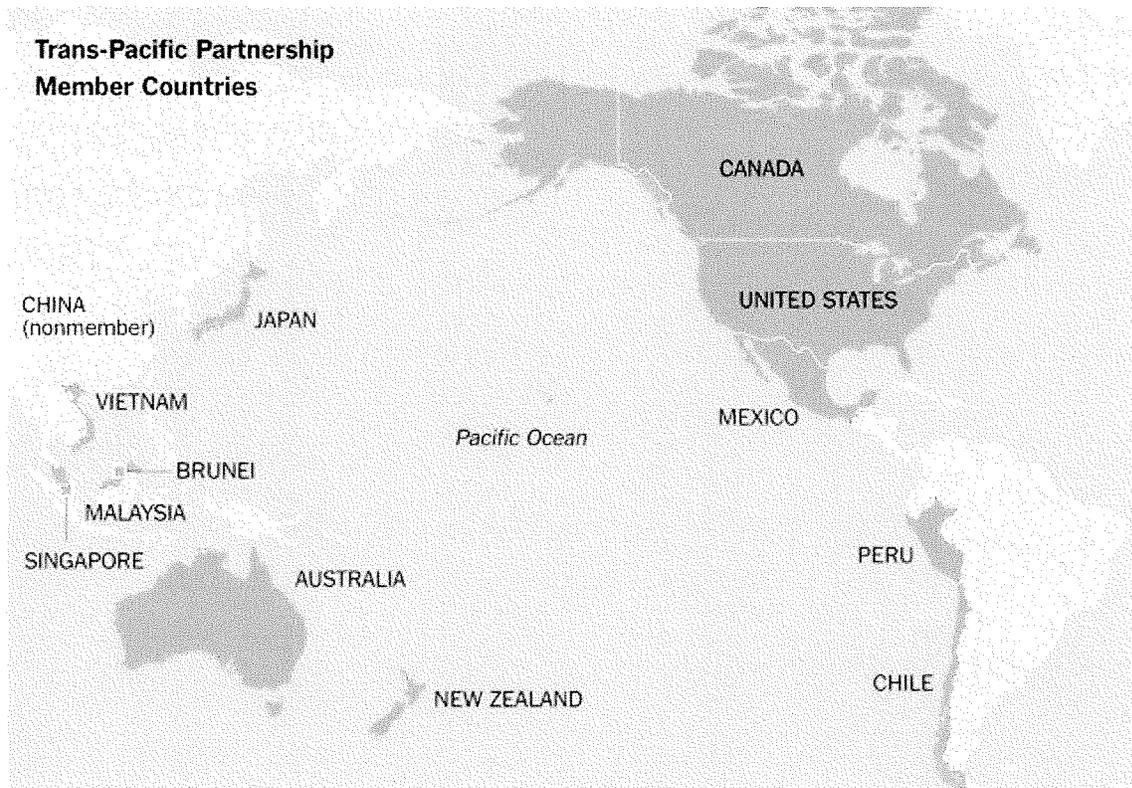
Worse, agreements like the TPP are only one aspect of a larger problem: our gross mismanagement of globalization.

Let's tackle the history first. In general, trade deals today are markedly different from those made in the decades following World War II, when negotiations focused on lowering tariffs. As tariffs came down on all sides, trade expanded, and each country

could develop the sectors in which it had strengths and as a result, standards of living would rise. Some jobs would be lost, but new jobs would be created.

Today, the purpose of trade agreements is different. Tariffs around the world are already low. The focus has shifted to “nontariff barriers,” and the most important of these — for the corporate interests pushing agreements — are regulations. Huge multinational corporations complain that inconsistent regulations make business costly. But most of the regulations, even if they are imperfect, are there for a reason: to protect workers, consumers, the economy and the environment.

What’s more, those regulations were often put in place by governments responding to the democratic demands of their citizens. Trade agreements’ new boosters euphemistically claim that they are simply after regulatory harmonization, a clean-sounding phrase that implies an innocent plan to promote efficiency. One could, of course, get regulatory harmonization by strengthening regulations to the highest standards everywhere. But when corporations call for harmonization, what they really mean is a race to the bottom.



When agreements like the TPP govern international trade — when every country has agreed to similarly minimal regulations — multinational corporations can return to the practices that were common before the Clean Air and Clean Water Acts became law (in 1970 and 1972, respectively) and before the latest financial crisis hit. Corporations everywhere may well agree that getting rid of regulations would be good for corporate profits. Trade negotiators might be persuaded that these trade agreements would be

good for trade and corporate profits. But there would be some big losers — namely, the rest of us.

These high stakes are why it is especially risky to let trade negotiations proceed in secret. All over the world, trade ministries are captured by corporate and financial interests. And when negotiations are secret, there is no way that the democratic process can exert the checks and balances required to put limits on the negative effects of these agreements.

The secrecy might be enough to cause significant controversy for the TPP. What we know of its particulars only makes it more unpalatable. One of the worst is that it allows corporations to seek restitution in an international tribunal, not only for unjust expropriation, but also for alleged diminution of their potential profits as a result of regulation. This is not a theoretical problem. Philip Morris has already tried this tactic against Uruguay, claiming that its antismoking regulations, which have won accolades from the World Health Organization, unfairly hurt profits, violating a bilateral trade treaty between Switzerland and Uruguay. In this sense, recent trade agreements are reminiscent of the Opium Wars, in which Western powers successfully demanded that China keep itself open to opium because they saw it as vital in correcting what otherwise would be a large trade imbalance.

Provisions already incorporated in other trade agreements are being used elsewhere to undermine environmental and other regulations. Developing countries pay a high price for signing on to these provisions, but the evidence that they get more investment in return is scant and controversial. And though these countries are the most obvious victims, the same issue could become a problem for the United States, as well. American corporations could conceivably create a subsidiary in some Pacific Rim country, invest in the United States through that subsidiary, and then take action against the United States government — getting rights as a “foreign” company that they would not have had as an American company. Again, this is not just a theoretical possibility: There is already some evidence that companies are choosing how to funnel their money into different countries on the basis of where their legal position in relation to the government is strongest.

There are other noxious provisions. America has been fighting to lower the cost of health care. But the TPP would make the introduction of generic drugs more difficult, and thus raise the price of medicines. In the poorest countries, this is not just about moving money into corporate coffers: thousands would die unnecessarily. Of course, those who do research have to be compensated. That’s why we have a patent system. But the patent system is supposed to carefully balance the benefits of intellectual protection with another worthy goal: making access to knowledge more available. [I’ve written](#) before about how the system has been abused by those seeking patents for the genes that predispose women to breast cancer. The Supreme Court ended up rejecting those patents, but not before many women suffered unnecessarily. Trade agreements provide even [more opportunities](#) for patent abuse.

The worries mount. One way of reading the leaked negotiation documents suggests that the TPP would make it easier for American banks to sell risky derivatives around the world, perhaps setting us up for the same kind of crisis that led to the Great Recession.

In spite of all this, there are those who passionately support the TPP and agreements like it, including many economists. What makes this support possible is bogus, debunked economic theory, which has remained in circulation mostly because it serves the interests of the wealthiest.

Free trade was a central tenet of economics in the discipline's early years. Yes, there are winners and losers, the theory went, but the winners can always compensate the losers, so that free trade (or even freer trade) is a win-win. This conclusion, unfortunately, is based on numerous assumptions, many of which are simply wrong.

The older theories, for instance, simply ignored risk, and assumed that workers could move seamlessly between jobs. It was assumed that the economy was at full employment, so that workers displaced by globalization would quickly move from low-productivity sectors (which had thrived simply because foreign competition was kept at bay through tariffs and other trade restrictions) to high-productivity sectors. But when there is a high level of unemployment, and especially when a large percentage of the unemployed have been out of work long-term (as is the case now), there can't be such complacency.

Today, there are 20 million Americans who would like a full-time job but can't get one. Millions have stopped looking. So there is a real risk that individuals moved from low productivity-employment in a protected sector will end up zero-productivity members of the vast ranks of the unemployed. This hurts even those who keep their jobs, as higher unemployment puts downward pressure on wages.

We can argue over why our economy isn't performing the way it's supposed to — whether it's because of a lack of aggregate demand, or because our banks, more interested in speculation and market manipulation than lending, are not providing adequate funds to small and medium-size enterprises. But whatever the reasons, the reality is that these trade agreements do risk increasing unemployment.

One of the reasons that we are in such bad shape is that we have mismanaged globalization. Our economic policies encourage the outsourcing of jobs: Goods produced abroad with cheap labor can be cheaply brought back into the United States. So American workers understand that they have to compete with those abroad, and their bargaining power is weakened. This is one of the reasons that the real median income of full-time male workers is lower than it was 40 years ago.

American politics today compounds these problems. Even in the best of circumstances, the old free trade theory said only that the winners could compensate the losers, not that they would. And they haven't — quite the opposite. Advocates of trade agreements often say that for America to be competitive, not only will wages have to be cut, but so will taxes and expenditures, especially on programs that are of benefit to ordinary citizens. We should accept the short-term pain, they say, because in the long run, all will benefit.

But as John Maynard Keynes famously said in another context, “in the long run we are all dead.” In this case, there is little evidence that the trade agreements will lead to faster or more profound growth.

Critics of the TPP are so numerous because both the process and the theory that undergird it are bankrupt. Opposition has blossomed not just in the United States, but also in Asia, where the talks have stalled.

By leading a full-on rejection of fast-track authority for the TPP, the Senate majority leader, Harry Reid, seems to have given us all a little respite. Those who see trade agreements as enriching corporations at the expense of the 99 percent seem to have won this skirmish. But there is a broader war to ensure that trade policy — and globalization more generally — is designed so as to increase the standards of living of most Americans. The outcome of that war remains uncertain.

In this series, I have repeatedly made two points: The first is that the high level of inequality in the United States today, and its enormous increase during the past 30 years, is the cumulative result of an array of policies, programs and laws. Given that the president himself has emphasized that inequality should be the country’s top priority, every new policy, program or law should be examined from the perspective of its impact on inequality. Agreements like the TPP have contributed in important ways to this inequality. Corporations may profit, and it is even possible, though far from assured, that gross domestic product as conventionally measured will increase. But the well-being of ordinary citizens is likely to take a hit.

And this brings me to the second point that I have repeatedly emphasized: Trickle-down economics is a myth. Enriching corporations — as the TPP would — will not necessarily help those in the middle, let alone those at the bottom.

HTTP://WWW.MAINEBIZ.BIZ/ARTICLE/20140318/NEWS0101/140319960/1092?UTM\_SOURCE=ENEWS&UTM\_MEDIUM=DAILY%2BREPORT&UTM\_CAMPAIGN=TUESDAY

MARCH 18, 2014

### **Trade judge recommends \$675K fine for DeLorme**

A federal trade judge has recommended that the Yarmouth-based mapping and GPS company DeLorme pay a \$675,000 civil penalty for practices that she ruled induce infringement on the satellite-tracking patent of a Virginia company.

The legal news service Law 360 reported Administrative Law Judge Dee Lord, of the International Trade Commission, ruled that DeLorme InReach LLC and parent DeLorme Publishing Co. Inc. induced infringement by selling InReach 1.5 units containing imported technology that violated a patent held by BriarTek IP Inc.

Lord's ruling concluded DeLorme did not sell products that directly infringed on BriarTek's patent and did not induce infringement through its InReach SE product.

Peter Brann, DeLorme's attorney, told the news service the company plans to file an objection to the ruling, arguing both the induced infringement ruling and the amount of the civil penalty.

John Fuisz, BriarTek's attorney, said his client was pleased with the ruling but questioned why DeLorme's InReach SE product was not included as a violation.

The full determination in the case remains under seal, pending redaction requests from both parties.

<http://us5.campaign-archive1.com/?u=a6208b84fc02ac1ffef5a7b9e&id=c6f36c5144&e=b9dc15b5dc>

**FOR IMMEDIATE RELEASE**  
**New Study Debunks Mining Company**  
**“Falsehoods” Regarding El Salvador**

March 18, 2014

(Ottawa/Sydney/Washington) The President-elect of El Salvador, Salvador Sánchez Ceren, has publicly committed to prohibit new mining during his administration, just as his predecessors have done since 2008. OceanaGold should respect the democratic process in El Salvador, abandon its acquisition of Vancouver-based Pacific Rim Mining, and drop its lawsuit against the government of El Salvador for not having permitted a mine, according to international civil society organizations. A new study debunks eight falsehoods the company has used to try to justify mining in El Salvador and undermine public debate and policymaking.

Canadian-Australian firm OceanaGold acquired Pacific Rim Mining in November 2013. Up against stiff local and national opposition in El Salvador, Pacific Rim has been trying to get at gold deposits in northern El Salvador for about a decade.

In 2009, Pacific Rim launched what is now a \$301 million lawsuit against El Salvador in a World Bank arbitration tribunal, arguing that the government must grant the company the permit to begin its El Dorado gold project. OceanaGold, having bailed out Pacific Rim from near bankruptcy in November 2013, aims either to strike a deal with the Salvadoran government or to continue fighting the suit.

But OceanaGold is making a shaky bet. The facts are:

1. Pacific Rim did not meet the regulatory requirements necessary to obtain a mining permit in El Salvador, relying instead on political lobbying.

2. Pacific Rim never undertook adequate studies to understand, much less mitigate, potential adverse impacts from the El Dorado project, especially on water supplies.
3. There is broad opposition to mining in El Salvador that extends to the highest echelons of the Catholic Church.
4. Pacific Rim's activities in Cabañas have generated conflict, aggravated divisions, and raised the stakes around current and potential economic benefits from mining. This can only have contributed to threats and violence, which have yet to be fully investigated.
5. Pacific Rim's willingness to opt for political lobbying and local patronage, rather than meet regulatory requirements and respect communities, could have fueled corruption.
6. Any profits from the El Dorado project would mainly be returned to the company and its shareholders.
7. The company is using investor-state arbitration rules to subvert a democratic, nationwide debate over mining in El Salvador, a matter that should not be decided by a World Bank tribunal.
8. OceanaGold operates an open-pit gold-copper project in the Philippines that illustrates the costs of mining that Salvadorans do not want to bear.

These facts respond to eight “falsehoods” from Pacific Rim/OceanaGold that have been carefully debunked in a new report published by the Blue Planet Project, the Council of Canadians, the Institute for Policy Studies, MiningWatch Canada and Oxfam International: **Debunking Eight Falsehoods by Pacific Rim Mining/OceanaGold in El Salvador**, [available online here](#).

# The Obama Administration's Trade Agenda Is Crumbling

By [Daniel R. Pearson](#)

March 19, 2014

## Introduction

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

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

## Is the President Sufficiently Committed?

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

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

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

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

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

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

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

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

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

### **Cart before the Horse**

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

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

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

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

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

### **The Way Forward for Supporters of Trade Liberalization**

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

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

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

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

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

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

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

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

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

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

### Conclusion

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

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

### Notes

<sup>1</sup> Dylan Matthews, "How Obama's Tire Tariffs Have Hurt Consumers," *Washington Post*, October 23, 2012, <http://www.washingtonpost.com/blogs/wonkblog/wp/2012/10/23/how-obamas-tire-tariffs-have-hurt-consumers//?print=1>.

<sup>2</sup> Robert J. Bowman, "Is the President's National Export Initiative a Dud?" *SupplyChainBrain*, July 1, 2013, <http://www.supplychainbrain.com/content/blogs/think-tank/blog/article/is-the-presidents-national-export-initiative-a-dud/>.

<sup>3</sup> Inside U.S. Trade, "Civil Society, Labor Groups Churn Out Petitions, Letters Against Fast Track," February 21, 2014, [www.insidettrade.com](http://www.insidettrade.com).

<sup>4</sup> *Ibid.*

<sup>5</sup> Ryan Grim and Zach Carter, "The Veal Pen Is Becoming a Dangerous Place," *Huffington Post*, February 20, 2014.

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*

<sup>9</sup> Carolyn C. Smith, "Trade Promotion Authority and Fast-Track Negotiating Authority for Trade Agreements: Major Votes," Congressional Research Service, January 12, 2011.

<http://www.businessweek.com/articles/2014-03-20/in-trade-talks-its-countries-vs-dot-companies>

Politics & Policy

## In Trade Talks, It's Countries vs. Companies

By [Peter Coy](#), [Brian Parkin](#), and [Andrew Martin](#) March 20, 2014

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Beginning in the 1950s, trade negotiators evolved an elegant solution to a vexing problem: the risk that poor countries would seize the oil fields, mines, and factories of Western corporations that operated within their borders. Fearful of nationalization or other harsh treatment, multinationals were holding back on investment. Everyone lost.

The answer was to include language in treaties specifying that disputes between investors and governments would be settled by independent arbitrators, not courts in the country where a disagreement arose. That gave corporations confidence that their projects were safe and helped unleash trillions of dollars' worth of cross-border investment. Today there are about 3,000 treaties between countries that provide for such arbitration.

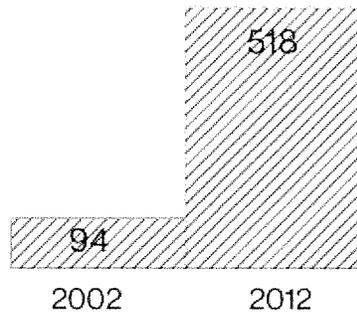
Yet that fix is now the subject of a bitter disagreement between corporations and governments that's impeding progress on two of the biggest free-trade treaties ever, both involving the U.S.: the Trans-Pacific Partnership (TPP) and the Transatlantic Trade and Investment Partnership (TTIP).

[Story: Farewell to the Age of Free Trade](#)

The problem is that to many people, arbitration looks profoundly undemocratic. Countries that sign the treaties give away a lot: The arbitration panels are unelected tribunals of three experts (usually lawyers, one chosen by each side and one picked by mutual consent or a third party) that are empowered to overrule a nation's highest authorities. The panels have come under attack from environmental groups, labor unions, and developing nations including Venezuela, Ecuador, and South Africa.

## Rising Complaints

Cumulative investor-state arbitration cases worldwide



Data: United Nations Conference on Trade and Development

Opponents point to several disputes currently in arbitration where corporations are invoking treaties for protection from local laws. Philip Morris International (PM) has brought a case in Hong Kong challenging Australia's plain-packaging law for cigarettes. The tobacco company says the law prevents it from marketing its brand, in violation of a treaty between Australia and Hong Kong. Sweden's Vattenfall, which operates nuclear plants in Germany, is seeking compensation for the country's planned phaseout of electricity generation from nuclear power, which it says breaks the countries' bilateral investment treaty. Lone Pine Resources, a U.S. company that has licenses to produce natural gas from beneath the St. Lawrence River in Quebec, wants to be compensated by Canada for a moratorium on fracking in the province.

Lori Wallach, director of Global Trade Watch, a Ralph Nader organization, has called the arbitration system "a quiet, slow-moving coup d'état." Democratic Senator Sherrod Brown of Ohio, a prominent arbitration critic, said in an e-mail that the "mere threat of costly litigation" can have a chilling effect on legitimate regulation, such as on tobacco.

[Video: The Benefits of a Transatlantic Free Trade Pact](#)

To see how arbitration can squeeze a country, consider the case of a lead and zinc smelting operation in South America called Doe Run Perú. The Peruvian government demanded a costly waste cleanup. U.S. billionaire Ira Rennert, who owned Doe Run Perú for more than a decade through Renco Group, said the government's escalating cleanup demands forced the unit into bankruptcy in violation of the U.S.-Peru trade promotion agreement of 2006. Renco asked a panel of arbitrators to force Peru to pay it \$800 million. It also said the country, which once owned the operation, should be liable for any damages arising from a pending lawsuit in federal court in St. Louis alleging that it sickened more than 700 Peruvian children. The case is ongoing.

The voices of opposition are becoming harder to ignore. In January, in response to criticism of the arbitration clauses now standard in nearly every agreement, the European Commission announced a halt to negotiations with the U.S. on the arbitration provisions of TTIP, the ambitious effort to open more trade and investment between the U.S. and the European Union.

The commission reaffirmed it was committed to including arbitration in the treaty, but said it wanted a 90-day break for “public consultation” to hear people’s views. A high-profile campaign by opponents could complicate talks long after the listening period ends.

For the U.S. government and other backers of arbitration, a bigger blow came in mid-March when the German government—which has been a staunch supporter of investor-state dispute settlements—said it decided to push for excluding it from TTIP. “Special investment protection rules are not necessary in an accord between the USA and EU,” the German economy ministry said in a statement. It said the rules were unnecessary because “both partners have adequate legal protection” for foreign investors in their courts. The Germans said they’d OK a treaty if the final text addresses their concerns on arbitration.

26 MARCH 2014

## Concerns about TTIP not just in Europe: interview with US State Legislator, Sharon Treat

Access to affordable medicines, protection of high labour and environmental standards are all at risk under TTIP says Sharon Treat, which she believes is a deal for international corporations that simply don't want to play by the rules.

SIMON MCKEAGNEY, EDITOR

Sharon Treat is a Member of the House of Representatives for the US State of Maine. She has warned against wholehearted support for the bilateral trade agreements that the US is currently negotiating; one with the EU, the Transatlantic Trade and Investment Partnership (TTIP), and another with 11 nations in the Pacific region, the Trans-Pacific Partnership (TPP). Both trade deals pose significant risks for US states and their ability to legislate in the interest of the public good.

In Europe, impressions are forming which suggest that TTIP is solely an attack on EU regulations by the US. This is not true - corporate interests on both sides of the Atlantic are calling for the removal of regulations. In fact, many people in the US are as worried about the implications of TTIP as Europeans. Here we speak to Sharon about some of the concerns that US citizens and state representatives have.

### **1) Obama visits Brussels today and TTIP will most likely be high on the agenda. What, in your opinion should the a US- EU trade deal strive to do?**

We have many smaller manufacturers of specialty products such as high-tech fabrics and fancy jams made from Maine blueberries and other local products. I'd love to see an agreement that helps these smaller manufacturers reach EU markets, just as I'd love to see EU products from similar small manufacturers for sale in my local stores. Selling products abroad can be complicated and we should develop mechanisms to assist smaller entities so that they can compete. What I don't want to see is an agreement that overturns valid public health and safety and environmental rules that are considered "non-tariff barriers" by big international corporations that already do lots of business back and forth across the Atlantic with little difficulty.

### **2) Proponents suggest that this will be a key opportunity to set a global standard for international trade. Do you see this happening with TTIP?**

The USTR frequently asserts that TTIP (and the similar TPP agreement) will set a "high standard" and be a "21st Century agreement." What does this mean? The average person on the street might think it means that such a trade agreement would protect high labor and environmental standards and promote the affordability of medicines. They would be wrong. In international trade-speak, "high standard" means aiming for the most restrictive patent rules that delay access to affordable generic medicines and getting rid of rules and regulations that big businesses would rather not comply with like requiring GMO labeling and regulating endocrine disruptors in consumer products.

**3) It is the 20th anniversary of the North America Free Trade Agreement (NAFTA) this year. We heard a lot about the future benefits when it was being negotiated in the early 90s. Have these benefits come to fruition?**

Not where I live, which has seen wave after wave of plant closures. And the national data backs up my on-the-ground experience.

**4) As a state legislator, you have mentioned in the past your concerns that TTIP could have an impact on a variety of health-related issues, from smoking prevention measures, to access to generic medicines. Can you explain why TTIP could impact the health sector?**

Philip Morris at this the is very moment is suing Australia pursuant to an obscure trade agreement with Hong Kong over its tobacco plain packaging rules, rules that have already been upheld as constitutional by Australia's highest court, in part on grounds that the company's intellectual property – its trademark – has been expropriated.

In the province of Quebec, Canada, the company Lone Pine is using NAFTA to challenge a recent law establishing a moratorium on fracking underneath the St. Lawrence Seaway until that government can review the environmental issues and develop appropriate protections. Lone Pine asserts its "property" has been expropriated and that the Quebec Parliament didn't follow fair processes in passing the law – even though the company doesn't even have a permit to frack under the St. Lawrence.

As envisioned by industry supporters and trade negotiators on both sides of the Atlantic, TTIP will include these same investor provisions that allow governments to be sued for millions of dollars by international corporations that simply don't want to play by the rules. With respect to generic medicines, the intellectual property provisions that are being sought in the TPP and most likely will be pursued for TTIP will extend patents – monopoly pricing – on drugs and newer biologic medicines and delay access to less expensive generic versions. There are also proposals that are intended to restrict government actions that reduce or cap pharmaceutical prices in government health programs.

**5) One of the EU's key 'offensive interests' in TTIP is to remove what they call 'discriminatory laws' that hinder European companies from bidding for procurement offers in US states. These laws are known under TTIP as "localisation barriers to trade". Why are these laws important for US states, and should they be a removed in TTIP?**

In our state of Maine, which is a rather low-income state with limited economic opportunity (especially now that our textile and shoe factories have almost all moved offshore following NAFTA and other trade agreements), a bright spot is local food initiatives. Our land use and procurement policies are encouraging young people to take up farming, and developing new markets for farmers to sell their produce to schools, hospitals, and other institutions. We have enacted a GMO labeling law similar to that in effect in EU countries, and policies that encourage organic and niche farming. We have also enacted procurement laws – in effect for over a decade – which do not permit the purchase by our state government of products made pursuant to unfair labor practices, or where discrimination is permitted.

We have decided as a society here in Maine, that we do not want our taxpayer dollars spent on products produced under bad working conditions. Recent trade agreements entered into by the U.S. government have given sub-central governments in the U.S. the option of being bound by some or all of the procurement chapters in those agreements. We would support that approach, which would allow us to continue to support our local farm-to-table food initiatives (which are also improving the health of our residents!) while extending TTIP procurement to those products that meet our procurement standards.

**6) Other issues, such as climate change have been mentioned as possible losers under a EU - US trade deal. Could you highlight one or two of your other concerns?**

Fossil fuel subsidies are embedded in the policies of countries on both sides of the Atlantic, and while trade agreements such as the WTO have been used to successfully challenge renewable, low-carbon policies like Ontario, Canada's feed-in tariff law, these same provisions are not used to limit fossil fuel subsidies. If this issue is not addressed in TTIP, it is expected that the agreement will lead to significantly increased carbon emissions. Our policies addressing climate change are likely to be undermined by TTIP (and other trade agreements) unless we take action to address these backwards incentives and promote positive climate policies instead.

## U.S. Trade Deficits Have Grown More Than 440% with FTA Countries, but Declined 16% with Non-FTA Countries

The aggregate U.S. goods trade deficit with Free Trade Agreement (FTA) partners is more than five times as high as before the deals went into effect, while the aggregate deficit with non-FTA countries has actually fallen. The key differences are soaring imports into the United States from FTA partners and lower growth in U.S. exports to those nations than to non-FTA nations. Incredibly, the U.S. Chamber of Commerce website states, “For those worried about the U.S. trade deficit, trade agreements are clearly the solution - not the problem.” Their pitch ignores the import surges contributing to growing deficits and job loss, while their export “data” is inflated, using tricks described below.

The aggregate U.S. trade deficit with FTA partners has *increased* by more than \$147 billion (inflation-adjusted) since the FTAs were implemented. In contrast, the aggregate deficit with all non-FTA countries has *decreased* by more than \$130 billion since 2006 (the median entry date of existing FTAs). Two reasons: a sharp increase in imports from FTA partners and significantly lower export growth to FTA partners than to non-FTA nations over the last decade. Using the Obama administration’s net exports-to-jobs ratio, the FTA trade deficit surge implies the loss of about 800,000 U.S. jobs. Trade with Canada and Mexico (our first and third largest trade partners, respectively) contributed the most to the widening FTA deficit. Under the North American Free Trade Agreement (NAFTA), the U.S. deficit with Canada ballooned and the small U.S. surplus with Mexico turned into a nearly \$100 billion deficit. The trend persists under new FTAs - two years into the Korea FTA, the U.S. trade deficit with Korea has jumped more than 51 percent. Reducing the massive trade deficit requires a new trade agreement model, not more of the same.

### U.S. Export Growth Falters under FTAs

Growth of U.S. exports to countries that *are not* FTA partners has exceeded U.S. export growth to countries that *are* FTA partners by 30 percent over the last decade. Between 2003 and 2013, U.S. goods exports to FTA partner countries grew by an annual average rate of only 4.9 percent. Goods exports to non-FTA partner countries, by contrast, grew by 6.3 percent per year on average. Since 2006, when the number of FTA partner countries nearly doubled with the implementation of the Central America Free Trade Agreement (CAFTA), the FTA export growth “penalty” has only increased. Since then, average U.S. export growth to non-FTA partner countries has topped average export growth to FTA partners by 47 percent.

## Corporate FTA Boosters Use Errant Methods to Claim Higher Exports under FTAs

Members of Congress will invariably be shown data by defenders of our status quo trade policy that appear to indicate that FTAs have generated an export boom. Indeed, to promote congressional support for new NAFTA-style FTAs, the U.S. Chamber of Commerce and the National Association of Manufacturers (NAM) have funded an entire body of research designed to create the appearance that the existing pacts have both boosted exports and reversed trade deficits with FTA partner countries. This work relies on several methodological tricks that fail basic standards of accuracy:

- **Ignoring imports:** U.S. Chamber of Commerce studies regularly omit mention of soaring imports under FTAs, instead focusing only on exports. But any study claiming to evaluate the net impact of trade deals must deal with both sides of the trade equation. In the same way that exports are associated with job opportunities, imports are associated with lost job opportunities when they outstrip exports, as dramatically seen under FTAs.
- **Counting “re-exports:”** NAM has misleadingly claimed that the United States has a manufacturing surplus with FTA nations by counting as U.S. exports goods that actually are made overseas - not by U.S. workers. NAM’s data include “re-exports” - goods made elsewhere that are shipped through the United States en route to a final destination. Determining FTAs’ impact on U.S. jobs requires counting only U.S.-made exports.
- **Omitting major FTAs:** The U.S. Chamber of Commerce has repeatedly claimed that U.S. export growth is higher to FTA nations than to non-FTA nations by simply omitting FTAs that do not support their claim. One U.S. Chamber of Commerce study omitted all FTAs implemented before 2003 to estimate export growth. This excluded major FTAs like NAFTA that comprised more than 83 percent of all U.S. FTA exports. Given NAFTA’s leading role in the 443 percent aggregate FTA deficit surge, its omission vastly skews the findings.
- **Failing to correct for inflation:** U.S. Chamber of Commerce studies that have claimed high FTA export growth have not adjusted the data for inflation, thus errantly counting price increases as export gains.

- **Comparing apples and oranges:** The U.S. Chamber of Commerce has claimed higher U.S. exports under FTAs by using two completely different methods to calculate the growth of U.S. exports to FTA partners (an unweighted average) versus non-FTA partners (a weighted average). This inconsistency creates the false impression of higher export growth to FTA partners by giving equal weight to FTA countries that are vastly different in importance to U.S. exports (e.g. Canada, where U.S. exports exceed \$251 billion, and Bahrain, where they do not reach \$1 billion), despite accounting for such critical differences for non-FTA countries.

**Chart: U.S. Trade Deficit Rises by \$147 Billion with FTA Partners, Falls by \$131 Billion with Rest of the World**

<b>FTA Partner</b>	<b>Entry Date</b>	<b>Pre-FTA Trade Balance</b>	<b>2013 Balance</b>	<b>Change in Balance Since FTA</b>
Israel*	1985	(\$1.00)	(\$14.80)	(\$13.80)
Canada	1989	(\$23.60)	(\$81.20)	(\$57.60)
Mexico	1994	\$2.50	(\$96.00)	(\$98.50)
Jordan	2001	\$0.30	\$0.80	\$0.50
Chile	2004	(\$1.90)	\$5.80	\$7.70
Singapore	2004	\$0.80	\$9.00	\$8.20
Australia	2005	\$7.30	\$14.50	\$7.20
Bahrain	2006	(\$0.10)	\$0.30	\$0.40
El Salvador	2006	(\$0.20)	\$0.30	\$0.50
Guatemala	2006	(\$0.50)	\$0.90	\$1.40
Honduras	2006	(\$0.70)	\$0.60	\$1.30
Morocco	2006	\$0.10	\$1.30	\$1.20
Nicaragua	2006	(\$0.70)	(\$1.80)	(\$1.10)
Dominican Republic	2007	\$0.60	\$2.50	\$1.90
Costa Rica	2009	\$1.20	(\$5.40)	(\$6.60)
Oman	2009	\$0.60	\$0.40	(\$0.20)
Peru	2009	(\$0.20)	\$0.70	\$0.90
Korea	2012	(\$15.20)	(\$23.00)	(\$7.80)
Colombia	2012	(\$9.90)	(\$4.90)	\$5.00
Panama	2012	\$7.70	\$9.70	\$2.00
<b>FTA TOTAL:</b>		(\$33.20)	(\$180.30)	(\$147.10)
<b>Non-FTA TOTAL:</b>	[2006]	(\$818.20)	(\$687.60)	<b>\$130.60</b>
<b>FTA Deficit INCREASE: 443%</b>				
<b>Non-FTA Deficit DECREASE: 16%</b>				
<i>Source: U.S. International Trade Commission. Units: billions of 2013 dollars. (*Measured since 1989 due to data availability.)</i>				

# **The Facts on Investor-State Dispute Settlement: Safeguarding the Public Interest and Protecting Investors**

03/27/2014 - 9:00am

As the Obama Administration promotes trade and investment agreements, we work closely with Congress, stakeholders, and the public to ensure that our trade agenda advances our economic interests and reflects our values. One of our core values is promoting the rule of law. In our agreements, we want to ensure that the United States and partner countries are able to regulate in the public interest as they see fit.

We also seek to ensure that Americans investing abroad are provided the same kinds of basic legal protections that we provide in the United States to both Americans and foreigners doing business within our borders. One element we use to achieve that goal is investor-state dispute settlement (ISDS). ISDS creates a fair and transparent process, grounded in established legal principles, for resolving individual investment disputes between investors and states.

There are a lot of myths out there suggesting that ISDS somehow limits our ability – or our partners' ability – to regulate in the interest of financial stability, environmental protection, or public health. Some have even suggested that a company could sue a government just on the grounds that the company isn't earning as much profit as it wants.

These assertions are false.

The United States promotes provisions in our trade agreements that protect our right to regulate in the public interest while promoting higher standards in many partner countries in areas ranging from labor and environment to transparency to anti-corruption.

Over the last 50 years, nearly 3,200 trade and investment agreements among 180 countries have included investment provisions, and the vast majority of these agreements have included some form of ISDS. The United States entered its first bilateral investment treaty (BIT) in 1982, and is party to 50 agreements currently in force with ISDS provisions. The United States has been a leader in developing carefully crafted ISDS provisions to protect the ability of governments to regulate, to discourage non-meritorious claims, and to ensure a high level of transparency.

Our approach to ISDS has helped establish higher global standards and strengthen arbitration procedures through clearer legal rules, enhanced safeguards, and transparency throughout the ISDS process. As a country that plays by the rules and respects the rule of law, the United States

has never lost an ISDS case. In our current negotiations, we are working to expand upon this approach to ISDS, in ways spelled out in the Model BIT that the Obama Administration released in 2012 following an extensive period of public comment and consultation.

Here are eight facts you should know about ISDS provisions under U.S. trade agreements. These provisions are different – and stronger – than the provisions in many other investment agreements in which the United States is not a participant. It's important to understand how U.S. agreements differ from other agreements that do not meet the same standards.

**1. Provide basic legal protections for American companies abroad that are based on the same assurances the United States provides at home.**

Investment protections are intended to prevent discrimination, repudiation of contracts, and expropriation of property without due process of law and appropriate compensation. These are the same kinds of protections that are included in U.S. law. But not all governments protect basic rights at the same level as the United States. Investment protections are intended to address that fact. Our agreements provide no new substantive rights for foreign investors. Rather, they provide protections for Americans abroad that are similar to the protections we already provide Americans and foreigners alike who do business in the United States.

**2. Protect the right of governments to regulate in the public interest.**

The United States wouldn't negotiate away its right to regulate in the best interest of its citizens, and we don't ask other countries to do so either. Our investment rules preserve the right to regulate to protect public health and safety, the financial sector, the environment, and any other area where governments seek to regulate. U.S. trade agreements do not require countries to lower their levels of regulation. In fact, in our trade agreements, we require our partners to effectively enforce their environmental and labor laws and to take on new commitments to increase environmental and labor protections.

**3. Do not impinge on the ability of federal, state, and local governments to maintain (or adopt) any measure that they deem necessary.**

Under our investment provisions, no government can be compelled to change its laws or regulations, even in cases where a private party has a legitimate claim that its basic rights are being violated and it is entitled to compensation.

**4. Do not expose state or local governments to new liabilities.**

Under our Constitution and laws, investors frequently exercise their rights in U.S. courts. For example, in recent years, the U.S. government has defended hundreds of cases in U.S. courts under the Constitution's "takings clause," which requires compensation for expropriations. State and local governments have likewise defended many such claims. By contrast, the United States has only been sued 17 times under any U.S. investment agreement and has never once lost a case. In some instances, we have

even received compensation for having had to defend against a case in the first place. In any disputes arising under our trade agreements, the federal government assumes the cost of defending the United States, even if they relate to state and local issues.

**5. Provide no legal basis to challenge laws just because they hurt a company's profits.**

Our investment rules do not in any way guarantee a firm's rights to any profits or to its projected financial outcomes. Rather, they only provide basic rights – like non-discrimination and compensation in the event of an expropriation – that are already consistent with U.S. law. Our investment rules seek to promote standards of fairness, not protect profits.

**6. Include strong safeguards to deter frivolous challenges to legitimate public interest measures.**

The United States has proposed additional safeguards that include stricter definitions than are in most investment agreements of what is required for successful claims, as well as mechanisms for expedited review and dismissal of frivolous claims, payment of attorneys' fees, consolidation of duplicative cases, and transparency. These are some of the strongest safeguards in any of the nearly 3,200 investment agreements around the world.

**7. Ensure fair, unbiased, and transparent legal processes.**

The United States is committed to ensuring the highest levels of transparency in all investor-state proceedings. Investment arbitration hearings under recent U.S. trade and investment agreements, as well as all key documents submitted to investor-state tribunals and tribunal decisions, are public. Recent U.S. trade and investment agreements also give NGOs and other non-parties to a dispute the ability to participate by filing *amicus curiae* or "friend of the court" submissions, similar to non-parties' ability to make filings in U.S. courts.

**8. Ensure independent and impartial arbitration.**

Investor-state arbitration is designed to provide a fair, neutral platform to resolve disputes. The arbitration rules applied by tribunals under our agreements require that each arbitrator be independent and impartial. These rules permit either party in a dispute to request the disqualification of an arbitrator and the appointment of a new arbitrator if necessary to ensure the independence and impartiality of all tribunal members.

The United States has been a leader in developing ISDS provisions that protect the ability of governments to regulate, discourage frivolous claims, and ensure a high level of transparency. Through extensive work with stakeholders, legislators, and the public we will continue to ensure that the United States remains at the forefront of innovative trade policy.