

**Article notes**  
**Citizen Trade Policy Commission**

**Articles from February 2015**

**'“Regulatory cooperation” and the U.S. states: A threat to federalism and democracy, and to public health and the environment’ (Sharon Treat, 2/2/15)**

This testimony was submitted by CTPC member Sharon Treat, representing the National Caucus of Environmental Legislators, to the Round 8 TTIP (Transatlantic Trade and Investment Partnership) negotiations in Brussels, Belgium. Ms. Treat makes the following points in her testimony:

- 35 states, including Maine, have exercised their prerogative to enact legislation which either bans or regulates toxic chemicals ;
- In taking this action, the states have exercised their constitutional rights to enact laws to protect the public health and welfare that go beyond any action taken by the federal government;
- Based on leaks of the current TTIP negotiations, it is clear that stakeholders representing international chemical corporations are attempting to fashion regulatory coherence provisions in the TTIP which would supersede or override the provisions of state laws with the ultimate goal of nullifying any state law that exceeds the level of federal regulation;
- The end result of this scenario could be the creation of trade regulations by unelected officials that supersede domestic state regulations voted upon and created by elected representatives of the people.

**TTIP Fact Sheets; (Trade Europa, 2/10/15)**

Trade Europa, a part of the European Union, has published a lengthy series of fact sheets and position papers regarding the 24 chapters of the TTIP. These documents are intended to reflect the current state of TTIP negotiations and reflect the EU position on each chapter. When read in its electronic form, this document provides links by which each of fact sheets and position papers can be downloaded or viewed. As one example, the fact sheet regarding “Trade in goods and customs duties in TTIP” has been printed out to accompany the original article.

**Tall Tales of the TPP (and TTIP); (FOE, 2/27/15)**

This blog piece authored by Friends of the Earth (FOE) makes a series of points which are highly critical of the TPP (Trans Pacific Partnership) and the TTIP and the manner in which these prospective trade agreements are being promoted. These points include:

- FOE disagrees with the USTR claim that the investment chapters of both agreements are similar to US law, More specifically the inclusion of Investor-State Dispute Settlement

(ISDS) provisions in both agreements is quite dissimilar to US law and sets up a process which undermines the sovereignty of our democratic process;

- This piece suggests that inclusion of ISDS provisions provide greater rights for investors than does the US Constitution;
- FOE also maintains that the 3 person tribunals set up under ISDS are not in the public interest and instead protect corporate privilege; and
- The blog asserts that ISDS provisions upset a current balance between investor protection and public regulation.

### **Articles from March 2015**

#### ***A Compromise to Advance the Trade Agenda: Purge Negotiations of Investor-State Dispute Settlement; (Cato Institute, 3/4/15)***

This article, written by Daniel J. Ikenson of the Cato Institute, advocates for the elimination of ISDS provisions as a means of advancing the prospects of trade agreements currently under negotiation such as the TPP and the TTIP. The author maintains that these trade agreements have been maligned by different interest groups representing labor, environmental protection and an anti-global perspective and that much of the criticism has its roots in opposition to ISDS provisions. The author agrees with the criticisms of ISDS and maintains that the inclusion of these provisions in trade agreements is unnecessary to advancing the goal of free trade. He suggests 8 reasons why ISDS should be dropped from the TPP and the TTIP:

1. ISDS is overkill;
2. ISDS socializes the risk of foreign direct investment;
3. ISDS encourages discretionary outsourcing;
4. By extending special privileges to foreign corporations, ISDS exceeds “national treatment” obligations;
5. ISDS challenges will result in challenges to US laws and regulations;
6. ISDS is prone to exploitation by creative lawyers;
7. ISDS reinforces the myth that trade primarily benefits large corporations; and
8. Dropping ISDS would improve US trade negotiating objectives.

#### ***Exports not the basis of sustainable local food economies; (Bangor Daily News, 3/11/15)***

This Op-Ed column was authored by Representative Craig Hickman and CTPC member Sharon Treat. The authors cite the 2014 CTPC assessment authored by the Institute for Agriculture and Trade Policy and the Maine Farmland Trust which suggested that many significant agricultural laws and regulations in Maine could be superseded by ISDS provisions which are likely to be included in the TPP and the TTIP. The authors maintain that ISDS provisions could be used by foreign investors to sue the State of Maine for laws that undermine their expected profits. The authors also suggest that many “buy local” preferential agricultural programs in Maine could be eliminated by adoption of the TPP and the TTIP.

**Trade deal attack on safe food and sustainable agriculture ; (FOE, 3/12/15)**

This blog piece from FOE suggests that the so-called “Fast Track” legislation currently under consideration by Congress would have a significantly detrimental effect on current local, state and federal laws that seek to ensure safe food and sustainable agriculture. The threat to these laws and regulations lies in the “up or down” vote that Fast Track will permit. Under the Fast Track proposal, Congress would not have the ability to amend certain parts of trade agreements which in this case would threaten these laws and regulations pertaining to agriculture which seek to protect the public health and welfare. In addition, adoption of the pending trade agreements would subject all signatories to the lowest common denominator of regulation which, depending on the country in question, may have the effect of diminishing the existing level of regulation pertaining to the safety of agricultural products.

**TTIP Ag Rapporteur Says Parliamentary Votes For TTIP Deal Are Lagging; (Inside US Trade, 3/13/15)**

This article reports that the Socialists & Democrats (S&D) party, which is the second largest party in the European Parliament, is divided over how the TTIP should treat the following issues:

- Agricultural issues;
- Sanitary and phytosanitary (SPS) rules; and
- Investor-State dispute settlement mechanism (ISDS).

The article states that support from the S&D is crucial for final approval of the TTIP in the European parliament. Many S&D members are strongly opposed to inclusion of an ISPS chapter and instead favor the use of well-developed court systems that already exist in many European countries.

**Australian Official Says Nine TPP Chapters Closed, Others Nearing Conclusion; (Inside US trade, 3/13/15)**

Another article from Inside US Trade reports that Australia’s chief negotiator for the TPP has stated that the TPP is nearing completion. According to this report, 9 chapters have been finalized:

1. Competitiveness and business facilitation;
2. Cooperation and capacity building
3. Cross-border trade in services
4. Customs
5. Development
6. Regulatory coherence
7. Small and medium enterprises
8. Telecommunications
9. Temporary entry

The article also quotes the Australian official as saying that most of the other TPP chapters are nearing the final stages of negotiation.

**Lawmakers Seek Protection For U.S. Footwear Industry; Differ On Details; (Inside US Trade, 3/13/15)**

This article reports that three members of Congress from New England, including US Senator Susan Collins from Maine, have sent a letter to USTR Michael Froman urging that the TPP avoid the elimination or phasing out of tariffs on those products identified as sensitive by US footwear manufacturers. This approach differs somewhat from another letter from members of Congress from Arkansas to USTR Froman which advocates for an approach in the TPP which mirrors the language used in the US-Korea free trade agreement which stipulates a 12 year phase out of tariffs on sensitive footwear.

**New global fund to help countries defend tobacco control; (BBC, 3/18/15)**

The BBC reports that a new global fund in the amount of \$4 million has been established by Bloomberg Philanthropies and Bill and Melinda Gates Foundation to assist developing countries in defending tobacco control measures from challenges made under the provisions of FTAs by cigarette manufacturers. The creators of this fund maintain that tobacco control measures are at risk from the industry's use of FTAs for litigation whereas the manufacturers hold that they are protecting their investments and certain intellectual property rights.

**Five reasons to fret about Obama's trade agenda; (Financial Times, 3/19/15)**

The authors of this opinion piece maintain that after more than 5 years of negotiations, the TPP will remain a tough sell in the US Congress for the following reasons:

1. Congress is looking increasingly messy with continuing partisan disputes.
2. Trade remains a tough sell in the US; actual experience with NAFTA belies claims of job creation from FTAs.
3. The left is strongly opposing President Obama on trade; this includes trade unions and prominent members of the president's own Democratic party.
4. Members of the right, particularly those members of Congress who identify with the Tea Party, are opposed to the President's proposal.
5. Time is running out; Fast Track Authority needs to be approved and the TPP to be ratified before the presidential election year in 2016.

**TPP in Focus: Investment and Investor-State Dispute Settlement –The Need for Reform; US Congress blog, 3/20/15)**

This blog piece, authored by Representative Sander Levin, ranking Democratic member of the House Committee on Ways and Means, advocates for reform of the ISDS mechanism that is contemplated for inclusion in the TPP. Representative Levin maintains that use of ISDS needs to

be reformed in light of its past history of use in FTAs such as the TPP and lists several current proposals that have been suggested to protect the rights of sovereign nations in the TPP:

1. Clarifying the “minimum standard of treatment” obligation;
2. Inclusion of a provision which allows TPP signatories to agree that certain investor claims can be dismissed;
3. Inclusion of a provision that clearly states that investment obligations cannot exceed the substantive rights granted under domestic law; and
4. The right of sovereign governments to limit cross-border transfer of funds to prevent a financial crisis.

**Letters to Members of Congress; (various interest groups, 9/10/14 and 3/23/15)**

20 public interest groups gathered together to write a letter to members of Congress dated 3/23/15. This letter asks Congress to ensure that trade legislation currently under consideration by Congress be amended to accomplish a high level of executive transparency for trade agreements like the TPP. The letter maintains that executive transparency must include public access to trade agreement texts.

Another letter dated 3/23/15 was sent to members of the US Senate and signed by 6 prominent nonprofit organizations. This particular letter urged that Senators reject the President’s Fast Track Authority proposal so as to preserve Congressional authority to meaningfully review and approve the detailed contents of FTAs such as the TPP.

Another letter, dated 9/10/14, was sent to Senator Ron Wyden (D- Oregon) who at the time was Chair of the Senate Finance Committee. This letter was jointly signed by approximately 100 national organizations and also advocated for rejection of the President’s Fast Track Authority proposal and suggested that it be replaced with a “new system for negotiating and implementing trade agreements that provides for more congressional and public accountability” .

**Fast Track attack: Chemical safety and food labels under fire in TPP and TTIP; (FOE Blog, 3/24/15)**

This bog piece, authored by Friends of the Earth, maintains that the President’s Fast Track Authority proposal will pave the way for quick adoption of both the TPP and the TTIP. The blog asserts that the consequence of adoption of these FTAs will result in the undermining of chemical safety and food labeling requirements that currently exist under US law.

**Canadian Newspaper Article Regarding NAFTA Arbitration Panel Decision; (The Globe and Mail, 3/24/15)**

This newspaper article reports that a NAFTA arbitration panel ruled against the Canadian government regarding a claim by a US company that it was denied a fair hearing pertaining to a permit application to expand a quarry in Nova Scotia. The panel’s decision opens the way for the private company to seek \$300 million in damages against the Canadian government.

**Analysis of Leaked Trans-Pacific Partnership Investment Text; (Public Citizen, 3/25/15)**

This publically released memorandum from Public Citizen examines and analyzes the contents of a recently leaked copy of the TPP chapter on Investment. The analysis includes the following conclusions:

- Foreign investors will be granted significantly expanded substantive and procedural rights which go beyond those granted in domestic law;
- ISDS tribunals will be authorized to oversee suits by investors which seek to sue governments for domestic policies which violate investor rights established by the TPP; and
- The use of the ISDS mechanism in the TPP will elevate a significant number of foreign investors to a status equal to that of sovereign governments and allow them to avoid the established judicial process.

**Trans-Pacific Partnership Seen as Door for Foreign Suits Against U.S.; (New York Times, 3/25/15)**

This newspaper article reports on the leaked investment chapter of the TPP discussed in the previous analysis conducted by Public Citizen. The article identifies many of the same potential consequences from the ISDS mechanism that were discussed in the Public Citizen analysis.

**The flaws in the geopolitical case for the TPP; (The Financial Times, 3/25/15)**

This opinion piece suggests that past advocacy for the TPP and other recent FTAs has often been based on an assumption that FTAs provide a strategic geopolitical advantage for signatory nations. The author challenges that assumption by suggesting that many nations have actually seen little geopolitical advantage after signing such an FTA and that the motivation to do so may be more rooted in a “*grudging acceptance*” that signing an FTA may be necessary to retain existing access to the US market. The author characterizes the TPP and other recent FTAs as “*a US model agreement that contains a decreasing proportion of actual free trade and an increasing proportion of intellectual property protection*”.

**How the Leaked TPP ISDS Chapter Threatens Intellectual Property Limitations and Exceptions; (Sean Flynn via InfJustice.org, 3/26/15)**

In this analysis, the author (Sean Flynn), asserts that the recently leaked Investment Chapter of the TPP is best understood as providing a broad definition of “investment” which would allow “*private companies the ability to enforce public international law whenever a local regulation ‘either directly or indirectly’ expropriates any ‘investment’.* (Art. 11.7). The term ‘indirectly’ opens the process to consideration of what in U.S. constitutional law is referred to as a ‘regulatory taking’ -that is a regulation or regulatory action that diminishes the value of property, even if the government does not take ownership of the property. ...The term ‘investment’ is incredibly broad, including every asset that an investor owns or controls, directly or indirectly, that has the

*characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk.”*

**Interview: Green solidarity on the U.S.-Europe trade deal; (FOE, 3/30/15)**

This blog piece from Friends of the Earth consists of an interview with Bill Waren, FOE staff member. During this interview, Mr. Waren made the following points regarding FOE concerns about the TTIP:

- The TTIP regulatory review provisions have little to do with actual trade and are mostly concerned with provisions designed to accomplish deregulation of domestic rules, regulations and laws;
- If existing environmental and public safety laws and regulations are deemed to be interfering with future investor profits under the TTIP, the ISDS mechanism can be used to sue governments for “*potentially billions in financial damages*”;
- With the reduced regulation anticipated in the TTIP, it is likely that the US will increase exports of “dirty energy” (re fossil fuels) to EU nations; and
- A primary concern of the US public is the Fast Track legislation being proposed by President Obama. This legislation will frustrate meaningful public access to both the TPP and TTIP texts thereby resulting in a lack of substantive congressional review and approval.

**Independent Expert calls for an end to secret negotiations of free trade and investment agreements until public consultation and participation is ensured and independent human rights impact assessments are conducted; (Alfred de Zayas, 3/31/15)**

This article represents opinions regarding the current FTA negotiation and approval process authored by Alfred de Zayas, a US citizen who was appointed as the first Independent Expert on the promotion of a democratic and equitable international order by the UN Human Rights Council in 2012. In this opinion piece, Mr. de Zayas makes the following points:

- The secrecy surrounding the current negotiations regarding the TPP, TTIP and TISA (Trade in Services Agreement) have effectively excluded key stakeholder groups from the negotiating process. These groups include labor unions, environmental protection organizations, food safety organizations and health professionals;
- The Fast Track proposal disenfranchises meaningful public participation and review of the potential FTA agreements; and
- By allowing investors to sue governments over domestic regulations that are claimed to interfere with industry profits, the inclusion of the ISDS mechanism in FTAs will have a negative impact on human rights. Potential regulations that are at risk include social legislation, labor laws, minimum wage provisions and environmental and health protection measures.