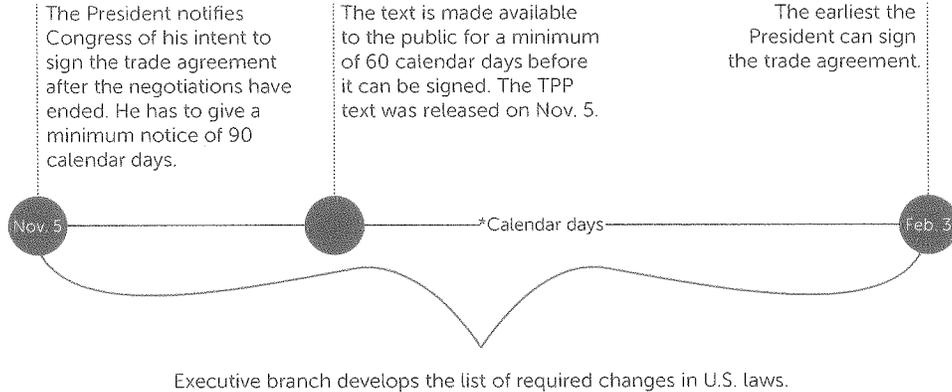


# FAST TRACK TIMELINE FOR TPP

The timelines dealing with the Trans-Pacific Partnership (TPP) trade agreement for the President and Congress as governed by the trade promotion authority (TPA), aka Fast Track.

## PHASE I: PRESIDENT'S TIMELINE

As governed by Fast Track, the executive branch negotiates the trade agreement, prepares a list of changes to U.S. laws needed to implement the agreement (the implementing legislation) and the President signs the trade agreement.



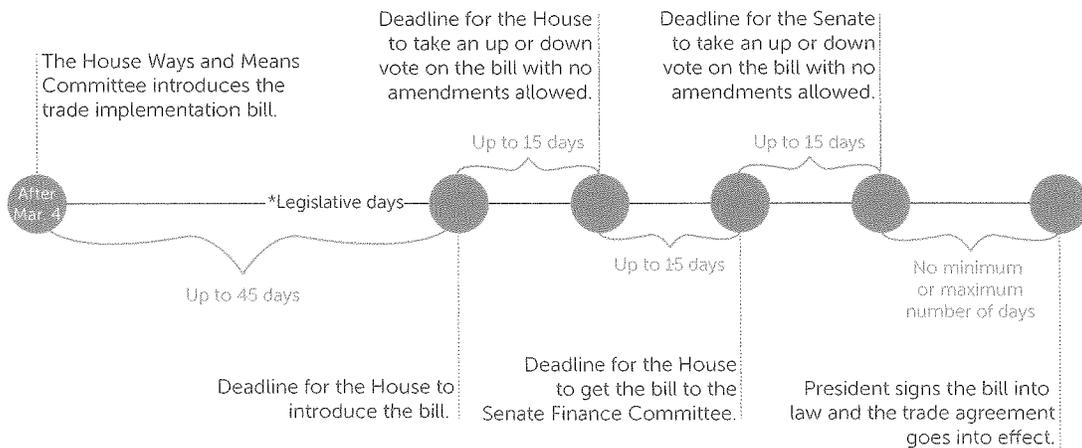
## PHASE II: IN BETWEEN THE PRESIDENT AND CONGRESS

Once signed, there is a minimum of 30 days before the implementing legislation can be submitted to Congress. It could be longer.

During that period, the House Ways and Means and Senate Finance Committees can hold "mock mark-ups" on the draft bill to give feedback to the Administration.

## PHASE III: CONGRESS' TIMELINE

Unlike most bills, no amendments are allowed and the implementation bill must be authorized by a straight "up or down vote" in the House and Senate. What follows is the maximum number of days allowed, but it could also be shorter.



\*Timeline measured in legislative days, i.e., the number of days they are convened in Washington, D.C. working and meeting.



INSTITUTE FOR  
AGRICULTURE AND TRADE POLICY

iatp.org

<http://www.nytimes.com/2015/10/06/business/international/the-trans-pacific-partnership-trade-deal-explained.html?emc=eta1&r=0>

## The Trans-Pacific Partnership Trade Accord Explained

By KEVIN GRANVILLE OCT. 5, 2015

The largest regional trade accord in history, the Trans-Pacific Partnership would set new terms for trade and business investment among the United States and 11 other Pacific Rim nations — a far-flung group with an annual gross domestic product of nearly \$28 trillion that represents roughly 40 percent of global G.D.P. and one-third of world trade.

The agreement reached by trade ministers on Monday in Atlanta, the result of five days of round-the-clock talks, came after a dispiriting failure to reach consensus in Hawaii in late July.

The product of 10 years of negotiations, the agreement is a hallmark victory for President Obama who has pushed for a foreign-policy “pivot” to the Pacific rim. But the Trans-Pacific Partnership now takes center stage on Capitol Hill, where it remains politically divisive.

In June, Mr. Obama successfully overcame opposition from Democrats to win trade promotion authority: the power to negotiate trade deals that cannot be amended or filibustered by Congress. He must now convince Congress — his fellow Democrats, in particular — to approve the trade deal. Lawmakers have 90 days to review the pact’s details.

The debate in Congress will put all the elements of the trade pact under scrutiny. It would be the final step for United States adoption of the Trans-Pacific Partnership, the most ambitious trade deal since the North American Free Trade Agreement in the 1990s.

### *Why Has the Pact Been So Divisive?*

Supporters say it would be a boon for all the nations involved, that it would “unlock opportunities” and “address vital 21st-century issues within the global economy,” and that it is written in a way to encourage more countries, possibly even China, to sign on. Passage in Congress is one of President Obama’s final goals in office, but he faces stiff opposition from nearly all of his fellow Democrats.

Opponents in the United States see the pact as mostly a giveaway to business, encouraging further export of manufacturing jobs to low-wage nations while limiting competition and encouraging higher prices for pharmaceuticals and other high-value products by spreading American standards for patent protections to other countries. A provision allowing multinational

## Daily News

### TPP Text Needs Further Work After Japan; Release Not Expected For Weeks

Posted: October 29, 2015

Trans-Pacific Partnership (TPP) officials will not be able to finalize the text of the agreement by Oct. 30, when a drafting and legal scrub session is slated to wrap up in Tokyo, meaning the release of the final text is still several weeks away, according to informed sources.

Two U.S. industry sources said they expect the release will not happen until around the Nov. 26 Thanksgiving holiday or later, although a source close to the negotiations said he believed the release would happen before then.

Felipe Lopeandia, Chile's chief negotiator for TPP, was non-committal on the timing of the text release in an Oct. 22 briefing for Chilean stakeholders. "Our interest is that these [texts] be published as soon as possible and we are working so that happens within the coming weeks," he said, according to an Oct. 22 press release from Direcon, Chile's trade agency.

One source close to the negotiations said he expects TPP countries to hold another meeting soon to continue work on the text, but that no date has been set yet. In the meantime, TPP officials will continue working to finalize the text through electronic communication, this source said.

Several sources said the work to finalize the TPP text is time-consuming and taking longer than expected, although they differed on the reasons. Some said translation problems have occurred with respect to Vietnam.

One informed source said additional complications have come up because some TPP countries are only now becoming aware of the substantive commitments that were agreed bilaterally between other parties and that is creating some discontent. At the Atlanta TPP ministerial, all countries provided to all 12 parties a list of the side letters they had negotiated bilaterally, but did not share the letters themselves.

An industry source said officials were also running into cases where TPP parties had slightly different understandings about the deals that were actually cut, on top of less substantive problems like mistakes in the text. But he characterized both types of issues as the "usual snafus."

The source close to the negotiations downplayed suggestions by U.S. officials that the change in government in Canada poses a further delay to efforts to release the text as the incoming Liberal Party needs time to review the agreement that was reached. Instead, this source said he did not view the Canadian issue as a "problem."

U.S. Trade Representative Michael Froman earlier this week said Canadian trade bureaucrats have been briefing the newly elected Liberal government on the contents of the TPP agreement, but stopped short of saying whether the change in government would delay the release of the TPP text.

the WTO so that they are likely to pose even greater threats to domestic food policy. A draft TBT chapter for TTIP seeks to “ensure that products originating in the other Party that are subject to technical regulation can be marketed or used across all the territory of each Party on the basis of a single authorisation, approval or certificate of conformity.”<sup>6</sup> Labeling rules are specifically targeted. The TBT chapter would also impose a “necessity test” such that labeling requirements “should be limited as far as possible to what is essential and to what is the least trade restrictive to achieve the legitimate objective pursued.”<sup>7</sup> In addition, a proposed special annex on prepackaged food in the TPP may prevent detailed ingredient listings on labels, even on sensitive products such as infant formula, and would make it more difficult for consumers to make healthy choices.<sup>8</sup>

State food labeling laws are clearly vulnerable under these provisions. State standards that differ from federal rules could be challenged, even if U.S. law allows for those differences. Would Vermont’s GMO labels, for example, meet the “necessity test,” when U.S. federal regulatory agencies have established no disclosure requirements? Legal scholars suggest that U.S. states should be concerned about how such a necessity test would operate.<sup>9</sup>

Health warnings are also at risk. In 2015, bills were introduced in three states—California, New York and Vermont—to require safety warnings on sugary drinks.<sup>10</sup> The US Trade Representative (USTR) has opposed such laws in other countries, objecting to Chilean nutrition warning labels because they might discourage consumption of imported processed foods.<sup>11</sup> Business groups have openly stated their interest in using these trade agreements to thwart state regulations. The U.S. Council for International Business testified that “[s]ubsidary political units, such as EU Member States or US States should be prohibited from seeking to impose separate requirements for approval or local restrictions on sale or use,”<sup>12</sup> and the U.S. National Confectioners Association has stated that “US industry also would like to see the US-EU FTA achieve progress in removing mandatory GMO labeling and traceability requirements.”<sup>13</sup>

## Investment provisions give corporations a preferential forum in which to challenge state laws

The Investor-State Dispute Settlement (ISDS) procedures in trade agreements allow foreign investors to sue governments directly in private investment tribunals, bypassing the courts or allowing a “second bite” if the investors do not like the results of domestic court decisions. Although the investor-state tribunal has no power to directly nullify U.S. laws, in practice, when a country loses to an investor, it will change the offending law, pay damages or both. Under ISDS, transnational corporations could sue for claimed lost profits due to food labeling requirements or GMO disclosure rules that companies claim will lower sales of GMO-containing products.

ISDS clauses in other trade agreements have been used repeatedly to attack environmental and public health measures. Even unsuccessful challenges take years to resolve, cost millions to

defend and have a chilling effect on the development of new legislation. U.S. state and Canadian provincial policies, including laws banning toxic gasoline additives and a moratorium on fracking permits, have already been targeted in challenges under the North American Free Trade Agreement (NAFTA). TPP and TTIP would exponentially increase the number of corporations that could take advantage of these special rights to challenge consumer standards.<sup>14</sup> Additionally, government-prepared impact assessments analyzing state regulations proposed in the regulatory cooperation provisions of these agreements could provide support for these legal attacks.

## Conclusion

The U.S. government has refused to make negotiating proposals for the TPP and TTIP public. Trade law and policy is complex and can seem far removed from the day-to-day challenges facing state governors, legislators and regulatory agencies. But state policymakers ignore trade policy at their peril. State government officials must take steps to get as informed as possible, as quickly as possible, and then communicate their views to the USTR and to Congress, which will soon be reviewing the final agreements under an abbreviated “fast track” process. If they do not, they could see important state health and consumer protections, including food labeling, undermined and likely rendered moot by these international agreements masquerading as trade facilitation.

## Endnotes

1. National Conference of State Legislatures’ databases of state legislation on environmental health and agriculture and rural development. Last accessed July 30, 2015.

2. *Preempting the Public Interest: How TTIP Will Limit US States’ Public Health and Environmental Protections*, Center for International Environmental Law (September 2015) at p. 9-12, and the EU Regulatory Cooperation chapter.

3. *Ibid.*, p.14-20.

4. TTIP Regulatory Cooperation text. An early leaked draft of the Regulatory Coherence chapter in TPP includes similar provisions.

5. *Eyes on Trade Blog, WTO Orders U.S. to Gut U.S. Consumer Country-of-Origin Meat Labeling Policy; Further Complicating Obama Fast Track Push*, Public Citizen, May 18, 2015.

6. See initial proposal for legal text on “Technical Barriers to Trade”, Article 4

7. EU TBT Chapter, Article 8

8. Sonya Reid Smith, Third World Network, “Some other WTO plus aspects of the TPP’s TBT chapter,” provided to author.

9. “Health warnings on junk food,” Albert Alemanno (March 25, 2013). See also TRADE POLICY ASSESSMENT prepared for the Maine Citizen Trade Policy Commission (June 25, 2012) at p. 8.

10. See, CA S 203 (2015), Sugar-Sweetened Beverages: Safety Warnings, Senator Monning; NY A 2320 (2015) Labeling of Sugar Sweetened Beverages, Assembly member Dinowitz; VT H 89 (2015), Health and Safety Warnings on Sugar Sweetened Beverages, Representative Stevens.

11. USTR 2014 Report on Technical Barriers to Trade, p. 55.

12. U.S. Council for International Business Submission to USTR)

13. Public Citizen, TAFTA as Monsanto’s Plan B: A Backdoor to Genetically Modified Food

14. TTIP alone could “quadruple” the number of newly empowered investors, see TAFTA Corporate Empowerment Map, Public Citizen.



## *the* **TRANS-PACIFIC PARTNERSHIP**

The Trans-Pacific Partnership (TPP) is a new, high-standard trade agreement that levels the playing field for American workers and American businesses, supporting more Made-in-America exports and higher-paying American jobs. By eliminating over 18,000 taxes—in the form of tariffs—that various countries put on Made-in-America products, TPP makes sure our farmers, ranchers, manufacturers, and small businesses can compete—and win—in some of the fastest-growing markets in the world. With more than 95 percent of the world's consumers living outside our borders, TPP will significantly expand the export of Made-in-America goods and services and support American jobs.



### **Overall U.S. Benefits**

#### **TPP ELIMINATES OVER 18,000 DIFFERENT TAXES ON 'MADE-IN-AMERICA' EXPORTS**

TPP levels the playing field for American workers and American businesses by **eliminating over 18,000 taxes that various countries impose on Made-in-America exports**, providing unprecedented access to vital new markets in the Asia-Pacific region for U.S. workers, businesses, farmers, and ranchers. For example, TPP will eliminate and reduce import taxes—or tariffs—on the following Made-in-America exports to TPP countries:

- **U.S. manufactured products:** TPP eliminates import taxes on every Made-in-America manufactured product that the U.S. exports to TPP countries. For example, TPP eliminates import taxes as high as 59 percent on U.S. machinery products exports to TPP countries. In 2014, the U.S. exported \$56 billion in machinery products to TPP countries.
  - **U.S. automotive products:** TPP eliminates import taxes as high as 70 percent on U.S. automotive products exports to TPP countries. In 2014, the U.S. exported \$89 billion in automotive products to TPP countries. Right now, car engines manufactured in Michigan face tariffs up to 55 percent in TPP countries. Thanks to TPP, those taxes will drop to zero. As part of TPP, we have also reached agreement with Japan to remove the non-tariff barriers that have kept U.S.-made autos, trucks and parts

out of that important market.

- **U.S. information and communication technology products:** TPP eliminates import taxes as high as 35 percent on U.S. information and communication technology exports to TPP countries. In 2014, the U.S. exported \$36 billion in information and communication technology products to TPP countries – which include, for example, devices, including smart phones; and equipment, including routers and computers.
- **U.S. agriculture products:** TPP cuts import taxes on Made-in-America agricultural exports to TPP countries. Key tax cuts in the agreement will help American farmers and ranchers by expanding their exports, which provide roughly 20 percent of all farm income in the United States. For example, TPP will eliminate import taxes as high as 40 percent on U.S. poultry products, 35 percent on soybeans, and 40 percent on fruit exports. Most U.S. farm product exports will receive duty-free treatment immediately; over 50 percent of U.S. farm products (by value) will enter Japan duty free once the agreement is implemented.
  - **Poultry:** American farmers exported \$2.7 billion to TPP countries in 2014, despite significant barriers. These include tariffs of 20 percent on American poultry to Vietnam, whether it's from Arkansas or Delaware. TPP eliminates those tariffs.
  - **Beef:** Japan places tariffs of 38.5 percent on American beef, whether it's from Texas, Montana, or Nebraska. These tariffs will be reduced to 9 percent. With over \$1.6 billion in annual sales in 2014, Japan is our largest export market for beef. Under the TPP agreement, Japan will eliminate duties on 74 percent of its beef and beef product tariff lines within 15 years. Tariffs will be cut on the remaining tariff lines.
  - **Pork:** Japan accounts for almost \$2 billion in pork exports in 2014—about one-third our pork exports – despite tariff barriers. Under the TPP agreement, Japan will eliminate 80 percent of its pork tariffs in 11 years, and make steep cuts in those that remain. Under TPP, we're going to reduce Japan's tariff on all pork and eliminate the current 20 percent tariff on ground seasoned pork, worth \$435 million annually to U.S. exporters.
  - **Dairy:** Japan has a tariff of 40 percent on cheese from the United States, which will be eliminated in TPP. The United States exported \$3.6 billion of dairy to TPP countries in 2014. In the case of Canada, passing TPP means renegotiating NAFTA, which didn't provide any direct benefits for dairy. Under TPP, we'll be able to sell more than 4,000 additional tons of butter, nearly 14,500 additional tons of cheese, and more than 50,000 additional tons of liquid milk to Canada. Plus more to Japan, Malaysia, and Vietnam.



INTERNATIONAL  
**TRADE**  
ADMINISTRATION

# Trans-Pacific Partnership

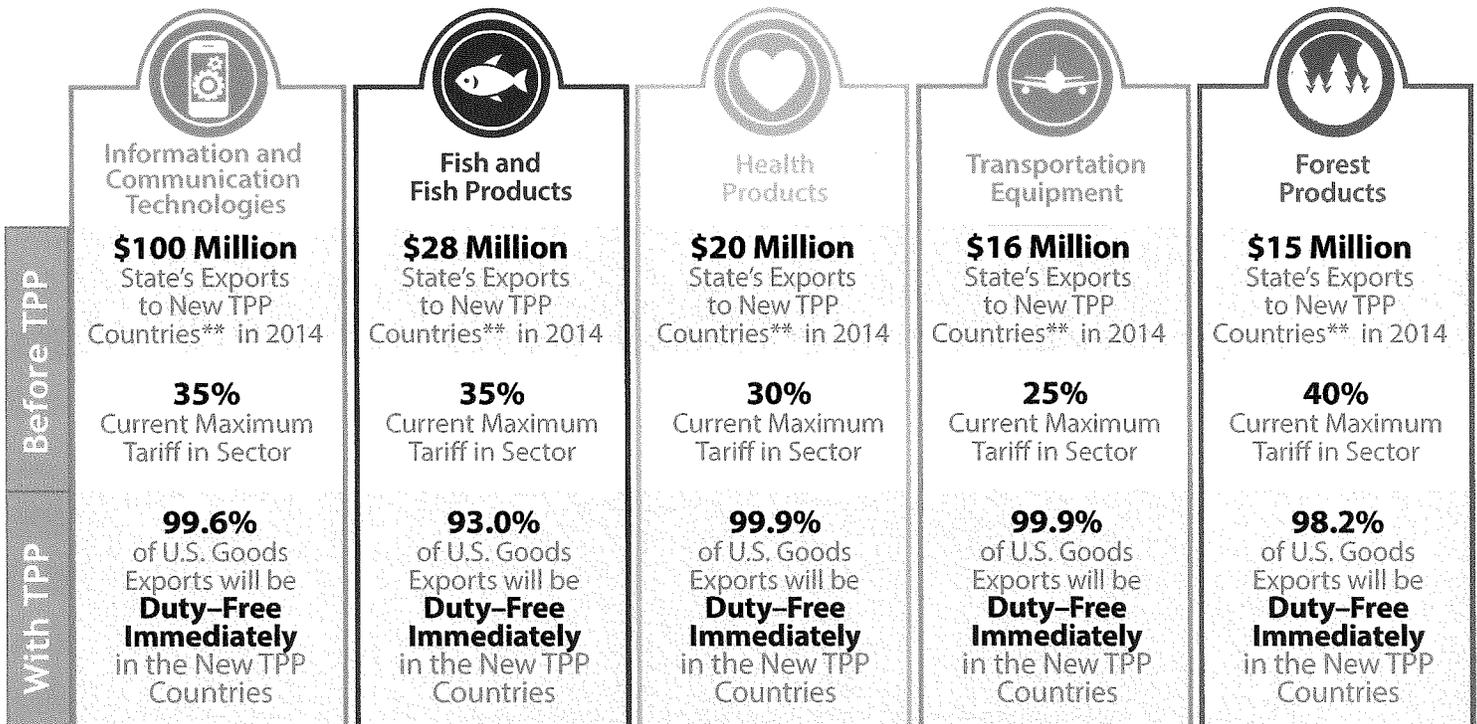


## Maine: Supporting Made-in-America Exports and Jobs

### TPP Countries\* are Important for Maine's Exporters

- \$1.8 Billion in goods exports from Maine to TPP countries in 2014, including \$105 Million to Malaysia, \$98 Million in goods exports to Japan, and \$6 Million to Vietnam
- 67% of Maine's goods exports went to TPP countries in 2014
- 1,001 companies from Maine exported goods to TPP countries in 2013 – 86% were small and medium sized companies

## TPP Will Eliminate All Foreign Import Taxes on Industrial and Consumer Goods, Benefiting Maine's Top Export Sectors



\* **TPP Countries:** Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States, and Vietnam

\*\* **New TPP Countries:** Countries with which the United States currently does not have preferential market access – Brunei, Japan, Malaysia, New Zealand, and Vietnam

## Additional New Market Access Benefits for Maine



**Agriculture:** TPP will provide new and commercially meaningful market access for U.S. exports of food and agricultural products;

eliminate the use of agricultural export subsidies; discourage countries from imposing export restrictions; and ensure food safety, animal health, and plant health measures are developed and implemented transparently and in a science-based manner.

For more information, please visit:  
[www.fas.usda.gov/TPP](http://www.fas.usda.gov/TPP)



**Services:** TPP will expand market access and investment opportunities in a number of services sectors, including

entertainment, telecommunications, software licensing, the Internet industry, retailing, and logistics/express delivery. TPP will bar discrimination against digital provision of services and prevent customs duties on electronic transmissions.

For more information, please visit:  
[www.trade.gov/fta/TPP](http://www.trade.gov/fta/TPP)

## TPP Works for Maine

### Saves Money, Increases Competitiveness



**Intellectual Property Rights:** Establishes strong protections for patents, trademarks, copyrights, and trade secrets, including safeguards against cyber-theft of trade secrets, as well as robust enforcement that will protect innovation and the good jobs it supports.

**Technical Barriers to Trade (TBT) and Regulatory Coherence:** Enhances transparency, reduces unnecessary testing and certification costs, and promotes greater openness as standards are developed. Establishes sector-specific TBT commitments on medical devices, pharmaceuticals, cosmetics, information and communication technologies, food and food additives, organics, and distilled spirits that strive to align standards and regulations across the TPP region.

**Customs and Rules of Origin:** Creates transparent and predictable rules to facilitate the quick release of goods and promote TPP regional supply chains. Promotes common rules of origin and customs procedures to ensure that TPP benefits go to the United States and other TPP countries, not countries like China.

**Government Procurement:** Increases access to government procurement markets in TPP countries and ensures fair, transparent, and non-discriminatory rules.

**Digital Economy:** Establishes requirements that support a single, global Internet, including ensuring a free flow of data across borders. Promotes non-discriminatory treatment of digital products transmitted electronically, including a commitment that TPP countries will not impose customs duties on digital products.

### Promotes Fairness & American Values



**Environment:** Creates strong and enforceable environment obligations and includes new provisions on wildlife trafficking, illegal logging, and illegal fishing practices.

**Labor:** Establishes enforceable obligations, including adherence to fundamental labor rights as recognized by the International Labor Organization.

**State-Owned Enterprises (SOEs):** Develops rules to ensure that U.S. private sector businesses and workers are able to compete on fair terms with SOEs engaged in commercial activity.

**Investment:** Ensures that U.S. investors have the same kinds of protections in TPP markets that the United States already provides to investors here at home.

**Enforcement:** Establishes fair and transparent dispute settlement mechanism that applies to all chapters and procedures to settle disputes in a timely manner.

## Maine Companies and Workers Depend on World Markets

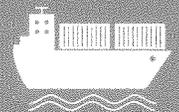
**17,120**

U.S. Jobs Supported by Goods Exported from Maine in 2014



**\$2.7 Billion**

2014 Total Goods Exports from Maine



**2,264**

Companies Exported Goods from Maine in 2013



**85%**

SME share of Goods-Exporting Companies from Maine in 2013



**55%**

SME share of Maine's Goods Exports in 2013



### Metropolitan Exports in 2014



• Portland – South Portland  
**\$1.1 Billion**

• Bangor **\$114 Million**

• Lewiston – Auburn **\$114 Million**

<https://www.politicopro.com/trade/story/2015/11/ag-groups-largely-positive-about-tpa-text-075369>

# Ag groups largely positive about TPP text

Politico

By HELENA BOTTEMILLER EVICH and JENNY HOPKINSON

November 5, 2015 at 9:01pm

The transpacific trade deal released Thursday continues to unfold as a goody bag for agriculture interests, including new tools to tackle disputes over animal and plant product safety, clearer biotechnology policies and better market access for beef and pork.

So far, commodity groups are either praising what they're seeing in the agreement's 1,000-plus pages or, at least for now, holding their peace.

"Before the text of the deal was released, most of the ag folks were leaning in to a 'yes,'" said House Agriculture Committee Chairman Mike Conaway. "[A]t this point I haven't seen any specific push-back from any of the ag groups."

With thousands of product tariffs to examine, farm groups are still poring over the finalized Trans-Pacific Partnership text. Conaway said he's leaning toward voting for the deal when it comes up for congressional approval as soon as next spring, but he's consulting with his constituents for their take.

However, happiness over the deal isn't universal. The National Farmers Union, a group that represents smaller farms, panned the agreement, saying it will hurt ranchers because of increased competition from beef imports and doesn't include enforcement mechanisms on currency manipulation.

"This agreement has been peddled to farmers and ranchers as a potential goldmine for farm exports," NFU President Roger Johnson said in a statement. "But as with other trade deals, these benefits are likely to be overshadowed by increased competition from abroad, paired with an uneven playing field that will not only reduce revenues for farmers and ranchers, but will also speed the loss of U.S. jobs."

U.S. [rice and dairy](#) groups have long been lukewarm on the deal because of provisions that they say hinder full market access for exports. The industries have raised concerns about policies that still limit exports to Japan, the world's third-largest economy, and dairy groups have taken issue with Canada's refusal to open its market fully. The National Milk Producers Federation, U.S.

Dairy Export Council [and USA Rice](#), as well as the American Farm Bureau Federation, all said Thursday that they're waiting to review the agreement before commenting.

### **SPS, friend or foe?**

The sanitary and phytosanitary, or SPS, [chapter](#), which sets new rules aimed at reducing unfair trade barriers raised under the guise of safety or pest concerns, is almost universally liked by industry groups.

The chapter sets rules requiring countries to base food safety and related regulations in science and outlining how to manage risks. It also sets up a TPP-specific SPS committee and encourages countries to move toward establishing equivalency between one another's regulatory systems.

The chapter allows countries to question each other's import checks to make sure requirements are based on real risks. The deal also requires nations to notify importers or exporters within seven days if they're blocking shipments because of an SPS issue.

If countries disagree about such things as blocked shipments or drug residue sampling and can't solve the problem bilaterally through the usual channels, then they can use what the chapter calls cooperative technical consultations, or CTC — basically a consultation process with related agencies to help resolve the dispute. Once an issue is raised, the two parties have to meet within 30 days, with the aim of resolving the disagreement within 180 days.

The consultation system creates another avenue for arbitration beyond the often drawn-out and high-profile dispute-settlement system under the World Trade Organization, although the 180-day goal for resolving disputes is hardly a quick turnaround.

The additional tools to resolve SPS disputes are of great interest to an array of commodity groups, whether pork producers that have struggled with ractopamine restrictions, chicken exporters that have gone up against Russia's ban on antimicrobial chlorine wash, or produce companies facing concerns over pesticides and pests.

Western Growers President Tom Nassif said the SPS chapter was one of the most important for the produce industry.

"The effectiveness of new mechanisms TPP provides for producer recourse when unfair SPS measures are imposed will be the greatest indication of TPP's long-term success for the fresh produce industry," Nassif said in a statement Thursday.

The Office of the U.S. Trade Representative said in its summary of the chapter that it in no way weakens food safety in the U.S.

"On the contrary, it will help TPP partners better ensure the health and safety of their food," the agency contends.

Rep. Ron Kind (D-Wis.), a strong supporter of the trade deal, emphasized to POLITICO that it goes further than any trade agreement in making sure that food-safety standards are based on science — a key point of interest for U.S. agricultural exporters.

But consumer groups are railing against the chapter, calling it worse than expected — and they have been slamming the deal for months over concerns about what would be in the final text.

Lori Wallach, director of Public Citizen's Global Trade Watch, blasted the deal, saying it would lead to a "flood of unsafe imported food."

"When the administration says it used the TPP to renegotiate [NAFTA], few expected that meant doubling down on the worst job-killing, wage-suppressing NAFTA terms, expanding limits on food safety and rolling back past reforms on environmental standards and access to affordable drugs," she said.

Democratic presidential candidate Sen. Bernie Sanders (I-Vt.) toed a similar line, saying the TPP was worse than he thought it would be.

"The agreement would threaten American laws that protect the safety of the drugs we take, the seafood we feed our families and the toys our kids play with every day," Sanders said in a statement Thursday.

In a [17-page take-down](#) of the deal, Public Citizen eviscerated the SPS chapter as a threat to the very basis of U.S. food-safety protections.

The group takes issue with, among other things, a provision that gives companies a right to challenge trade-enforcement actions, including things like import alerts, detentions and even lab analyses, which they say "second-guesses U.S. inspectors and creates a chilling effect that would deter rigorous oversight of imported foods."

Patrick Woodall, research director at Food and Water Watch, said the SPS chapter gives the industry just what it wanted, providing "a more powerful weapon to use against food-safety rules than the WTO. That's what the industry asked for, they wanted stronger, more binding SPS rules to attack food-safety regulations they thought were restrictive trade barriers."

Woodall also takes issue with the way the No. 1 objective of the chapter is worded: to "protect human, animal or plant life or health in the territories of the parties while facilitating and expanding trade by [utilizing] a variety of means to address and seek to resolve sanitary and phytosanitary issues."

"It really puts the commercial piece on par the food safety piece," he said, arguing that the WTO's SPS provisions treat food safety and consumer protection with greater importance and make providing a level playing field being a secondary objective.

Seafood is one of the biggest concerns for consumer and food-safety advocates wary of the lower sanitation and production standards in developing countries like Vietnam, a major player in the global aquaculture market.

"I'm especially worried about this related to antibiotics and fungicide residues on fish from Vietnam or Malaysia," Woodall added. "The U.S. position on unapproved antibiotics being illegal [a reason for a large portion of import actions against seafood] ... Vietnam could conceivably challenge that."

## **Biotech**

The TPP marks the first time that biotechnology has been given a mention in a trade agreement, something agriculture groups say is an important step in harmonizing international approval standards and ensuring market access for new products.

The deal calls for countries to try as much as possible to align regulations for approving and importing biotech crops and make approval documents publicly available. Member countries also have agreed to communicate when low levels of unapproved GE crops are detected in imports and to work to reduce those occurrences.

While the provisions are largely voluntary, crop groups are optimistic that they will help align the countries' rules, set a precedent to address biotech issues in future trade deals and put pressure on nearby countries, including China, to fall in line with the policies if they want easier access to TPP member economies.

"For these 12 member countries, we really are not having a lot of challenges with biotechnology, but if you've got another country like China that has expressed some interest" in joining the deal, "they will have to agree to those principles on biotechnology," Floyd Gaibler, the U.S. Grains Council's director of trade policy and biotechnology.

## **Increased market access**

Expanding market access remains among the most important outcomes for ag groups. The United States is highly efficient at producing food, feed and fiber and already exports huge quantities, making it one of the few U.S. sectors with a trade surplus.

Dave Warner, spokesman for the National Pork Producers Council, called the text a 99.9 percent win for the U.S. pork industry.

Under the agreement, tariff and non-tariff barriers will be eliminated for pork products in almost every TPP country, but they will be phased out differently depending on the country, Warner said. For Japan — where pork is highly sensitive but is the biggest market by value for U.S. pork producers — most tariffs will vanish after 10 years.

For Malaysia, tariffs will drop the moment TPP is enacted. And in New Zealand, tariffs on hams and shoulders will phase out in three years, Warner said.

"No free-trade agreement is perfect, but this is pretty darn close," Warner said. "This is going to be huge for the U.S. pork industry and big for the U.S. agriculture economy."

Agriculture commodity groups are largely happy with the deal, at least at first glance. The TPP will eliminate the few remaining tariffs in the region on things like corn and expand the market for commodities used in animal feed and fuel.

"Trade agreements are essential for us ...," Gaibler said. "And I think TPP is probably the most comprehensive agreement that we have."

By and large, agriculture groups are preparing to make the case to lawmakers that, while there may be some problems with the deal, its approval will be a boon to farmers.

“We always know this agreement is coming awfully close to presidential politics and things like that, so I have to think the grumbling you are seeing right now is the posturing they have to do,” a corn industry source said. “Lawmakers have to ask themselves what’s the alternative here if we don’t do this. What is our world going to look like ...? While not perfect, we are a lot better off with this type of agreement in place.”

*Adam Behsudi, Chase Purdy and Victoria Guida contributed to this report.*

## **Business Coalition Urges Congress To Subject TPP Deal To Close Scrutiny**

Posted: November 05, 2015

Following the release of the nearly final text of the Trans-Pacific Partnership (TPP), the U.S. Coalition for TPP on Thursday (Nov. 5) urged members of Congress to examine the text closely to ensure it opens markets of the Asia-Pacific region and effectively tackles the challenges and barriers prevailing in the global economy now.

In a letter sent to lawmakers Thursday morning, the business coalition also urged members to "hear directly" from business representatives, workers and the public on how they evaluate the deal.

"The final agreement is worthy of serious review and understanding," the group said. "If it meets our high expectations, it has tremendous potential to help improve America's competitiveness and create a more level playing field for our industries and workers."

"We respectfully ask that you review the agreement's text in full and hear directly from workers, families and job creators in your states and districts about their views of the negotiated agreement," the letter added. "An economic agreement covering 40 percent of the world's GDP deserves nothing less."

**The letter stopped far short of endorsing the deal and sticks to conditional statements about TPP. The go-slow approach it advocates to members of Congress is most likely a reflection that members of the coalition are divided on the final deal, sources said.**

The TPP Coalition represents companies and associations across a broad spectrum, including agriculture, manufacturing, information and communications technology, merchandising, processing, retailing and services, according to the letter.

Separate from its letter to members of Congress, the Coalition for TPP issued a public statement that is less detailed, but makes the same point that the text needs to be closely scrutinized.

"While it will take some time to examine and absorb the agreement, the U.S. Coalition for TPP is encouraged to see many chapters that address trade barriers and the type of rules that are important to create a level playing field and advance American competitiveness in the 21st century," the statement said. "The final agreement is worthy of serious review."

Separately, Cal Cohen, the president of the Emergency Committee for American Trade (ECAT), which is the secretariat for the coalition, said that members of the business community are giving

"a very careful read to the text and hope to be able to indicate their positions within the next few weeks."

**By taking a wait-and-see attitude, the coalition and other associations facing a similarly divided membership have time to try to fix their problems. This could include trying to appease the opponents by either getting marginal improvements in TPP through side letters or getting the administration to address some other priority these companies have, sources said.**

Businesses that have taken the most critical view of the TPP deal as negotiated include brand-name pharmaceutical companies unhappy with the terms of the market exclusivity for biologic drugs, tobacco companies opposing the carveout of anti-tobacco regulations from the investor-state dispute settlement, and the Ford Motor Company, which opposes the deal in the absence of enforceable currency provisions.

The currency issue has been addressed in a joint declaration by TPP countries on exchange rate policies that was released along with the TPP text, which future members of TPP would have to sign to participate in the trade deal.

Following the release of the currency declaration by the Treasury Department, a Ford spokeswoman said the company's opposition to the deal has not changed since the currency forum does nothing to change the status quo. "It falls outside of TPP, and it fails to include dispute settlement mechanisms to ensure global rules prohibiting currency manipulation are enforced," Ford said in a statement.

"To ensure the future competitiveness of American manufacturing, we recommend Congress not approve TPP in its current form, and we ask the Administration to renegotiate TPP and incorporate strong and enforceable currency rules," the spokeswoman said in an e-mail. "This step is critical to achieving free trade in the 21st century."

The administration has been pushing for business endorsements of TPP, so holding off on offering them will likely increase the leverage of groups in any potential conversation with the U.S. government, sources said.

**Other major business groups also offered a very measured response to the release of the text.** For example, a Business Roundtable statement applauds the public release of the full text, and says the group is looking forward to reviewing the details and better understanding the benefits the deal would provide for American companies, farmers and workers.

"The TPP agreement holds the potential to expand trade and investment opportunities for countries on both sides of the Pacific Ocean," the statement said. "U.S. trade expansion, including through trade agreements like the TPP, is a key pillar of the Business Roundtable pro-growth policy agenda."

These very carefully worded statements are the latest example of what private-sector sources said this week has been a message to Congress from some business representatives that it should go slow in handling the TPP text. -- *Jutta Hennig*

NEW YORK TIMES

# Labor Reform in Vietnam, Tied to Pacific Trade Deal, Depends on Hanoi's Follow-Up

By [KEITH BRADSHERNOV](#). 5, 2015

HONG KONG — A pact between Washington and Hanoi to strengthen labor unions in [Vietnam](#) could give workers more bargaining power, but the impact will depend on how [Vietnam](#) carries out the agreement, longtime Vietnamese government advisers and other specialists said on Thursday.

The [side agreement](#) to the Trans-Pacific Partnership calls for Vietnam to pass legislation that would legalize independent unions, allow them to strike and let them seek help from foreign labor organizations like the A.F.L.-C.I.O.

The overall trade agreement faces a [contentious debate](#) in Congress. The Obama administration is aiming to win over Democrats who have expressed concern about the potential for free trade to shift jobs to countries where unions and workers' rights are weak.

Vietnam's Constitution enshrines the right of workers to strike and engage in organized protests, said Le Dang Doanh, a prominent economist and a former top official at a government research organization in Hanoi. But until now, Vietnam has adopted few laws to codify and protect those rights.

Consequently, the labor accord "is a very positive step for Vietnam," said Mr. Doanh, a longtime advocate of market changes who has advised his country's top leadership through its gradual relaxation of many government controls over the economy in the last quarter-century.

Pham Chi Lan, the former secretary general of the Vietnam Chamber of Commerce and Industry and a former senior adviser in the office of the prime minister, also portrayed the agreement as an important concession.

"This is a big compromise, for Vietnam to agree to do this," she said.

But Tony Foster, the managing partner of the Hanoi and Ho Chi Minh City offices of Freshfields Bruckhaus Deringer, a big global law firm, said that the labor provisions of the Trans-Pacific Partnership had been expected, and that it was unclear how much change they would bring to Vietnam.

**For Immediate Release**  
November 5, 2015

**Contact:** Michael Byerly  
(202) 225-6306

## **Poliquin's Statement On The Release Of The TPP Text**

**WASHINGTON** – Maine's Second District Congressman, Bruce Poliquin, released the following statement after President Obama released the final text of the Trans-Pacific Partnership (TPP):

"I have often said that this secretive process of negotiation major deals is not right and it isn't fair to the American People.

"That's why I joined my colleagues in sending a letter to President Obama urging him to release the final text of the Trans-Pacific Partnership. Mainers deserve to know what is in the final text of the Trans-Pacific Partnership.

"Now that the text has finally been released, I look forward to carefully reviewing the details of this proposed trade deal. Additionally, as I travel throughout the Second District, I look forward to meeting with Mainers and listening to their thoughts on the Trans-Pacific Partnership."

*The following is the full text of the letter to President Obama:*

November 04, 2015

President Barack Obama  
The White House  
1600 Pennsylvania Avenue  
Washington, DC 20500

Dear Mr. President:

On October 5<sup>th</sup>, you announced that negotiations on the Trans-Pacific Partnership (TPP) had concluded. Your statement at that time noted, “we can help our businesses sell more Made in America goods and services around the world, and we can help more American workers compete and win.” We share those goals but believe if that is truly what the TPP will achieve it is time for the American people to have the opportunity to fully review the agreement.

Americans are rightly concerned about the secretive nature of TPP trade negotiations, especially given the significant economic impact the deal would have across many sectors of our economy. Just like TPP, past trade agreements were sold on their economic benefits. However, since the passage of the North American Free Trade Agreement, thousands of factories have closed and millions of manufacturing jobs have been lost all across the U.S.

Just 15 years ago, our country had more than 17.1 million Americans employed in the manufacturing sector. Today, that number has fallen by nearly five million. Given that the TPP has been sold to Congress and the American people based on its ability to change this trajectory and strengthen economic opportunity here at home, the American people deserve the chance to judge the full text of the deal for themselves.

Thank you for your attention to these concerns. We look forward to reviewing the full text of the TPP agreement, to ensure that it maintains the interests of U.S. businesses and workers, without further delay.

## Trans-Pacific Partnership Text Released, Waving Green Flag for Debate

By JACKIE CALMESNOV. 5, 2015

WASHINGTON — The release on Thursday of the full text of President Obama's trade accord with 11 Pacific Rim nations brought out opponents and supporters and officially opened what may be the last big battle of the president's tenure: winning congressional approval of the largest regional trade deal in history.

The opposition mainly came from the left, as an array of unions, environmental groups and public advocacy organizations that typically resist global trade agreements registered their dismay. But some businesses, like Ford Motor, also joined the emerging resistance to the Trans-Pacific Partnership.

The reaction confirmed that in this final fight, Mr. Obama will have to rely on the Republicans who control Congress if he is to sell the legacy-making agreement in the months before the House and Senate vote next spring. Republican leaders were withholding endorsements for now, leaving the president to make the case on his own.

Mr. Obama immediately sought to do so. Early Thursday, the White House posted the text of the deal on Medium, a social media sharing website, along with the president's statement hailing the agreement as a "new type of trade deal that puts American workers first."

The accord ties together countries from Canada to Chile and Japan to Australia that account for 40 percent of the world's economy. While the 12 nations' trade ministers concluded the agreement a month ago, after years of negotiations, Mr. Obama said that the disclosure of the details now should build support. He cited the agreement's labor and environmental protections, the end of many tariffs and trade barriers among the countries, and expanded markets for American goods and services.

"It eliminates 18,000 taxes that various countries put on American goods," Mr. Obama said. "That will boost Made-in-America exports abroad while supporting higher-paying jobs right here at home. And that's going to help our economy grow."

He cited the strategic as well as economic advantages of a trade alliance that would counter a rising China, which is not a party to the agreement.

"When it comes to Asia, one of the world's fastest-growing regions, the rule book is up for grabs. And if we don't pass this agreement — if America doesn't write those rules — then

countries like China will,” Mr. Obama said. “And that would only threaten American jobs and workers and undermine American leadership around the world.”

The president’s post on Medium came hours after the United States trade representative first released the 30 chapters, side agreements and other attachments that make up the voluminous accord in the middle of the night, simultaneous with other nations doing so.

Also on Thursday, he officially notified Congress of his intent to sign the agreement in 90 days, a period specified by law to give the House and Senate time to begin deliberating over its terms. Congress has additional time beyond that to debate and vote on legislation to enact the agreement.

Final action is expected by perhaps May, ensuring that Congress’s debate will occur against the backdrop of a presidential campaign in which leading candidates of both parties already have gone on record against the accord.

Senator Bernie Sanders of Vermont, who is challenging Hillary Rodham Clinton for the Democrats’ nomination, said the trade text was proof that the accord “is even worse than I thought” — a threat to American jobs, food and product safety and access to affordable drugs, for the benefit of international corporations and third-world countries.

Without naming Mrs. Clinton, who last month announced her opposition to the agreement, Mr. Sanders summoned the phrase she once used as secretary of state to hail the emerging Pacific accord. “It is clear to me that the proposed pact is not, nor has it ever been, the gold standard of trade agreements,” Mr. Sanders said.

The agreement also must be approved in the other 11 nations. Besides Chile, Canada, Japan and Australia, they are Mexico, Peru, New Zealand, Singapore, [Vietnam](#), Malaysia and Brunei.

The Obama administration is hoping that the accord’s labor protections, along with separate bilateral agreements on labor and human rights between the United States and [Vietnam](#), Malaysia and Brunei, will help persuade some Democrats to back the deal. The administration is especially eager to promote its agreement with Vietnam, which commits its communist government to change its laws to allow workers to freely unionize and to strike, not just for better wages and hours but also for improved working conditions and other rights.

“Without reservation, I think this is the best opportunity we’ve had in years to encourage deep institutional reform in Vietnam that will advance human rights, and it will only happen if T.P.P. is approved,” Tom Malinowski, the assistant secretary of state for democracy, human rights and labor, said in an interview.

The organization where Mr. Malinowski formerly worked, Human Rights Watch, is among the skeptics who say Vietnam’s commitments are unenforceable, especially given the track record of the United States trade office. John Sifton, the group’s Asia advocacy director, said workers

should have been given the same right that corporations have under this trade agreement and others: to take complaints about a country's compliance directly to a dispute settlement panel.

"Are trade unionists who actually produce all the capital that we're talking about here allowed to bring complaints against a country for violations?" he asked. "No, of course not."

For the first time as part of a trade accord, the Pacific partners agreed in a "joint declaration" to avoid manipulating the value of their currencies for trade advantage, to report interventions in foreign exchange markets and to meet annually to hold one another accountable. The language did not persuade some Democrats — or Ford, which broke with other big businesses supporting the agreement — that it would prevent Japan and other countries from intervening to underprice their exports unfairly.

The annual currency forum "does nothing to change the status quo," Ford said in a statement, adding, "It fails to include dispute settlement mechanisms to ensure global rules prohibiting currency manipulation are enforced."

While the Obama administration played up environmental standards included in the accord as precedent-setting, the Sierra Club and the Natural Resources Defense Council were among groups that came out in opposition, calling the language weaker than in trade pacts negotiated during the George W. Bush administration.

Other advocacy groups, including Doctors Without Borders, cited language that would give pharmaceutical companies up to eight years of intellectual property protections before their data is available for production of lower-cost generic drugs.

That has put the administration in a bind: Those protections, while too long for health care advocacy groups, are shorter than the 12 years the big drug companies currently enjoy. That has angered drug company allies in Congress, especially Senator Orrin G. Hatch of Utah, the chairman of the Senate Finance Committee, which has jurisdiction over trade. Without Mr. Hatch's support, Senate approval could be impossible.

The senator was noncommittal on Thursday, promising only a "rigorous review" of the pact. Also staying neutral was the new House speaker, Representative Paul D. Ryan of Wisconsin.

"We do not rubber-stamp anything around here, let alone trade agreements," Mr. Ryan told reporters at the Capitol.

<https://www.washingtonpost.com/news/wonk/wp/2015/11/06/how-the-five-most-contentious-issues-in-obamas-big-trade-deal-turned-out/>

# How the five most contentious issues in Obama's big trade deal turned out

While advocacy groups acknowledged some improvements from previous drafts, they're still worried that even the best provisions won't be enforced.

The Washington Post

By Lydia DePillis

November 6, 2015

The [full text of the Trans Pacific Partnership became public Thursday](#), and there's a lot we still don't know about it. This deal isn't really about lowering tariffs, after all — much more importantly, it's the rulebook for trade across a giant region, and 2,000 pages of dense legalese can hide a lot of stuff. We don't yet have a comprehensive overview of how the agreement would change global commerce, but we did go looking for answers on a few issues that have been particular bones of contention for public interest groups, which until Thursday were mostly hypothetical, and have since become concrete. Here's what we know so far.

## **1. [Intellectual property protection](#)**

To companies that sell creative content — from record labels to drug makers — it's very important to ensure that their intellectual property won't simply get copied and resold when they sell it abroad. Those companies won strong protections in this deal, many of them replicating U.S. laws, which were already quite accommodating.

For example: Party nations agreed to protect copyright for 70 years beyond the death of the author, and trademarks for a total period of 10 years. The agreement criminalizes the circumvention of "digital rights management" software, and requires countries to allow their law enforcement authorities to destroy infringing goods.

The agreement does commit parties to "endeavor to achieve balance" in their copyright protection regimes, giving "due consideration" to uses such as news reporting and commentary. But while acknowledging some improvement from earlier drafts, groups like [Fight for the Future](#) and the [Electronic Frontier Foundation](#) found these and other provisions — such as legal

"safe harbors" for Internet service providers that take down copyright-infringing material — to be excessively protective of copyright, at the expense of the public's ability to share and repurpose content.

The chapter also protects a newer kind of pharmaceutical called "biologics" for five to eight years. That's less than what the drug industry had sought, on the grounds that companies need a long period of exclusivity in order to cover the high cost of research; Senate Finance Committee Chairman Orrin Hatch (R-Utah) is so unhappy about it that he thinks the deal might have to be negotiated. But it's much higher than what groups advocating access to medical care wanted. For that reason, they fear the agreement "will deepen the global crisis of exorbitant drug prices here in the United States as well as abroad," said Judit Rius, of Doctors Without Borders.

## **2. Investor-State Dispute Settlement (ISDS)**

This provision, which allows companies to sue foreign governments in an international court for violations of their rights to equal treatment under the agreement, became a flashpoint in congressional debate over the summer. Critics worried that it would chill governments' attempts to pass laws that might negatively impact the return on a corporation's investment.

The U.S. Trade Representative says the final draft made some improvements, including making the ISDS proceedings accessible to the public, allowing courts to quickly throw out frivolous claims, and ensuring that damage to a company's expected returns doesn't in and of itself constitute a violation of the agreement. It also includes a provision that protects governments' ability to regulate in the interest of health, safety, and the environment.

Lise Johnson, head of investment law and policy at the Columbia Center for Sustainable Investment, isn't impressed. She says the protections on regulating in the public interest are undermined by a clause saying those laws must be "otherwise consistent with" the rest of the investment chapter, and that even considering damage to expected investor returns as a relevant consideration in dispute settlement increases government liability relative to the rules under the North American Free Trade Agreement.

"The fundamental concern still exists that ISDS is a mechanism that generally allows disproportionate deregulatory pressure to be put on a government, and can sideline domestic concerns in developing and defining domestic law," Johnson says.

Also, while the agreement excludes tobacco products from the ISDS process, some advocates think that's only proof that it's dangerous for public health and the environment. "If a carveout exists for tobacco, why shouldn't it exist for environmental policies?" asks Ilana Solomon, director of the Sierra Club's Responsible Trade Program. "It's not sufficient to carve out one sector and leave exposure to risks in so many others."

## **3. Labor and human rights provisions**

The agreement extends commitments made in some of the U.S.' most recent trade deals to all countries in the TPP, including a requirement that their domestic laws allow labor unions to form and freely operate, eliminate forced and child labor, and prohibit employment discrimination.

In addition, the U.S. has negotiated side agreements with Vietnam, Malaysia, and Brunei that spell out exactly which laws need to change before the TPP goes into effect in order to achieve those goals, and what resources must be committed to enforce them. There are some important advances, such as a prohibition against weakening labor protections in "special economic zones" around export facilities. The Malaysia agreement also provides that outsourcing and subcontracting — which has undermined the effectiveness of previous labor chapters — not be used to evade new requirements.

Labor and human rights groups acknowledge the language all sounds nice on paper, but they're still [concerned that the provisions won't be enforced](#). Although this chapter is subject to the same dispute settlement mechanisms available for the rest of the chapters, and the U.S. Trade Representative's fact sheet [promises](#) that the U.S. "will not hesitate to take action against any country that fails to live up to their obligations in the labor chapter," there's no guarantee that party nations will invest time and money into policing their neighbors if there isn't a strong commercial interest in doing so. Labor rights cases in previous agreements have taken years to build and adjudicate, which is why labor unions had pressed for provisions that would give workers the same rights that investors have to sue governments themselves for failing to uphold the agreement.

"There's no stick or carrot hanging over these countries to make them show progress on trafficking or forced labor," says John Sifton, Asia advocacy director for Human Rights Watch. "It's good that Malaysia's going to fix this problematic law. But then you realize if they don't do it, nothing's going to happen."

#### 4. [Environmental provisions](#)

Similar to the labor chapter, the environmental provisions of TPP appear an improvement upon previous trade agreements, but their effectiveness likely will depend on vigorous enforcement.

Fundamentally, the agreement requires parties to uphold pre-existing international agreements protecting endangered flora and fauna. It also provides for countries to stop subsidizing illegal fishing activity, promotes trade in environmental goods and services, and commits parties to combating the illegal wildlife trade. "It's an important tool that can be used to enhance and augment other tools to try and address the problem," U.S. Trade Representative Michael Froman told National Geographic, which has an [in-depth dissection of the chapter](#).

But in contrast to many of the chapters taking down barriers to trade, the language in the environmental provisions is overwhelmingly vague, with lots of clauses like "shall endeavor to," "may include," and "recognize the importance" of various priorities. Even the availability of trade sanctions may not prove very effective in enforcement of such unspecific commitments. "The environment chapter is weak and fails to provide the necessary requirements and stronger penalties desperately needed to better fight poaching, protect wildlife habitat and shut down the illegal wildlife trade," said Defenders of Wildlife CEO Jamie Rappaport Clark.

In addition, environmentalists such as the World Wildlife Fund are [concerned](#) that the text does not explicitly mention climate change. The closest it comes is a couple paragraphs committing parties to "engage in cooperative and capacity-building activities related to transitioning to a low emissions economy." Although climate change is being addressed through other fora, environmental groups are disappointed that the TPP doesn't do more to support those efforts.

## 5. Currency

Prior to the TPP's conclusion, labor unions, domestic manufacturers, and lawmakers from production-heavy states had demanded that the agreement prohibit countries — most importantly Japan — from devaluing their currencies in order to make their exports cheaper. The White House pushed back, saying it was addressing the problem through bilateral pressure, and that binding commitments could constrain the U.S.' control over its own money supply.

In the end, the TPP parties did sign a separate agreement promising that they wouldn't manipulate their currencies for commercial advantage, and committed to publishing information about their exchange rates and foreign reserves. So now, if a country does try to devalue its currency, at least it will be easier to find out.

# How Obama's Trade Deal Might Stir Up Your Dinner

November 08, 2015 10:28 AM ET  
Tracie McMillan

When President Obama announced the details of the Trans-Pacific Partnership on Thursday — and released them on [Medium.com](#) — there was a lot of talk about labor, the environment and manufacturing. But trade deals have a way of changing the way we eat, too.

Consider NAFTA, which boosted the availability of cheap avocados and winter tomatoes for Americans, while expanding Wal-Mart and processed food in Mexico. So now that we know the details of this new Pacific Rim trade deal, what might it mean for dinner — both in the U.S. and the 11 other nations party to the treaty? Herewith, a cheat sheet on the 2,000-plus-page deal:

## Food Safety

Supporters of the TPP highlight the fact that the chapter on food safety and inspections will bring other countries up to U.S. standards, and set rapid deadlines for resolving disputes over rejected shipments. Critics say the agreement gives countries new power to challenge food safety laws, which could be framed as "barriers to trade."

"It's hard right now for inspectors to make sure everything is safe," said Karen Hansen-Kuhn, director of trade, technology and global governance for the Institute for Agriculture and Trade Policy. Currently, about 2 percent of food imported to the U.S. is inspected. With more imports coming in, pressure to resolve disputes quickly, and no mandate for more regulatory staff, says Hansen-Kuhn, it's unlikely that inspections will improve.

## GMOS

Since rules on genetically modified foods differ from country to country, the agreement's market access chapter includes a section on "products of biotechnology" — think engineered corn and soy — and sets up a protocol for importing countries to decide on product safety. It also establishes a working group for the topic, suggesting that there's plenty more to be worked out.

## **Dairy, Meat And Booze**

The TPP does away with more than 18,000 tariffs in the countries party to the deal. American producers will gain access to new markets — and foreign producers will get access to ours. That includes a lot of food, much of which could become cheaper here, as low-cost imports intensify competition on price.

**Dairy:** After significant battle during negotiations, Canada and New Zealand agreed to modest tariff reductions on dairy, opening their markets to American milk and cheese. In return, Americans may see more New Zealand milk — apple bircher "yogurt suckies", anyone? — on shelves.

**Pork:** The American pork industry has become a net exporter in the last 20 years, says Nick Giordano, vice president for global government affairs at the National Pork Producers Council. The TPP will pave the way for exports to continue to grow. But America also imports a significant amount of pork. Tariff reductions on imports here could make all that foreign pork cheaper, and push prices down in the U.S. — but also potentially threaten the livelihood of hog farmers.

**Beef:** The agreement doesn't do much for American beef producers, says the National Farmer's Union, because Japan won a provision that would push tariffs back up if imports surged. Smaller beef producers in the U.S. say that increased competition from imports will put more farmers out of business.

**Booze:** California's Wine Institute has been supportive of the TPP, as have most American drink industry groups — think Kentucky bourbon — because the deal opens the massive Pacific market to their products. It also should mean lower prices here for Pacific Rim wines and spirits, like New Zealand's sauvignon blancs and Japanese shochu — though the Office of the U.S. Trade Representative notes that American wine tariffs are already pretty low.

## **Labeling Issues**

**Junk food:** Prepackaged food companies can be required to list all ingredients in their foods and additives, but regulators are required to provide importer companies the same confidentiality afforded domestic ones — i.e. no requesting, say, the formula for

Coca-Cola to verify nutrition information and then sharing it with a local producer. So those food labels should still tell you whether or not you can pronounce what you're eating.

**Organic Products:** Countries can enforce organic standards and are encouraged to come up with a way to unify them across borders. But there's no provision about whether stricter or looser standards should prevail. According to the agreement's draft text, if a country "maintains requirements relating to the production, processing, or labeling of products as organic, it shall enforce such requirements." the U.S.T.R. was unable to provide specifics by press time.

**Challenging other nations' laws:** The Investor State Dispute Settlement provision — which Elizabeth Warren called "the TPP clause everyone should oppose" — gives member states the power to challenge other states' laws that impact trade and sales. This provision gives member states the power to challenge other states' laws that impact trade and sales. The clause is similar to the provision in NAFTA that overturned a Mexican tax on high-fructose corn syrup in favor of American companies' right to sell it, though the TPP does contain explicit language giving countries the right to "regulate in the public interest." No word yet from USTR on whether labeling provisions for genetic modification and country of origin would reach that standard, or who defines "public interest."

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*Tracie McMillan is the author of The American Way of Eating, a New York Times best-seller, and a senior fellow at the Schuster Institute for Investigative Journalism at Brandeis University. You can follow her on Twitter @tmmcmillan.*

## 230-235 House votes for TPP

By [Doug Palmer](#)

11/10/15 10:00 AM EST

**PREDICTION: 230 TO 235 HOUSE VOTES FOR TPP** — That's the word out west in Seattle, where the Washington Council on International Trade held a day-long conference on Monday to explore how Boeing, Microsoft and many other Washington state exporters would benefit from the Trans-Pacific Partnership. Chief U.S. agricultural negotiator Darci Vetter briefed the group on the agricultural, labor and environmental provisions of the pact.

"If I were a betting man, I'd say if there were 218 votes in the House for TPA, I think there's probably somewhere in the range of 230 to 235 votes in the House for TPP, assuming something crazy doesn't happen," WCIT President Eric Schinfeld told POLITICO Pro.

Schinfeld said he expected the state's business community to push hard for approval of the agreement. "Is it a perfect deal? No," Schinfeld admitted. "But is it a really, really good deal for Washington state businesses? Absolutely ... There is no world in which Washington state employers won't embrace the TPP ... We're 100 percent behind it."

Three of Washington's ten-member House delegation - Democratic Reps. Adam Smith, Denny Heck and Jim McDermott - voted against trade promotion authority this summer. But Schinfeld said he believed it would be easier for both Democrats and Republican to support the TPP deal since it offers much more tangible benefits than the TPA bill.

**IT'S TUESDAY, NOV. 10!** Welcome to Morning Trade, where "something crazy" is our middle name! Like, man, I wish I was in Sheffield, England, where my son's band Sheer Mag is playing a club called The Lughole tonight. According to its Facebook page, the club is "run by the punks for the punks." Yep. That sounds just like me. Any other crazy suggestions? Send them to [dpalmer@politico.com](mailto:dpalmer@politico.com) or [@tradereporter](#), although I'm kind of lazy on Twitter.

**U.S. FOOTWEAR GROUP EAGER FOR TPP TARIFF CUTS:** Meanwhile, the Footwear Distributors and Retailers of America trade association, which includes companies such as Walmart, Foot Locker and Payless ShoeSource, was also busy on Monday talking up the benefits of the agreement, which it estimated could save importers \$450 million in import duties in just the first year and at least \$6 billion over 12 years.

Almost all of those savings would come from lower duties on footwear from Vietnam, FDRA President Matt Priest told reporters. Even without the agreement, imports from Vietnam are up 21 percent this year by volume and almost 26 percent by value. Historically, most of those imports have been athletic shoes, reflecting the presence of big U.S. shoe companies like Nike,

Adidas and ASICS in Vietnam. But now there's "also mass footwear being produced there for places like Payless, Walmart and Target," Priest said.

**The industry is hoping newly installed** House Ways and Means Committee Chairman Kevin Brady will become a champion for TPP and also looks for support from new House Speaker Paul Ryan, who was instrumental in passing TPA this year, Priest said.

**BLUEGREEN ALLIANCE TO SOUND OFF ON PACT** - Labor and environmental groups haven't been shy about criticizing the TPP agreement. But they promise to go into more detail today in a phone call with reporters "to discuss specifically how the trade deal falls short in protecting workers and the environment." United Steelworkers President Leo Gerard and Sierra Club Executive Director Michael Brune will join the call hosted by BlueGreen Alliance.

**BERGSTEN BACKS TPP CURRENCY PACKAGE:** Fred Bergsten, director emeritus of the Peterson Institute for International Economics, was one of the most vocal advocates of including enforceable currency provisions in the Trans-Pacific Partnership. Now, Bergsten has endorsed the TPP currency side agreement unveiled last week, even though it would not be subject to binding dispute settlement that could lead to trade sanctions.

"While not legally enforceable, the commitments in the declaration are far-reaching in ruling out competitive devaluations and persistent exchange rate misalignments. In addition, the requirements for more transparency and public disclosure of data on exchange rate policies, including currency intervention, should make the 'naming and shaming' of manipulators more effective," Bergsten said in a blog post, which can be read here: <http://bit.ly/1MkVuSp>

**CURRENCY JOB IMPACT SAID TO BE SMALLER NOW:** Meanwhile, another Peterson scholar, Joseph Gagnon, said U.S. job losses caused by currency manipulation are not as high now as they were in 2012, when he and Bergsten estimated the United States would have 1 million to 5 million more jobs if currency manipulation were eliminated.

"The effect of currency manipulation on U.S. employment is much smaller today for two reasons," Gagnon said in a separate blog post. "First, many former manipulators appear to have stopped buying foreign currency assets recently, and some are even selling them (e.g., China). Second, the US economy is getting close to full employment." To read more, click here: <http://bit.ly/1NFVrox>

**FROMAN REQUESTS ITC STUDY ON TPP:** In another sign the White House could send the Trans-Pacific Partnership to Congress next year for a vote, U.S. Trade Representative Michael Froman has formally requested the International Trade Commission to begin a study of the impact of the trade deal on U.S. economy, consumers and various industrial sectors.

The recently passed trade promotion authority law requires the White House to give details of the deal to the ITC at least 90 days before signing the TPP pact, so the trade panel can prepare an economic impact report that is due 105 days after signing. Under those guidelines, the earliest countries could sign the agreement is in early February, which would set the stage for the ITC to release its report by the second half of May.

<http://www.theguardian.com/business/2015/nov/10/tpps-clauses-that-let-australia-be-sued-are-weapons-of-legal-destruction-says-lawyer>

## **TPP's clauses that let Australia be sued are weapons of legal destruction, says lawyer**

Leading arbitration lawyer says there are critical loopholes in the Trans-Pacific Partnership's investment chapter that leave Australia wide open

Jess Hill

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When the text of the Trans-Pacific Partnership was finally released last Friday morning, many supporters and detractors went straight to one of its most controversial provisions: so-called investor state dispute settlement (ISDS). This provision, opposed by Labor and the Greens in Australia, gives foreign investors the power to sue the Australian government for introducing legislation that harms their investment.

Andrew Robb, the Australian trade minister, was quick to defend the agreement from its detractors. He lauded Australia's efforts to secure significant exemptions, which he said would make it impossible for foreign corporations to sue the Australian government for enacting environmental policy. "It's a trade agreement which looks at issues relating to trade that can affect public policy in the environmental area ... It does provide safeguards, the best safeguards that have ever been provided in any agreement in this regard."

Robb said critics were just the usual suspects "jumping at shadows", "peddling lines they've been peddling for years without having a decent look at what's been negotiated". But George Kahale III is not one of the usual suspects. As chairman of the world's leading legal arbitration firm – Curtis, Mallet-Prevost, Colt & Mosle LLP – his core business is to defend governments being sued by foreign investors under ISDS. Some of his clients are included in the TPP, and he says the trade minister's critics are right: "There are significant improvements in this treaty, but they do not immunise Australia from any of these claims. If the trade minister is saying, 'We're not at risk for regulating environmental matters', then the trade minister is wrong."

Speaking via Skype from his office in New York, Kahale thumbs through the investment chapter, pointing out the critical loopholes that leave Australia wide open. "The one where all the discussion should be focused is 9.15," he says, referring to one of the "safeguards". "That's a very nice provision, which I imagine the trade minister points to as, 'We've really protected ourselves on anything of social importance.' I think that's nonsense, frankly."

Here's what 9.15 says: "Nothing in this chapter shall be construed to prevent a party from adopting, maintaining or enforcing any measure otherwise consistent with this chapter that it considers appropriate to ensure that investment activity in its territory is undertaken in a manner sensitive to environmental, health or other regulatory objectives."

This entire provision is negated, says Kahale, by five words in the middle: “unless otherwise consistent with this chapter”. “So at the end of the day, this provision, which really held out a lot of promise of being very protective, is actually much ado about nothing.”

Kahale says many provisions in the TPP investment chapter are a vast improvement on previous trade deals. But he says all this hard work could be for nothing because of another provision. “Why would you spend so much time and effort doing a great job in negotiating narrow provisions to this treaty, when you have a ‘most favoured nation’ clause?”

This is where things get a little technical. Essentially, an MFN clause is tantamount to a classic wipeout move. It would enable foreign corporations from TPP states to make a claim against Australia based on the ISDS provisions in *any other trade deal* Australia has signed, no matter which country it was signed with. That means it does not matter how carefully the TPP is drafted: foreign investors can cherrypick another treaty Australia has signed, and sue the Australian government based on the provisions included in that treaty. Kahale has described MFN as “a dangerous provision to be avoided by treaty drafters whenever possible” because it can turn one bad treaty into protections “never imagined for virtually an entire world of investors”.

Including an MFN clause in the TPP was a “major mistake”, Kahale argues, and another reason Australia is still wide open to being sued for legislating to protect the environment.

If you are curious about what this might look like, take Germany, for example. The German government has had two claims brought against it by the same corporation, Vattenfall, a Swedish energy company.

First, Vattenfall sued the government for €1.4bn over the Hamburg provincial government’s decision to place extra environmental restrictions on a coal-fired power plant the company was planning to build along the river Elbe. To settle this case, Germany had to remove the restrictions.

In 2012, Vattenfall announced it was suing the German government again, this time over its decision to phase out nuclear power after the Fukushima nuclear disaster. This was in breach of its contract to allow the company to build and operate nuclear power plants, claimed Vattenfall, which has lodged another claim against Germany, reported to be worth €4bn.

Billion-dollar claims are becoming the norm, says Kahale, citing a recent case in Ecuador, where the government now owes more than \$1bn to the multinational oil company Occidental. “That is a huge number for Ecuador! From my reading of the facts, and my reading of the decision, terrible mistakes were made. The decision was 2-1 to begin with, with a very strong dissent. Now you can be sure, if they’d had a different panel of arbitrators, that could just as easily have been 2-1 the other way.”

The problem with ISDS is not just that corporations can sue governments, says Kahale, but that its entire legal framework is fundamentally flawed. ISDS claims are not heard in a standing court staffed by independent judges. Instead, claims can proceed in ad hoc courtrooms – a hotel room, for example – by three arbitrators hand-picked by the parties. Unlike a traditional court of law, these arbitrators are not obliged to refer to precedent and, since their decisions are not open to appeal, they are free to rule according to their personal opinion. The arbitrators can also be

severely conflicted, says Kahale, because they may act as a judge one day and as a lawyer for a party the next.

Kahale's criticisms have been echoed by Robert French, the chief justice of Australia's high court. In a speech last July, he said: "Arbitral tribunals set up under ISDS provisions are not courts, nor are they required to act like courts, yet their decisions may include awards which significantly impact on national economies and on regulatory systems within nation states."

Kahale believes the ISDS system is so badly flawed it should be abolished, and started again from scratch. Australia, he warns, should think very carefully before signing up to it in the TPP.

"What I would say to Australians is that while the system is in the state it's in right now, signing any new treaty is a very serious mistake. You have to weigh the benefits against the burdens. Somebody at some point might be able to explain to me where all the benefits are, but I certainly haven't seen any."

## **Benton protester at it again, opposing Trans-Pacific Partnership outside New Balance**

Kim Cormier, who was convicted with other members of Occupy Augusta in 2012, said trade deal outsources American jobs.

By Doug Harlow Staff Writer

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**NORRIDGEWOCK** — No more toxic trade deals that outsource American jobs.

That was the message Wednesday outside the New Balance Athletic Shoe factory in Norridgewock, where longtime activist Kim Cormier, of Benton, stood with placards opposing the Trans-Pacific Partnership.

“The Trans-Pacific Partnership is the dirtiest trade deal that no one has ever heard of,” Cormier, a former Benton selectwoman and a member of the Occupy Augusta movement, said. Cormier was among those [convicted of criminal trespass](#) in 2012 for refusing police orders to leave the grounds of the governor’s residence in November 2011.

“It’s been negotiated in secret for about four years and Congress just got the full text recently,” Cormier said. “Obama supports — it’s like a death knell — like NAFTA times 10.”

The Trans-Pacific Partnership is a 12-nation agreement intended to create jobs in the U.S. by increasing exports of industrial goods, agricultural products and textiles to parts of Asia and the Pacific Rim. However, the agreement also could lift some tariffs, or import duties, on goods including athletic footwear, making imported, foreign-made shoes cheaper to buy than those made in the U.S., a move that would affect New Balance directly.

Officials at Massachusetts-based New Balance, which has factories in Skowhegan, Oxford and Norridgewock, said in June they remain cautiously optimistic that the trade pact will have provisions to protect U.S. jobs after the Senate passed “fast track” legislation that makes it easier for the president to negotiate the deal.

President Barack Obama this week published an editorial essay outlining his support of the trade pact, saying “it’s a trade deal that helps working families get ahead.”

The president said his top priority is to grow the economy and strengthen the middle class, and the TPP does just that. He said 95 percent of potential customers of American goods live outside the U.S., and the agreement will open up new markets for made-in-America goods and services.

Exports support 11.7 million American jobs, the president said.

“Companies that sell their goods around the world tend to grow faster, hire more employees and pay higher salaries than companies that don’t,” he said. “On average, export-supported jobs pay up to 18 percent more than other jobs.”

U.S. manufacturers oppose the trade pact because it is likely to increase imports, such as athletic shoes made in Vietnam, and therefore increase competition for American-made goods.

U.S. Commerce Secretary Penny Pritzker and U.S. Trade Representative Michael Froman plan to hold an on-the-record news conference call at 1:30 p.m. Thursday to highlight the importance of the Trans-Pacific Partnership to the economies of each of the 50 states, according to a White House news release.

Outside New Balance on Wednesday, Cormier, with fellow protester Clark Miller, waved to workers ending their shift at 3 p.m. Many workers in turn tooted their horns supporting their opposition to the trade pact.

Cormier’s sign read “Flush the TPP,” referring employees to a website and urging them to join the opposition by emailing or calling members of the Maine congressional delegation.

“It has great potential to shift American jobs overseas, especially manufacturing jobs,” Miller said. “New Balance is a local manufacturer. They employ our friends and neighbors. It’s not only New Balance; it’s any manufacturing facility we have in Maine and everywhere else.”

New Balance makes more than 1.6 million pairs of athletic shoes per year. The company employs about 900 workers in Maine. It is the last major footwear manufacturer still making some of its product line in the U.S.

Matt LeBretton, vice president of public affairs at New Balance corporate offices in Boston, said the company was not going to comment Wednesday. He said in June that Maine’s congressional delegation — past and present — has helped make progress with the Obama administration on the company’s concerns, but the company continues to reserve judgment on the agreement until the final document is released.

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[http://www.bostonglobe.com/opinion/2015/11/11/jeffrey-frankel-congress-should-approve-tpp/Y5gKGNk0SLf0ilxqp404WP/story.html?s\\_campaign=8315](http://www.bostonglobe.com/opinion/2015/11/11/jeffrey-frankel-congress-should-approve-tpp/Y5gKGNk0SLf0ilxqp404WP/story.html?s_campaign=8315)

## Congress should give TPP a thumbs up

By Jeffrey A. Frankel November 11, 2015

Now that the long-awaited text of the Trans-Pacific Partnership agreement has been released, Congress will have to decide whether to ratify it. It should vote thumbs up.

Many who are concerned about labor and environmental issues are fervently opposed to TPP, but they should read the text with an open mind. It seems unlikely that they did so, judging by the speed with which some nongovernmental organizations and others reacted negatively to the document within a few hours of its release last week.

Supporters and opponents alike correctly describe TPP as different from past trade agreements in that it is more about “deep integration” than about removing good old-fashioned tariffs and quotas against merchandise trade. It establishes enforceable rules among the 12 signature members in areas that have traditionally been considered the exclusive province of each country’s own sovereignty, areas such as labor and the environment. Americans should appreciate that they are US-style rules.

As for labor, the deal includes cracking down on human trafficking in Malaysia and promoting union rights in Vietnam, which would allow for independent labor unions for the first time.

On the environment, TPP includes steps to protect the ocean from ship pollution; bans on national subsidies to fishing boats, especially subsidies for overfishing in such depleted species as tuna and swordfish; stronger enforcement of the Convention on International Trade in Endangered Species, or CITES. Endangered species likely to benefit from such enforcement include rhinos, elephants, tropical birds, and rare reptiles.

For the first time in a regional agreement, these environmental and labor provisions are subject to a dispute settlement process backed by the threat of economic penalties. Some NGOs believe the penalties will not be fully enforced. Only time will tell whether they are. Regardless, what is the argument for opposing the agreement? Surely a step in the right direction is better than none at all. Would opponents prefer no measures to establish union rights for Vietnamese, protect the oceans, and end subsidized depletion of fish stocks?

What alternatives do critics offer? We already have CITES, but its enforcement is too weak. Environmentalists have long said they want to put protection of endangered species into a trade agreement because it has more teeth than a multilateral environmental agreement. Now here it is. So how can an environmentalist not support TPP?

Although it is correct that TPP goes beyond previous trade agreements, it also reduces traditional tariffs and quotas. It is true that the United States will not be lowering many such import barriers under TPP, because we don't have many. But other members around the Pacific Rim have lots. TPP will lower their trade barriers and so allow new opportunities for US exports.

American exporters who will benefit include such industries as machinery, automotive products, and information and communications technology hardware. US farmers will be able to export dairy products to Canada, poultry to Vietnam, and beef, pork, soybeans, and wine to Japan. And US service firms will be able to enter fields where they have a comparative advantage such as engineering, education, software, express delivery services, and much more. These are important wins for the US economy.

Some big US corporations did not get what they were expecting out of TPP. The tobacco industry is unhappy that Australia can ban corporate logos on cigarette packs as part of its domestic antismoking campaign, unimpeded by the new Investor-State Dispute Settlement mechanism that the agreement creates. Pharmaceutical and biotech companies did not get extension to other TPP member markets of the full 12-year period of protection that they get at home for the data that they compile on new drugs (biologic medical products, in particular), but rather an effective eight years.

President Obama has now lost support for TPP among some Republican lawmakers over those issues. He will be looking to more members of his own party for votes. Democrats who were fearful of what would come out of the negotiations should now reconsider and give the final text a fresh read. They may be pleasantly surprised.

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### About Steve Suppan

Steve Suppan has been a policy analyst at IATP since 1994. Much of Steve's work is to explain U.S. agriculture, trade and food safety policy to foreign governments and nongovernmental organizations, especially farmer organizations. Steve has also represented IATP at meetings of the Codex Alimentarius Commission, the UN Commission on Sustainable Development, and the UN Food and Agriculture Organization.

### About IATP

Institute for Agriculture and Trade Policy works locally and globally at the intersection of policy and practice to ensure fair and sustainable food, farm and trade systems. IATP is headquartered in Minneapolis, Minnesota with an office in Washington D.C..

# The TPP SPS chapter: not a "model for the rest of the world"

## KEY FINDINGS

- ❖ "Trade in products of modern biotechnology" has been located in Chapter 2, "National Treatment and Access for Market Goods," so that controversies over GMOs or synthetic biology would
- ❖ be judged based on criteria of market access rather than risk assessments of their safety for human health or the environment.
- ❖ Provisions establishing an SPS consultative committee led by trade officials will further weaken and possibly conflict with global standards setting bodies on food and plant safety.
- ❖ Weakness in the U.S. regulatory agencies to provide the "appropriate level of sanitary and phytosanitary protection" required in the Chapter will be exacerbated by the confidentiality requirements that already hobble U.S. scientific peer review of food and agricultural products.

## Overview

**MINNEAPOLIS, NOVEMBER 12, 2015** — Proponents of the Trans-Pacific Partnership (TPP) Agreement, and particularly the White House, have insisted that the TPP is a "high standards" agreement. The Sanitary and Phytosanitary (SPS) "measures" affecting food safety and animal and plant health of agricultural trade are part of these "high standards." Indeed, the TPP and the Transatlantic Trade and Investment Partnership (TTIP) are characterized as a "model for the rest of the world" by U.S. Trade Representative Michael Froman.<sup>1</sup> Far beyond any changes in tariffs, the most important U.S. export in the TPP is the making and enforcement of rules by which all TPP members, and any other countries that wish to export to the United States, must abide.

If the U.S. regulatory system and its scientific underpinnings had not been captured by the regulated industries,<sup>2</sup> it might be credible to claim that repeating the mantra of "high standards" might help lead to improvements in public and environmental

health and worker safety. TPP proponent support for Congressional regulatory “reform” and lawsuits for “regulatory overreach”<sup>3</sup> indicates to us that what is being exported is a framework for regulatory capture that will be legitimated by reference to binding trade commitments and, in the case of the TPP SPS chapter, by “science.”

The TPP chapter on SPS measures is a mere 18 pages of the total 6,194.<sup>4</sup> Following the Obama administration’s November 5 release of the TPP text<sup>5</sup>, the U.S. Congress and the public have 90 calendar days to review the text before President Barack Obama can sign the TPP. Then the clock begins to tick on implementing legislation to accept or reject the 6,194 pages, perhaps as early as May 2016.<sup>6</sup> No amendments are allowed to U.S. trade agreements, according to the Trade Promotion Authority (TPA) that Congress granted to the Obama administration on June 29.<sup>7</sup>

What follows is a critical interpretation of parts of the SPS chapter in the context of how the U.S. regulatory structure operates. Like the confidential USTR-industry dialogue and the intergovernmental negotiations that produced the chapter, the text alone reveals very little about how governments will provide the “appropriate level of sanitary or phytosanitary protection” promised in the World Trade Organization SPS Agreement (Article 5.3). The TPP chapter promises to “build upon and reinforce” (Article 7.2b) that Agreement and the thousands of pages of SPS texts and numerical standards of international organizations referenced in the appendices to the WTO SPS Agreement. But textual explication alone reveals nothing of the capacity of U.S. regulatory agencies to implement and enforce the text to protect public, animal, plant and environmental health and life, per their obligations under U.S. law.

In addition, the negotiators decided to locate provisions on “Trade in Products of Modern Biotechnology” for agricultural trade (Article 2.29) in Chapter 2, “National Treatment and Market Access for Goods,” apparently believing that “modern biotechnology” does not pose SPS issues about which there might be controversy. Since the text neglects to reference the relationship of Article 2.29 to the SPS chapter, we are obliged to explain the reference in this short analysis.

## **The “economic feasibility” of protecting consumers and plant and animal health and life**

Although the *Washington Post* has made the TPP keyword searchable<sup>8</sup>, there are almost no controversial SPS issues in the chapter—or anywhere else in the agreement—that a keyword search reveals. *Growth hormones, food and agricultural nanotechnology, endocrine disrupting chemicals, antimicrobial resistance to anti-biotics, plant synthetic biology* and so many others. Nothing about them—among other controversial food safety, and animal, plant and environmental health issues or technologies—appears in the SPS chapter. Instead, the chapter describes administrative procedures and consultative arrangements for resolving SPS “issues” insofar as they might impede agricultural trade. “Science,” or “scientific principles” or “science-based” rules (Article 7.9), provided they are “economically feasible,” are to transcend any one controversy over any one food or agricultural technology or over any one SPS rule.

However, it is crucial to understand how scientific evidence is subordinated and occulted as Confidential Business Information to realizing trade objectives through the regulatory process. Under the TPP rules and trade policy more generally, what trade and regulatory officials deem to be “appropriate” levels of protection are judged on whether SPS measures to provide that protection are potential or “disguised” trade barriers. Such judgments require a use and understanding of “science” that is filtered through confidentiality requirements, which are antithetical to the peer review that scientific consensus methodologically requires. TPP SPS Committee consultations about the science underlying SPS measures “shall be kept confidential unless the consulting Parties agree otherwise” (Article 7.17.6). The applicability of “science” to SPS measures is further qualified according to whether trade and regulatory officials decide the SPS measures are economically feasible.

The “economic feasibility” of the science-based SPS measures to provide the appropriate level of protection is formulated in this provision: “Each Party shall . . . select a risk management option that is not more trade restrictive than necessary to achieve the sanitary or phytosanitary objective, taking into account technical and economic feasibility” (Article 7.6c). “Economic feasibility” provides TPP members with a crucial loophole against providing SPS measures that are science-based.

For example, since the Congress refuses to fund the Food Safety Modernization Act (FSMA), including its import provisions, inadequately funded and staffed SPS measures of the FSMA are not “economically feasible” to implement and enforce. Because the food and agribusiness industry does not want to pay the fees to expedite trade under the FSMA, they appeal to the presidential Office of Management and Budget to do a “cost-benefit” analysis to delay levying of fees.<sup>9</sup> In the meantime, “science” cools its heels, waiting for lawyers and economists to decide which SPS measures are “necessary” and to what extent, according to cost-benefit analysis, to provide the appropriate level of protection.<sup>10</sup> Cost benefit analysis routinely underestimates the benefits of regulation and overstates the costs.<sup>11</sup>

## **What the chapter says it aims to do**

The chief objective of the chapter is to “protect human, animal and plant life or health in the territories of the Parties while facilitating and expanding trade by a variety of means to seek to address and resolve sanitary and phytosanitary issues” (Article 7.2a). Contrast this objective with the objective of the principles of risk analysis of the Codex Alimentarius, to which the SPS chapter is, in theory at least, legally bound:

While recognizing the dual purposes of the Codex Alimentarius are protecting the health of consumers and ensuring fair practices in the food trade, Codex decisions and recommendations on risk management should have as their primary objective the protection of the health of consumers. Unjustified differences in the level of consumer health protection to address similar risks in different situations should be avoided.<sup>12</sup>

While the Codex advises its member governments to avoid “unjustified differences in the level of consumer health protection,” the primary emphasis in the Codex principles of risk analysis remains consumer health protection, not trade facilitation or expansion.

However, the objective of the TPP chapter is not to improve the “protection of human, animal and plant life or health” itself. Rather, such protection only applies insofar as SPS measures facilitate and expand cross-border trade of food and agricultural goods. So the issues to be resolved are not how best to protect, but how to eliminate or modify any SPS measures (laws, rule-making processes, rules, implementation and enforcement practices, even judicial rulings) that impede food and agricultural trade, if those measures cannot be justified in terms of the trade negotiators’ peculiar understanding and use of “science.”

## **“Scientific principles” in the TPP: a practical U.S. regulatory application**

Even when the use of scientific principles in determining appropriate standards is discussed in the TPP, the integrity of the science behind the standards is subordinated to the goal of facilitating and expanding trade. The TPP SPS chapter would have citizens, who have been denied access for more than five years to the texts negotiated between the USTR, its industry advisors and foreign trade officials, rely on “scientific principles” and “risk analysis” to protect public and environmental health from whatever application of whichever technology that has products being traded. So, for example, “The Parties recognize the importance of ensuring that their respective sanitary and phytosanitary measures are based on scientific principles” (Article 7.9.1) But there is no definition of “scientific principles.” And to judge by current U.S. regulatory practice, the “science” referred to in the text could be the kind of the unpublished corporate science studies that frequently justify U.S. rulemaking and commercial approvals and yet remain “Confidential Business Information.”<sup>13</sup>

For example, in June, the U.S. Environmental Protection Agency (EPA) relied on 27 studies by Monsanto, most of them unpublished, to renew the commercial approval for Monsanto’s RoundUp, the trademark for glyphosate.<sup>14</sup> There is a long history of U.S. regulatory approval of genetically modified organisms and their accompanying pesticides, using the applicant’s unpublished research or a summary thereof without test data and experimental design.<sup>15</sup> Some of the Monsanto studies on glyphosate reviewed by the EPA were from the 1970s, before scientists discovered that glyphosate was an endocrine disrupting chemical that damaged normal human development. (Five independently funded studies were also considered.) In July, the International Agency for Research on Cancer (IARC) released its full report that characterized glyphosate as a “probable human carcinogen,”<sup>16</sup> after having vigorously debated whether the globally used herbicide should be classified as a “known human carcinogen.”<sup>17</sup>

The EPA, using Monsanto's unpublished "science" authorized a continuation of U.S. commercialization, and yet just in time to ignore the full IARC findings and without referring to the preliminary IARC summary released in March. The EPA will be able to claim, without fear of a TPP legal challenge, that its risk assessment was based on "scientific principles," whatever they are. But the EPA is far from the only agency battered into submission by members of Congress at the behest of industry.<sup>18</sup> Indeed, White House risk managers will ignore scientific evidence in risk assessments, if industry concerns about "economic feasibility" of both SPS and non-SPS regulatory measures are brought to their attention with sufficient persistence.<sup>19</sup>

## **Agricultural biotechnology in the TPP**

Perhaps because of the negative international publicity over Monsanto's genetically modified seeds, RoundUp and other EPA approved pesticides,<sup>20</sup> the USTR negotiators decided not to include an annex to the SPS chapter on the biotechnology plant varieties that are modified to withstand multiple applications of RoundUp and other herbicides. Instead, "Modern biotechnology" appears in the "National Treatment and Market Access for Goods" chapter, with a definition that limits the application of "modern biotechnology" to agricultural goods (Article 2.21). Article 2.29, "Trade in Products of Modern Biotechnology," is displaced from the SPS chapter, as if there were no SPS issues involved in the genetic modifications of agricultural crops, whether or not they are modified to withstand ever more toxic pesticides.

However, the terms of Article 2.29 indicate that "modern biotechnology" should be logically located within the SPS chapter, e.g. the reference to the Annex 3 of the "Codex Guideline for the Conduct of Food Safety Assessment of Foods Derived from Recombinant-DNA Plants (CAC/GL 45-2003)" (Article 2.29.6b)iii and footnote 13). This reference concerns how TPP parties are to prevent the import of the undefined, "inadvertent low level presence" of GMOs unauthorized for import. Logically, TPP's SPS "competent authorities" would agree to the definitions, sampling and testing methods and numerical amount of "inadvertent low level presence" during negotiations for bilateral SPS "equivalency" negotiations among TPP members (Article 7.8).

For example, the USDA's grain inspection service would inform the "competent authorities" for grain and oilseed imports that the Grain Inspection and Stockyards and Packers Administration (GIPSA)

does not assess the effectiveness of different detection methods for biotechnology-derived traits nor does it determine the characteristics of fortified samples to a particular degree of accuracy, such as what is performed in the preparation of certified reference materials.<sup>21</sup>

Importing authorities would have to decide whether the GIPSA standards for detecting unauthorized GMOs for import would be adequate to provide the appropriate level of protection for their citizens.

But by putting "modern biotechnology" within the chapter on "National Treatment and Market Access for Goods," the TPP negotiators are able to discuss issues about "trade in products of modern biotechnology" without any reference to the SPS chapter requirements. Instead, any SPS concerns about these products will be discussed in the "Committee on Agriculture Trade (Working Group)," which has no requirement for experts to discuss or demonstrate risk assessment or risk analysis for GMOs. What is particularly remarkable about this Trans-Pacific regulatory evasion is that Article 2.29 will apply to products derived from synthetic biology, the next generation of "trade in products of modern biotechnology." The techniques of synthetic biology are of an order of magnitude more complex than the transgenic plant varieties engineered to withstand multiple applications of a pesticide.

For example, the plant synthetic biology varieties that have received USDA field trial permits do not yet have a reliable safeguard against Horizontal Gene Transfer of DNA or RNA sequences foreign to agricultural or wild plants. According to one research team

Synthetic biology and other new genetic engineering techniques will likely lead to an increase in the number of genetically engineered plants that will not be subject to review by USDA [U.S. Department of Agriculture], potentially resulting in the cultivation of genetically engineered plants for field trials and commercial production without prior regulatory review for possible environmental or safety concerns.<sup>22</sup>

Three scientific committees reported to the European Commission in early 2015 that

[c]urrently available safety locks used in genetic engineering such as genetic safeguards (e.g. auxotrophy and kill switches) are not yet sufficiently reliable for SynBio. Notably, SynBio approaches that provide additional safety levels, such as the genetic firewalls, may improve containment compared with classical genetic engineering. However, no single technology solves all biosafety risks and many new approaches will be necessary.<sup>23</sup>

TPP negotiators, such as former Biotechnology Industry Organization vice president Sharon Bomer Lauritsen, likely do not care that NGOs or academics point out the logical incoherency of excluding “modern biotechnology” from the purview of the SPS chapter and hence from that of the WTO SPS Agreement. No matter how logically inconsistent it is to put “modern biotechnology” and its synthetic biology successors outside of the SPS chapter, doing so means that trade disputes over the products of “modern biotechnology” will have to be filed with reference to the non-scientific framework of the “National Treatment and Market Access for Goods” chapter.

The most disingenuous provision within Article 2.29 is this: “Nothing in this Article shall require a Party to adopt or modify its laws, regulations, and policies for the control of products of modern biotechnology within its territory.” (Article 2.29.3) This provision will certainly be invoked ad nauseam to try to make “modern biotechnology” less controversial among the TPP countries’ civil society. However, the passage should come with a footnote, perhaps something such as:

Expect a visit from the U.S. State Department officer for biotechnology and/or the Foreign Agricultural Service representative in your Embassy to discuss how you can adopt our regulations or modify your laws and regulations to better expedite the import of our agricultural products of modern biotechnology. If you refuse the visit, either expect to look for a new job or expect market entry problems for your country’s exports.

The likelihood of the realization of this footnote is documented in about 900 Wiki-leaked State Department cables from 2005-2009 analyzed by Food and Water Watch.<sup>24</sup> In these cables, the power of the State Department to cause “voluntary” changes in laws and import regulations to increase trade in agricultural biotechnology products is on full display.

In the current low price environment for agricultural commodities, Monsanto and other biotechnology companies are laying off thousands of employees, cutting research and development budgets and buying back the shares of their equity stock to keep share prices high enough to enable share price-based bonuses.<sup>25</sup> It is only a slight exaggeration to say that without U.S. government intervention share prices would be tanking.

The genetic resources that modern biotechnology modify receive a mention only in the TPP chapter on Exceptions. “Article 29.8: Traditional Knowledge, Traditional Cultural Expressions and Genetic Resources Subject to each Party’s international obligations, each Party may establish appropriate measures to respect, preserve and promote traditional knowledge and traditional cultural expressions.” It is fitting that the TPP ignore the genetic resource base of modern biotechnology, since the U.S., together with the EU and Japan, have resisted all efforts, to amend the WTO intellectual property agreement on genetic resources and traditional knowledge, to require patent holders of modern biotechnology, both medical and agricultural to disclose the origin of the genetic resources used in their products.<sup>26</sup>

## **Building on the WTO SPS Agreement or building a TPP Caucus to lobby the WTO SPS Committee?**

The Foreign Agriculture Service of the U.S. Department of Agriculture reviews hundreds of foreign SPS measures to determine whether and how they might be inhibiting an expansion of U.S. agricultural exports.<sup>27</sup> In 2012, the World Trade Organization’s SPS Committee reported 16 “SPS-specific trade concerns,” i.e. SPS measures enacted by WTO members that appeared to violate the WTO SPS agreement.<sup>28</sup> U.S. food and agriculture exporters and importers are unhappy that the putative SPS violations they report to U.S. officials are not resolved more quickly in the WTO process. As a result, the agribusiness lobby has advocated a “WTO plus” SPS agreement that would emulate the U.S. regulatory process, in which their products are invariably approved for commerce.<sup>29</sup>

The “appropriate level of sanitary and phytosanitary protection” in the WTO SPS agreement, adopted in the TPP (Article 7.1 et passim) will be determined by the “competent authorities” in U.S. regulatory agencies. However, in the TPP, the “primary representative” (Article 7.1.2) for the implementation of TPP will not be the “competent authorities,” much less the scientists, but in the case of the United States, the Office of U.S. Trade Representative, which has no scientific competence.

The TPP SPS Chapter, purported to “reinforce and build on the SPS Agreement,” (Article 7.2b) in fact, may well detract from the use of the WTO SPS Committee to inform WTO members about SPS issues that may result in trade barriers. TPP members will be obliged to participate in the TPP Committee on Sanitary and Phytosanitary Measures “to improve the Parties’ understanding of sanitary and phytosanitary issues that relate to the implementation of the [WTO] SPS Agreement and this Chapter” (Article 7.5.3a). The TPP SPS Committee may also develop positions for “meetings held under the auspices of the Codex Alimentarius Commission, the World Organisation for Animal Health and the International Plant Protection Convention” (Article 7.5.3g). This latter provision is ostensibly optional (“may consult”) but in a Chapter with so many “shalls” and opportunities for cooperation, it would be a brave, even foolhardy, “competent authority” who did not obey the orders of the TPP “primary representative” (i.e. the trade minister) to not consult.

The status of the WTO SPS Committee and the WTO recognized international standards setting organizations (which are already subject to considerable political pressure by commercial interests) is further weakened in the TPP SPS chapter. The TPP Parties will merely “take into account” the “standards, guidelines and recommendations” of the World Animal Health Organization and International Plant Protection Convention concerning plant and agricultural animal diseases in the TPP territories. (Article 7.7.2) “The [TPP] Parties may cooperate on the recognition of pest- or disease-free areas” (Article 7.7.3). Or they may not, if doing so would harm the trade or investment of a U.S. firm. The relationship of the TPP SPS Chapter to the WTO SPS Agreement and to the international organizations referenced in the Agreement is opportunistic, like that of a parasite.

## Dispute Settlement in the TPP SPS Chapter

U.S. agribusiness lobbyists have long complained to their Members of Congress that the WTO dispute settlement system was too slow and does not “fully enforce” SPS related rulings. Members of Congress, in turn, pressed the U.S. Trade Representative for a TPP (and TTIP) SPS chapter that would be “fully enforceable.”<sup>30</sup> Did they get their wish fulfilled?

The mention of the TPP state to state dispute settlement chapter is fairly short in the SPS chapter, just two paragraphs. TPP parties to an SPS disagreement are supposed to first resolve their differences through Cooperative Technical Consultations (CTC) with “the appropriate involvement of relevant trade and regulatory agencies” (Article 7.17.5). A note from U.S. horticulture industry advisors to the USTR concerning the U.S.-Chile Free Trade Agreement gives some insight into how the CTC might use “science” to resolve horticulture SPS disputes:

U.S. negotiators must recognize this factor [the need for U.S. export access to Chilean markets] and seek SPS agreements that are flexible enough to ensure phytosanitary mitigation while at the same time being commercially sound. Simply basing SPS agreements on sound science is not enough.<sup>31</sup>

“Flexibility” will presumably include resolving disputes by “various means” that are not simply invocations of “science,” though confidential to be sure.

In keeping with the spirit of Confidential Business Information, “All communications between the course of CTC, as well as all documents generated for the CTC, shall be kept confidential unless the consulting Parties agree otherwise” (Article 7.17.6). Thus the “science” to justify an SPS measure, even if it bears directly on public, animal, plant or environmental health, will remain disclosed only to the “relevant trade and regulatory officials.” The disputing Parties cannot proceed to use of the dispute settlement chapter without first having attempt to resolve their differences through CTC meetings (Article 7.17.8). Thus far, it is difficult to see how this dispute settlement procedure is different from that of the application of WTO dispute settlement to SPS disputes.

However, the SPS chapter exempts certain paragraphs and subparagraphs from application of the dispute settlement process (Article 7.18), e.g. as outlined in footnotes two, concerning equivalence of SPS measures and four, concerning risk analysis. There is no clear logic as to why these paragraphs, and not others, are not subject to dispute settlement. Nor is it clear as to whether SPS measures could be subject to the Investor State Dispute Settlement (ISDS) chapter, given the extremely broad definition of what comprises an “investment” in the Investment Chapter.<sup>32</sup>

Parties to a TPP dispute get to choose the forum in which they may settle the dispute, just as they would for an ISDS settlement. (Article 28.4) Perhaps U.S. agribusiness lobbyists and Members of Congress will have their wish for “fully enforceable” fulfilled on the assumption that the World Bank forum, just down the road, will be more attentive to their concerns than a WTO dispute panel in Geneva.

However, because the TPP does include an appellate body (as does the WTO dispute settlement process), to double check that the dispute panelists have correctly interpreted the dispute settlement procedures, the TPP process will be quicker—just 15 months from the panel hearing to its final report (Article 28.18). Furthermore, compensation under the TPP dispute settlement chapter will be more rapid. (Article 28.19 and 28.20). No more malingering or legislative refusal to pay WTO authorized retaliation, as in the U.S. Upland Cotton Subsidies case!<sup>33</sup> So if the dispute settlement cases are decided in favor of U.S. agribusiness and compensation is paid in full and/or offending SPS measures are modified or eliminated, perhaps the agribusiness lobby will consider SPS measures, finally, to be “fully enforceable.”

## Conclusion

The complexity of the SPS text, as well as its relationship to other provisions in the agreement on Regulatory Cooperation, Investment and Dispute Settlement, to name just a few issues, will require additional analysis. For example, the status of “import checks” and inspection and testing is not treated here, though I have discussed inspection and testing bans proposed by the European Commission in the TTIP SPS chapter.<sup>34</sup> The weakened capacity of the Food and Drug Administration to inspect foreign food facilities, in lieu of port of entry import inspection and testing,<sup>35</sup> surely calls into question the contribution of “import checks” to the “appropriate level of sanitary and phytosanitary measures.”

Likewise the “transparency” measures and the relation of the SPS chapter to the Regulatory Cooperation and Technical Barriers to Trade chapters certainly will require additional study. Will “transparency” requirements burden smaller governments with endless industry demands for comments to revise and delay regulations until regulations are so riddled with exemptions, exclusions, waivers and postponements as to be ineffective? These and other issues in the TPP deserve a fuller public debate in the next few weeks, before President Obama can sign what he hopes will be a “legacy making” trade deal that is largely about removing regulatory “irritants” to trade.

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# Froman Seeks ITC TPP Analysis As Soon As Possible In Request Letter

Inside US Trade, Posted: November 12, 2015

U.S. Trade Representative Michael Froman last week urged the International Trade Commission to complete as soon as possible its assessment of the impact of the Trans-Pacific Partnership (TPP) on the U.S. economy mandated under the 2015 fast-track law, which requires the ITC to deliver its report no later than 105 days after the deal is signed.

In a Nov. 5 letter to the commission requesting the study, Froman said he would "greatly appreciate it if the Commission could issue its report as soon as possible." He also said he had instructed his staff to be available to answer questions and provide additional information to the ITC as needed.

If the ITC takes the full time, it would deliver its analysis in mid-May. This is because signing can take place no earlier than Feb. 3, 2016, which is 90 days after President Obama notified Congress on Nov. 5 of his intent to sign the TPP. The fast-track law mandates this 90-day layover period for Congress to review an agreement before the president signs it.

Froman had previously urged the ITC to begin its economic assessment even before TPP was concluded (*Inside U.S. Trade*, Feb. 13).

However, the ITC has not committed to finishing its analysis in fewer than the 105 days it has under the law, which has led to some private-sector sources to speculate that it may well take the full allotted time (*Inside U.S. Trade*, Nov. 6). The ITC's analysis of a trade agreement's impact on the U.S. economy traditionally accompanies the implementing bill when it is sent to Congress.

Meanwhile, the president's Nov. 5 notification to Congress of his intent to sign the TPP also kicked off a 30-day clock for U.S. trade advisory committees to provide their reports on the TPP agreement. This means the deadline for the committees to deliver the reports is Dec. 5.

Several trade advisory committees already held in-person meetings prior to the text release that are a formal step under U.S. law for their reports to be official. Members can submit comments electronically to the committee chair, who is responsible for producing a draft report.

If the in-person meeting has already taken place, the committees do not have to meet again to approve the report, and can instead do so over the phone. If all committee members do not agree with the report, they can refrain from signing it and may produce a dissenting report.

**12 November 2015**

## US State legislators 'shocked' by EU trade deal implications

Rules envisioned under TTIP could give EU officials power to interfere in US State affairs

**Simon McKeagney, Editor**

When State Senator Virginia Lyons thought it would be wise to develop legislation to reduce harmful electronics waste in her state of Vermont, the last complaint she expected to receive was from the People's Republic of China. The Chinese it seemed, had issue with how new E-Waste reduction measures for Vermont would impact their sales of electronics to the USA.

"I was taken aback" said Senator Lyons at a meeting of the Vermont Commission on International Trade and State Sovereignty. "Why was an issue like better recycling causing such a fuss? They pushed hard on us to change our minds. In the end we implemented the changes, and I'm pretty sure the Chinese are still selling electronics."

This small anecdote might sound innocuous to some, but it raises compelling questions about the intrusion of other countries into legislators work at state-level. On health and environmental issues, Vermont is known for setting the bar high, and is well versed in the pushback that comes from the powers that be. They were the first state to ban Fracking in 2012, and have worked hard to protect waterway systems and develop coherent environmental and consumer protection policies. This year the state is being sued by a consortium of agri-industry giants lead by the Grocery Manufacturers of America, for introducing labeling requirements for genetically engineered (GE) foodstuffs.

Many of the same companies involved in the legal action are also advocating for a strong "comprehensive" trade agreement between the EU and US, a discussion on which brought together the Vermont Commission on International Trade and State Sovereignty, the Vermont Council on World Affairs, the National Caucus of Environmental Legislators (NCEL) and members of the European Parliament to Burlington VT, on November 6.

While TTIP has been overshadowed in the US by its sister agreement, the recently concluded Trans-Pacific Partnership (TPP), an all out war of words is raging across the Atlantic, as European citizens grapple with scope and manner by which the negotiations have been orchestrated. In October, a petition advocating against TTIP reached 3.2 million signatures, and polling shows a majority against it in countries like Austria, Luxembourg and Germany.

"The main issue driving the anti-TTIP sentiment in Europe is the power of corporations," explained Reinhard Bütikofer, Member of the European Parliament from Germany. "When some

of the most powerful business lobbyists have been involved in co-writing the deal to suit themselves, it doesn't bode well for ordinary people or the environment, whether in Europe or the US."

Freedom of information requests revealed in 2013 that 93% of the preliminary meetings the EU Commission had on TTIP were held with corporate lobby groups, while in the US, the trade advisory system is dominated by industry pressure groups, accounting for 85% of seats.

### **Interfering with democracy**

With the big players in driving-seat, social and environmental considerations have been viewed more as "burdensome" trade irritants that should be stymied, rather than important societal choices. Nowhere is this more apparent in the "regulatory cooperation" chapter proposed in TTIP.



"This is a completely new thing, and state legislators need to watch out," explained Sharon Treat, former state-legislator from Maine and member of the Maine Citizen Trade Policy Commission. "It's not even in the TPP, and could have a real effect on how US states make decisions."

In effect, Treat explains, the deal sees the creation of a new oversight body, that would act as an early-warning system for both sides when states or countries plan to introduce new laws or regulations. This body will assess the proposals for their trade impact, through a limited perspective that would demand the "least trade restrictive" measures are finally adopted, regardless of the intention of the proposal.

Effectively, instead of getting a call from the Chinese, TTIP will require US states to call ahead to Europe to check they can proceed with any new laws. That means more time, and more avenues for big business to frustrate and derail progressive public policy:

"When you're crafting a new law on an important issue, such reducing toxics in food packaging as an example, you don't go first to those forces you know will organize to oppose it, like a chemical company and say 'hey look- this is what we're working on.' That's just common sense. So why would we allow that in a trade deal?"

### **Regulatory Chill**

"TTIP might be negotiated in Washington, but all states will be party to the agreement," says Treat. "The regulatory cooperation chapter could apply to most if not all of US state laws and regulations, even if they're not directly related to trade. The potential for companies to slow down or stop progressive policy making in the US is huge."

Treat also explained the interests involved behind the scenes. Industry associations like the US Council on International Business (USCIB) and the American Chamber of Commerce to the US (Amcham) want regulatory cooperation as a means of preventing regulations by US states. And the pressure is two-sided. In Europe, EU politicians are already feeling it:



“TTIP is a huge prize for big corporations, and they know it.” Bart Staes, Belgium MEP said “We in the European Parliament have seen first hand the pressure TTIP has created to change our laws, especially when it comes to GMOs. The US side are working extremely hard to press us to allow greater access of GM crops, based on requests by agri-industry and despite many EU countries being dead set against them.”

### **Change ‘Buy America’ to ‘Buy Transatlantic’?**

The EU also wants greater state-level access for procurement in the US, which could mean substantially altering US state’s procurement criteria. Whether supporting small companies, or sourcing workers and produce locally and sustainably, EU companies have an interest in undermining those rules for great access to state markets, from wholes cities, to hospitals and universities.

“Local purchasing programs, such as farm to school programs, source healthy locally sourced food for 23.5 million students in the US.” Karen Hansen-Kuhn, Director of Trade at the Institute for Agriculture and Trade Policy explained. “Bodies like the Los Angeles Food Policy Council, and 200 other similar bodies across the US, are setting the bar high when it comes to good food purchasing programs. We don’t want these initiatives undermined by the new criteria set in trade negotiations like TTIP.”

Hansen-Kuhn noted the comments of former French minister for Foreign Trade Nicole Briq, who said in 2013, “Why not replace “Buy American” which penalizes our companies with “Buy transatlantic” which reflects the depth of our mutual commitment?”

But is it a given that US states would be willing to compromise their local commitments to suit the Europeans?

“Buy America might have some problems, but in my mind, if you’re using public money, it should be for the public good, like local employment” says Karen Hansen-Kuhn. “Fewer and fewer states are willing to sign on to binding procurement provisions that appear in trade deals. It’s not by coincidence. Who would decide if a state university or public hospital is bound under the procurement criteria in TTIP?”

### **Transatlantic dialogue**

New Hampshire State Representative Bob Backus said he was grateful for the attendance of representatives from the European Parliament, and “shocked” by implications to some of the proposals under the EU-US trade deal.

MEPs Bart Staes and Reinhard Butikofer noted that legislators from US states and EU member countries shared many concerns, and needed to work closer together to expose the threats of TTIP and the corporate interests pushing these agreements.

**Reuters**

## **As Obama heads to Malaysia, human trafficking stance questioned**

**KUALA LUMPUR/WASHINGTON** | BY KANUPRIYA KAPOOR, [JASON SZEP](#) AND [MATT SPETALNICK](#)

November 19, 2015

Inus bin Abul Baser, an 18-year-old from Myanmar's persecuted Rohingya Muslim minority, believed he'd escaped the worst when he managed to buy his freedom from human traffickers in Thailand and enter Malaysia in search of security and work.

But within weeks, he was cooped up in a filthy, overcrowded detention center near Kuala Lumpur's international airport, squatting or sleeping on the floor in a hall with scores of other men. During his fourth month, wardens ordered them not to move or talk, he says, and beat them with belts if they did.

"There was no rest. You couldn't sit or lie down without touching someone else," he said, pointing to a welt on his forearm that he says he received when a guard beat him for arguing with another detainee over space. Reuters was unable to independently confirm his allegations. Interviews with six former detainees revealed similar treatment.

U.S. President Barack Obama's visit to Malaysia on Friday for a Southeast Asia leaders' summit comes amid allegations by U.S. lawmakers and rights groups that his administration ignored Malaysia's abuse of trafficking victims such as Baser to secure the country's help sealing a high-profile trade deal and strengthen ties to offset China's growing political clout.

As Reuters previously reported, a U.S. State Department office set up by Congress to independently grade global efforts to fight human trafficking had recommended keeping Malaysia on the bottom grade in its annual Trafficking in Persons Report this year. That status, known as Tier 3, is reserved for countries with the worst trafficking records.

But senior officials instead in July upgraded Malaysia to the Tier 2 Watch List, freeing the country from potential sanctions and international condemnation, and paving the way for the ambitious 12-nation Trans-Pacific Partnership trade agreement. If Malaysia remained a Tier 3 country, the Obama administration would have had to exclude it from the deal under the fast-track negotiating authority it had from Congress, potentially torpedoing the agreement.

Starkly worded criticism of Malaysia was excised from the final report, according to internal documents seen by Reuters that have not been previously made public.

Malaysian government officials did not respond to requests for comment on the country's trafficking record or detention centers such as the one where Baser stayed, but Deputy Prime Minister Ahmad Zahid Hamidi told a news conference on Thursday that conditions in the facilities had improved.

Secretary of State John Kerry denied [on Aug. 6](#) that there was any link between Malaysia's human trafficking ranking and the trade deal, which was concluded in October.

#### “FUNDAMENTALLY FLAWED”

At the heart of concerns by the State Department's human trafficking experts are Malaysia's immigration detention facilities where people who had already suffered at the hands of human smugglers and traffickers faced more problems and abuse, according to rights groups and Reuters interviews with multiple former detainees.

“It did not reform its fundamentally flawed victim protection regime,” the State Department's human trafficking experts wrote in their recommendation to keep Malaysia on Tier 3, according to internal documents reviewed by Reuters.

“Proposals to reform the grossly inadequate victim protection regime did not result in concrete improvements despite sustained high-level USG (U.S. government) engagement,” they added. “The GOM (government of Malaysia) punished trafficking victims by forcibly detaining them in government facilities.”

The analysts were overruled by senior American diplomats at the State Department, according to sources with direct knowledge of how the report was compiled. By the time the report was published, much of the tougher criticism of Malaysia's detention facilities was removed. The final text was softened to, “the government increased efforts to improve Malaysia's victim protection system.”

The State Department declined to comment on what it described as “alleged internal documents that purport to be part of the deliberative process.” It also denied that the country-by-country ratings in the latest report had been politicized.

In response to questions on Malaysia's ranking, a State Department official said Malaysia's current ranking means that Malaysia does not fully comply with minimum standards as defined by U.S. Congress but “is making significant efforts to do so”.

“It is a ranking that sends a strong message to Malaysia that they must continue to make significant efforts to combat human trafficking,” said the official, who requested anonymity. Washington remains “concerned about a disproportionately low conviction rate for trafficking crimes,” the official said.

After Reuters revealed [on July 8](#) the State Department's plans to upgrade Malaysia, more than 160 U.S. lawmakers wrote to Kerry urging him to keep the country on the list of worst offenders and saying any upgrade due to external factors such as trade would undermine the Trafficking in Persons report's credibility.

But the significance of Washington's relationship with Malaysia goes well beyond trade at a time of regional tensions over China's territorial claims in the South China Sea. Malaysia, a Muslim majority country of 30 million people with an ethnic Chinese minority, is influential in a region

where Washington needs to court allies to counter Beijing's expanding diplomatic and military muscle.

Malaysia is especially important this year as chair of the 10-nation Association of South East Asian Nations.

### "I SAW PEOPLE AROUND ME DYING"

Pongram Konglang, 30, one of an estimated two million undocumented foreign workers in Malaysia, says he witnessed people dying in overcrowded immigration facilities while detained for two years.

A Christian from Myanmar's northern Kachin State, he says he fled his remote village in January 2012 during fighting between Kachin rebels and the military. When smugglers offered to help him leave Myanmar, they didn't tell him where he was going. He was held by force for three weeks at a camp on the Thai-Malaysia border until paying a 3,000 Malaysian ringgit (\$690) ransom. He was then spirited by jeep into Malaysia.

Smuggling, done with the consent of those involved, differs from trafficking, which is the trapping of people by force or deception into labor or prostitution.

Once in Malaysia, Pongram says he worked temporary jobs for several months. In September 2012, as he was attempting to register as an asylum-seeker with the United Nations, he was stopped and asked for identification by two plainclothes police officers in Kuala Lumpur, the capital. When he failed to produce any, they arrested him and took him to one of the country's 12 immigration detention facilities.

He spent the next two years in detention. He said officials would not respond quickly to pleas for medical attention. "I saw people around me dying, and I thought, 'when will it be my turn?'"

He can't say why specifically he was allowed out in May this year but he received an appointment with the local office of the United Nations High Commissioner for Refugees. He still has no legal papers and works odd jobs in cafes and shops.

Reuters was unable to independently confirm details of his detention.

The Malaysian government declined to comment on individual cases involving the detention centers.

Malaysia has said it is taking steps to combat human trafficking, including amendments passed in June to a 2007 anti-trafficking law aimed at improving care for human trafficking victims.

"We have followed the international practice to provide them with basic needs that meets humanitarian benchmark that are imposed by the international community," Zahid, the deputy prime minister, said. "We respect this, although extra budget has to be created to take good care of them."

The country, however, has faced criticism from Human Rights Watch and other rights organizations for failing to implement or enforce amendments to its anti-trafficking law.

Refugees are highly vulnerable to economic exploitation in Malaysia, say rights groups. Labor abuses such as coercion and debt bondage are rife in the Malaysian electronics industry, the plantation sector and construction, the groups contend.

Nearly a third of some 350,000 workers in Malaysia's electronics industry suffer from conditions of modern-day slavery such as debt bondage, according to a study released last year that was funded by the U.S. Department of Labor.

(Additional reporting by [Praveen Menon](#) and Trinna Leong in Kuala Lumpur; Editing by [Martin Howell](#))

<https://www.washingtonpost.com/news/monkey-cage/wp/2015/11/30/investors-have-controversial-new-rights-to-sue-countries-heres-why-this-matters-for-the-u-s/>

# Investors have controversial new rights to sue countries. Here's why this matters for the U.S.

By Rachel Wellhausen November 30 at 4:00 PM

On Oct. 5, the U.S. finished negotiating a complex and controversial free-trade agreement with 11 other countries, called the [Trans-Pacific Partnership](#), or TPP. Congress is [gearing up](#) to vote yes or no on the treaty. And one [provision](#) is especially contentious: [ISDS](#), or Investor-State Dispute Settlement.

Some 3,000 international [treaties](#) already exist that allow foreign investors to sue the government of a sovereign country, legally challenging its actions, but outside the country's own courts. Foreign investors have sued at least 120 different countries more than 650 times between 1990 through 2014.

Ezra Klein at Vox [writes](#), "The ISDS system isn't likely to have much effect on Americans at all." It's true that the U.S. has prevailed in the 13 lawsuits brought to judgment against it thus far. So is the outcry over ISDS – from Sen. [Elizabeth Warren \(D-Mass.\)](#) on the left to the [Cato Institute](#) on the right – much ado about nothing?

No, it isn't.

First of all, while one putative justification for ISDS is that it encourages investment, it isn't at all clear that it does. Second, it hurts to get sued, even if you don't lose. Third, ISDS doesn't depoliticize investors' disputes, as it was supposed to.

Here's what the research says about the [politics around foreign investment](#), and how it has consequences for the United States, too.

## 1. ISDS doesn't do what it's supposed to.

The purported justification for ISDS is that it's risky for businesses to set up shop in another country's sovereign territory. They might find their property confiscated or their investments undermined by government action. However, countries can [really benefit from foreign investment](#), and thus governments want to reassure potential investors. That's why they [sign treaties](#) to promise fair treatment to foreign investors. ISDS is designed as a failsafe: if the government behaves badly, the foreign investor can sue and get compensation.

If ISDS did help soothe the fears of foreign investors, leading them to invest more, it might be worth the tradeoffs. The problem is that there is no clear evidence that these agreements do attract investors. Many scholars have used sophisticated statistical techniques to show, in the end, that investment treaties generate little or no increase in foreign direct investment. Others find some hope. For example, U.S. firms investing in factories, infrastructure, and other physical assets invest a little more abroad when the U.S. has an investment treaty with the partner country. But that's a far cry from ISDS increasing investment everywhere.

Even if ISDS did work as it was supposed to, it wouldn't do much for investment into the United States. Investment treaties and ISDS were initially supposed to help very risky developing countries reassure investors that they weren't stuck if they got tangled up in the developing nations' unreliable domestic legal systems. Because the United States has a well-functioning legal system, that rationale for ISDS is irrelevant here.

## **2. Countries that get sued lose future investment and rethink regulations.**

For the United States, the real upside of ISDS in the TPP is that American firms get the right to sue other TPP governments. Reasonable people can disagree about whether that justifies the downsides of ISDS.

One key downside to consider is that the right to sue goes both ways. While we know that democracies like the United States interfere with firms' property rights less often, they still interfere sometimes. And under the TPP, more frustrated investors from more places can sue the U.S.

The problem is that countries that get sued get less future investment in aggregate, including less investment from compatriots of the firm doing the suing. Just getting sued is enough to scare off other investors: It might not matter whether the U.S. wins its lawsuits or not.

If it is costly to get sued, then rational governments will behave in ways that minimize the risk of getting sued. This is the root of the worry about what ISDS might do to regulation. The U.S. government might think twice about setting regulations that trigger lawsuits.

For instance, what if TransCanada uses the NAFTA ISDS provision to sue the United States for unfair treatment over the Keystone Pipeline? The international law rumor mill is buzzing that such a lawsuit could be filed, even though TransCanada probably wouldn't win. But being sued might be bad enough to discourage the U.S. from making other controversial regulatory decisions.

This said, in new research we find that ISDS might be good at getting investment from at least one source: reinvestment from the aggrieved investor itself. Well over one-third of investors reinvest after they win a lawsuit, and a quarter of investors reinvest even after they lose a lawsuit—suggesting that some investors may respect the rule of law even if they don't like the outcome.

## **3. ISDS doesn't get the U.S. government off the hook for American firms' disputes.**

Historically, ISDS was supposed to “de-politicize” investment. At the World Trade Organization, governments sue each other. So, firms with trade disputes have to complain to their diplomats first.

ISDS was supposed to keep diplomats from getting pulled into private investment disputes, because firms file their own lawsuits instead. That hasn’t happened. In fact, I wrote a book about how diplomats and national origins shape investors’ political risks today. ISDS made it easier for me to do my research, because disputes that used to be hidden behind closed doors are now heard in public, international tribunals.

Investors want their home governments to remain involved in their disputes abroad for good reason: These disputes can get politically tricky. Countries in general did not know what they were in for when ISDS spread around the world in the last decades. Getting sued can be a real shock. Lawsuits have been centerpieces of political campaigns in countries like South Africa, Ukraine, Indonesia, Bolivia, and so on. Some disillusioned governments have delayed ratifying, renegotiated, or withdrawn from treaties. In short, ISDS can stir up anger that diplomats have to quell.

A large body of research suggests real consequences to a system that, for better or worse, has become part and parcel of modern trade treaties. ISDS seems obscure, but it is already shaping the behavior of American actors. And the TPP doubles-down on it.

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