

Friends of the Earth news release

<http://www.foe.org/news/news-releases/2014-05-closed-door-us-eu-trade-talks-put-safeguards-at-risk>

What's the secret? Closed door U.S.-EU trade talks put environmental and public health safeguards at risk

Posted May. 19, 2014 / Posted by: Kate Colwell

WASHINGTON, D.C. – Today, the United States and the European Union opened the fifth round of negotiations on the Transatlantic Trade and Investment Partnership, which are scheduled to run through Friday, May 23. The negotiations will be held in secret, and the negotiating text is hidden from the press and public. But, approximately 600 “cleared advisors” to the United States, mostly corporate lobbyists, have access to the text and negotiators.

Because tariffs are already quite low on both sides of the Atlantic, it unfortunately appears that TTIP negotiations will focus on lowering regulatory “barriers” to transatlantic trade and investment. Such “barriers” include environmental and public health protections -- such as those related to food safety, genetically-engineered organisms, and toxic chemicals, among many others. In the alleged interest of making trade easier, environmental and public health safeguards are put at risk.

Magda Stoczkiewicz, director of Friends of the Earth Europe, released a statement today saying, “These negotiations have the potential to impact upon every aspect of life for citizens here and in the U.S., from food or chemical safety to the environment. The European Commission cannot continue to remain deaf to civil society calls for transparency -- people have the right to know what’s at stake.” Friends of the Earth Europe -- on behalf of 257 organization around the globe -- released today in Brussels a [joint civil society call](#) for TTIP transparency to EU Commissioner De Gucht.

Erich Pica, president of Friends of the Earth U.S., which signed the call for TTIP transparency, had this to say about the coming week of TTIP negotiations: “It’s amazing that the longest living democracies in Europe and the United States cannot negotiate in public. Why keep these negotiations secret? Why do corporate lobbyists have privileged access to negotiators and text and not the public?”

<http://www.foe.org/news/news-releases/2014-05-europe-trade-deal-threatens-food-safety>

For Immediate Release

May 21, 2014

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Europe trade deal threatens food safety

Friends of the Earth protests corporate capture of trade policy at USTR stakeholder event

WASHINGTON, D.C. – Today in Arlington, Virginia, trade negotiators from the United States and the European Union gathered at the George Mason University School of Law to hear public comments about a giant trade deal that is likely to undermine sensible safeguards that protect public health and the environment.

The Trans-Atlantic Free Trade Agreement, also known as the Transatlantic Trade and Investment Partnership, is being negotiated behind closed doors with input from official advisors to the U.S. Trade Representative Michael Froman, most of whom represent global corporations. This facilitates special interest capture of the negotiating process.

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Outside the negotiating venue, public interest groups staged a rally to protest this corporate-driven trade agenda that Friends of the Earth, U.S. called “a race to the bottom approach to food and worker safety.”

Earlier this year, Friends of the Earth and 28 other organizations wrote [a letter](#) to Froman expressing concern “over possible measures in the Transatlantic Trade and Investment Partnership that could have sweeping ramifications for how meat is produced in the United States and EU in coming decades...Rather than an opportunity to raise standards that protect public health and the environment, the meat and feed industries on both sides of the Atlantic are seeking to proliferate destructive practices in the animal agriculture industry with ramifications for other parts of the world.”

Bill Waren, a trade analyst with Friends of the Earth, said that “if global meat and feed industry interests have their way, the U.S. will lower its safety standards for imported beef, leading to an increased risk of mad cow disease in this country.”

The transatlantic deal could prove even more harmful to Europeans. Global meat companies, with a major stake in U.S. meat production, aim to weaken several EU rules that prohibit the use of chemicals, additives and veterinary drugs in meat production. For example, companies are

pushing to overturn current rules that prohibit U.S. exports to Europe of chicken soaked in chlorine or other chemical rinses. They are also seeking to end EU restrictions on U.S. exports to Europe of beef and pork treated with growth hormones and additives, such as ractopamine, a powerful compound that can lead to health and behavioral disorders in animals and possibly in humans. Ractopamine is currently banned in 160 countries.

“If these profit-driven demands by global meat companies are accepted, it will undermine efforts on both sides of the Atlantic to make our animal agriculture system more humane, healthy and fair,” Waren said.

http://citizen.typepad.com/eyesontrade/2014/05/wto-final-ruling-european-ban-on-products-from-inhumane-seal-harvest-violates-wto-rules.html?utm_source=feedburner&utm_medium=email&utm_campaign=Feed%3A+eyesontrade+%28Eye+on+Trade%29

May 22, 2014

WTO Final Ruling: European Ban on Products from Inhumane Seal Harvest Violates WTO Rules

Statement of Lori Wallach, Director of Public Citizen's Global Trade Watch

The WTO today added fuzzy white baby seals clubbed to death on bloody ice flows to dolphins and sea turtles as animals that the WTO has declared cannot be protected by domestic laws because they violate "trade" rules, which will just fuel public and policymaker skepticism about these so-called trade deals.

As a technical matter, today's ruling confirms the uselessness of the WTO exceptions, allegedly designed to protect countries' domestic public interest laws, that are now being touted as the way to safeguard environmental, health and safety policies in proposed pacts such as the Trans-Pacific Partnership (TPP). This is the 39th time out of 40 attempted uses that the exception has been rejected by WTO tribunals when raised to safeguard a domestic public interest law.

BACKGROUND: In this final ruling, the WTO Appellate Body acknowledged that the European Union's ban on the importation and sale of seal products resulted from concerns about "inhumane" hunts with "inherent animal welfare risks," but concluded the EU failed to satisfy the litany of conditions required to defend public interest policies under the WTO's "general exception" provisions. Specifically, the Appellate Body ruled against use of the WTO exception for policies "necessary" to protect public morals. Only one out of 40 government attempts to use the the WTO General Exception, found in Article XX of the WTO's General Agreement on Tariffs and Trade (GATT) and Article XIV of the General Agreement on Trade in Services (GATS), has ever succeeded.

In its ruling today, the Appellate Body also rebuffed arguments made by the U.S. government as a third party observer to the case demanding that the WTO evaluate whether policies that appear to have a discriminatory effect stem from a "legitimate regulatory distinction." The Appellate Body ruled against this U.S. government position, concluding that WTO panels do not need to consider under GATT whether a challenged domestic policy stems from a legitimate policy objective.

Today's ruling follows a string of WTO rulings against popular U.S. environmental and consumer policies. In May 2012, for example, the WTO ruled against voluntary "dolphin-safe" tuna labels that, by allowing consumers to choose to buy tuna caught without dolphin-killing fishing practices, have helped to dramatically reduce dolphin deaths. Today's decision will again spur public ire over WTO rules that extend beyond "trade" to target domestic environmental and consumer safeguards.

Wednesday, May 28, 2014 6:08 PM

FOR IMMEDIATE RELEASE

Contact: Steve Mercer, Vice President of Communications, U.S. Wheat Associates, (703) 650-0251, smercerc@uswheat.org

Statement on TPP Negotiations

U.S. Wheat Associates and the National Association of Wheat Growers today join USA Rice Federation, the National Pork Producers Council and the International Dairy Foods Association in the following statement on Trans-Pacific Partnership negotiations.

Minister Amari's statement in Singapore that none of Japan's sensitive agricultural items will be fully liberalized may signal the end of hopes for the Trans-Pacific Partnership (TPP) to become a truly comprehensive and forward-looking 21st Century agreement. A country cannot shield its primary agricultural products from competition and still claim to be committed to a high-standard agreement liberalizing essentially all goods.

When Japan joined the TPP negotiations, it agreed to "to pursue an agreement that is comprehensive and ambitious in all areas, eliminating tariffs and other barriers to trade and investment," as stated in the earlier (Nov. 12, 2011) TPP Trade Ministers' Report to Leaders. Yet according to several reports from the TPP Ministerial meeting just completed in Singapore, Japanese Minister of the Economy Akira Amari has now flatly told the other negotiating countries that Japan will not abolish tariffs in the five agricultural sectors it considers "sacred." Those five sectors include seven basic agricultural products, covering most of agricultural production: dairy, sugar, rice, beef, pork, wheat and barley. They also include many downstream products made from those seven items, such as flour and flour mixes made from wheat and rice.

The broad exemption that Japan is demanding will encourage other partner countries to withhold their sensitive sectors as well. The result would fall far short of a truly comprehensive agreement that would set a new standard for future trade agreements. In fact the TPP envisioned by Japan, if it stands, would be the least comprehensive agreement the U.S. has negotiated since the 21st Century began.

U.S. negotiators still have a chance to push Japan to provide meaningful agricultural market access in the agreement. Failing that, the alternative is suspending negotiations with Japan for now and concluding a truly comprehensive agreement with those TPP partners who are willing to meet the originally contemplated level of ambition. It is a big step, but one that will be justified if Japan continues to refuse to open its agricultural sector to meaningful competition.

U.S. Wheat Associates is the industry's market development organization working in more than 100

countries. Its mission is to “develop, maintain, and expand international markets to enhance the profitability of U.S. wheat producers and their customers.” USW activities are made possible through producer checkoff dollars managed by 19 state wheat commissions and cost-share funding provided by FAS. USW maintains 17 offices strategically located around the world to help wheat buyers, millers, bakers, wheat food processors and government officials understand the quality, value and reliability of all six classes of U.S. wheat.

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FRIENDS OF THE EARTH, U.S. BLOG

CORPORATE CAPTURE: EUROPE TRADE TALKS THREATEN ENVIRONMENT

Posted May. 29, 2014 / Posted by: Bill Waren

On Friday, May 23, the United States and the European Union concluded weeklong negotiations on the Transatlantic Trade and Investment Partnership (also called the Trans Atlantic Free Trade Agreement). This fifth negotiating round was held behind closed doors in the Washington, D.C. area. TAFTA negotiating documents were classified as government secrets, even as several hundred corporate lobbyists who are “cleared advisors” to the U.S. Trade Representative were granted privileged access.

Tariff issues are a secondary matter in these talks. Generally speaking, tariffs on transatlantic trade in goods are low. Negotiators, therefore, focused last week -- as they will throughout the course of U.S.-EU talks -- on lowering regulatory “barriers” to transatlantic trade and investment. Such “barriers” include environmental and public health protections -- such as those related to climate change, food safety, genetically-engineered products and toxic chemicals, among many others.

Here are a few of the threats posed by TAFTA to sensible regulatory protections for the environment, public health and the climate that Friends of the Earth raised last week in discussions with negotiators, participants at “stakeholder events,” and the press.

Fossil fuel exports. The boom in oil, coal, and liquefied natural gas exports is fueling climate change, but international trade agreements encourage international commerce in these carbon-polluting products. Friends of the Earth believes that TAFTA negotiators should steer a different course: one that creates enough policy space for bold governmental action to curb fossil fuel exports.

For example, Friends of the Earth condemned statements in congressional testimony by Michael Froman, the U.S. Trade Representative, challenging an EU fuel quality directive that would limit shipments to Europe of dirty Canadian tar sands oil, including that which would flow through pipelines like the proposed Keystone XL system for export from U.S. ports.

On Monday, May 19, as TAFTA negotiations kicked off, a leaked draft negotiating text for the E.U. on energy issues was published online. An analysis of the leaked text by the European NGO, Power Shift, and Sierra Club shows that the draft European proposal for TAFTA energy provisions would “expand fossil fuel exports from the U.S. to the EU.”

“This proposal exposes the contradiction of policy makers who promise to do everything they can to act on climate and then push a trade and investment agreements that would devastate our climate,” said Peter Fuchs, executive director of PowerShift.

Investment tribunals. U.S. Trade Representative Froman is also pushing for an investment chapter in TAFTA that would allow firms to sue governments for millions or billions in money damages if environmental or public health regulations interfere with expected future profits. This would discourage government action, for just a few examples, restricting oil and gas drilling,

imposing pollution controls, or limiting the use of hydraulic fracturing.

Toxic chemicals. TAFTA poses risks to the EU's health-protective approach to chemical regulation, called REACH. If the American Chemistry Council gets its way, the TAFTA process could "harmonize down" European chemical regulations so that they approach low federal standards in the U.S., namely the failed Toxic Substances Control Act. In coming years, this could also prevent comprehensive reform of federal chemicals regulation, resulting in weaker rules for chemicals associated with breast cancer, autism and infertility. More immediately, it would undercut more effective toxic chemical regulation currently on the books in California and other states.

Genetically engineered products. TAFTA could open the door for U.S. exports of genetically engineered goods into Europe, where market access is currently restricted -- or at least labeling is required -- because of safety concerns. This could threaten ecosystems, public health and the livelihoods of small farmers, among other adverse consequences.

Gene patents. Friends of the Earth fears that U.S. negotiators will propose, as they have in Trans Pacific Partnership trade negotiations, that intellectual property provisions cover and protect patents on plants, animals and other life forms. We support a ban on gene patenting that covers human genes and all the genes that occur naturally on the planet. By giving corporations monopolies over the use of parts of the genetic code that have evolved naturally and are part of our common natural and human heritage, gene patents are inherently dangerous and unfair

Government procurement. Friends of the Earth believes that green purchasing preferences should not be limited by TAFTA government procurement rules that might be based almost exclusively on product cost and performance. For example, a TAFTA procurement chapter should allow governments to impose procurement rules that require products to be made with recycled or organic materials or meet energy efficiency standards. And, governments should be able to discriminate against products made with environmentally destructive methods. Trade agreement prohibitions on “buy local” purchasing policies should not undercut government policies intended to encourage the growth of green industries, such as solar and other renewable energy ventures. Similarly, school lunch programs that favor healthy food produced by local farmers, rather than giant agribusiness, should not be endangered.

Food safety. Industry lobbyists have called for TAFTA provisions that would make it much easier to challenge safeguards related to food safety and animal health. European firms are seeking to relax U.S. regulatory safeguards related to mad cow disease. But U.S. agri-business has even more ambitious plans to lower food safety standards in Europe, seeking to deregulate EU restrictions on imports of beef treated with growth hormones, chicken washed in chlorine and meat produced with growth stimulants, among others.

Earlier this year, Friends of the Earth and 28 other organizations wrote a letter to Trade Representative Froman expressing concern “over possible measures in the Transatlantic Trade and Investment Partnership that could have sweeping ramifications

for how meat is produced in the United States and EU in coming decades... Rather than an opportunity to raise standards that protect public health and the environment, the meat and feed industries on both sides of the Atlantic are seeking to proliferate destructive practices in the animal agriculture industry.”

In order to appear responsive to an outraged European public and press, both U.S. and EU officials have made broad and artfully disingenuous statements that might sound like support for at least some existing food safety measures in Europe. The Chief U.S. negotiator Dan Mullaney went so far as to tell the press that “The United States has no intention of forcing Europeans to eat anything a European does not want to eat” -- a statement totally at odds with USTR’s recent public comments, including Mullaney’s own wisecrack at last week’s meeting belittling European concerns about “bleached chicken.”

Even if a few EU food safety regulations, such as restrictions on hormone-treated beef, are technically “reserved” (or grandfathered) in a final TTIP agreement and stay on the books, they could prove difficult to interpret and enforce, and might be impossible to update. These rules could be required to meet tough regulatory review standards proposed by the United States and the U.S.-E.U. High Level Working Group. Interpretations and enforcement actions are generally regarded as “measures” covered by trade agreements. They could be subject to review under standards that ignore “the precautionary principle” as it is now applied in Europe. They could be required to meet restrictive TAFTA standards related to sanitary measures, technical barriers, regulatory coherence, cost-benefit analysis

and so forth that have been proposed by the U.S. and the HLWG.

In any case, how can the public be assured that the U.S. has not “out-lawyered” EU negotiators on this and other technical issues in the TAFTA text on food safety if the text is a secret?

End the secrecy and the corporate capture of the TAFTA negotiating process. The U.S and the EU should release the negotiating text of TAFTA as it develops after each round of negotiations. In that way, the public, in the United States and Europe, could make an informed judgment. On Monday, May 19, as TAFTA negotiations got underway, Friends of the Earth Europe -- on behalf of 257 organizations around the globe -- released a joint civil society call for this veil of secrecy over the talks to be lifted. Erich Pica, president of Friends of the Earth U.S., reasonably asked: “Why keep these negotiations secret? Why do corporate lobbyists have privileged access to negotiators and text and not the public?”

Fight Brews In Wake Of EU Elections, But Limited TTIP Impact Expected

Posted: May 29, 2014

The European Council and European Parliament are preparing for an institutional power battle over who should take the helm of the next European Commission, but EU officials and observers say they doubt the fight or its outcome will have much of a bearing on the EU's handling of the Transatlantic Trade and Investment Partnership (TTIP).

This is due in part to the expectation that the square-off -- while messy -- will not actually lead to a delay of the seating of the new commission, and by extension the next trade commissioner, after the current term of the EU executive branch expires on Oct. 31. They also expect the next commission, whoever may lead it, will be supportive of continuing with the TTIP negotiations -- both because the same working-level trade experts will be present in the commission, and because member states also favor continuity in EU policy generally across commissions. Other sources have also pointed out that the TTIP mandate approved by the council will continue to guide the new commission. One EU observer, however, did say that if the commission is ultimately left with a weak leader, that may hamper its ability to shepherd what is likely be a politically contentious final TTIP deal to final passage. But at this point, it's far from clear how the leadership battle will shake out.

Aside from teeing up the fight over the commission presidency, the May 22-25 EU elections also left the European Parliament with a significant number of new members from extreme far-right parties hostile toward Brussels. But that development, too, appears to have a limited bearing on TTIP -- to the extent it will have an influence at all.

Observers said that the election of roughly 60 "euro-skeptics" to the parliament could make a potential TTIP deal more difficult to ratify in the end because they would complicate the debate. On the other hand, these members do not appear to adhere to one philosophy on trade, and some of them may even support the U.S. trade deal.

Frederik Erixon, director of the European Center for International Political Economy (ECIPE), noted in an interview with *Inside U.S. Trade* that either way -- because their numbers are so small in the 751-member parliament -- the euro-skeptics are not expected to be able to block any decisions taken by the legislature.

That still doesn't mean that TTIP will get a free pass in the new European Parliament. The second-largest Socialists & Democrats (S&D) Group, for example, has staked out its position that it will not accept a deal that includes investor-state dispute settlement. The left-leaning Greens Group has also been sharply critical of the overall TTIP agenda.

This year marks the first time that the European Council and parliament have fought over the right to propose presidential candidates. The roots of the battle lie in language in the Lisbon Treaty stating that the council must take "into account" the results of the European elections in putting forward a candidate.

The parliament has interpreted that language to mean that the council should endorse the nominees put forward by the leading political blocs in the parliament -- colloquially known as *spitzenkandidaten*. The leading candidate advanced by the parliament is Jean-Claude Juncker,

the pick of the European People's Party (EPP) Group, which had held and retained its status as the largest voting bloc in the parliament after this year's elections.

But many EU heads of government have balked at the notion that the parliament has the right to choose the candidate. At least two heads of government -- United Kingdom Prime Minister David Cameron and Swedish Prime Minister Fredrik Reinfeldt -- have also publicly voiced their opposition to nominating Juncker. One observer said Cameron's opposition to Juncker is based on his reputation as an adamant EU federalist.

Martin Schulz, the former president of the European Parliament and the S&D Group's *spitzenkandidat*, is also viewed as a "divisive" figure and seems unlikely to get a council endorsement, according to Erixon.

There have been rumors that the council could nominate an "outsider" -- someone who is not the selected candidate from the EPP, S&D, or another political bloc. How that will sit with the parliament, however, is still not clear.

If the council's candidate cannot get the majority backing of parliament, the council has one month to nominate another candidate, according to the Lisbon Treaty. "At the end of the day, you need an agreement between the council and the parliament," one EU official said. "There's no way around that."

International Monetary Fund chief Christine Lagarde's name has been floated as a possibility, according to EU sources. Other "outside" candidates include Finnish Prime Minister Jyrki Katainen, Irish Prime Minister Enda Kenny, Polish Prime Minister Donald Tusk, and Danish Prime Minister Helle Thorning-Schmidt.

In the end, the fight could ultimately boil down to horse-trading over senior posts within the European Commission, another EU official said. "We have 27 commissioners that will be nominated between the end of the year," the official said. "There's plenty of tradeoffs."

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Inside U.S. Trade

Daily News

EU Pursues Strong Energy Chapter In TTIP, Along The Lines Of Leaked Paper

Posted: June 2, 2014

The European Union is continuing its push for a strong energy chapter in the Transatlantic Trade and Investment Partnership (TTIP) that will broadly abolish restrictions on trade and investment in energy and raw materials bilaterally and set guidelines for government regulators. In addition, the EU is seeking rules that are more relevant to global than bilateral energy trade, such as freedom of transit applied to pipelines, though those are not necessarily meant as binding obligations.

The energy issue was on the agenda of the fifth round of TTIP negotiations held from May 19 to 23 in the Washington, DC area. At the closing May 23 press conference, the two chief negotiators made clear that the two sides had not yet agreed whether there should be a separate chapter, as proposed by the EU, or whether the obligations on energy and raw materials trade should be covered by the same rules as established for other goods trade in the agreement.

Assistant U.S. Trade Representative Dan Mullaney last week told a stakeholder briefing that with respect to exports of gas and oil, nothing in the TTIP will change existing U.S. law, according to informed sources. His EU counterpart, Ignacio Garcia Berceero, told the briefing that the energy chapter should have common principles that are not binding rules, sources said.

Some sources said that what the EU is pursuing for energy and raw materials trade and investment in TTIP, including the efforts to reduce restrictions on energy exports, is not radically different from what is laid out in a European Commission non-paper dated September 2013 and leaked in May.

Ilana Solomon, director of Sierra Club's Responsible Trade Program, said that, based on the conversations she has had in recent weeks, it is her understanding the leaked non-paper reflects the energy proposal on the table now. The non-paper was sent by the European Commission to member states for review in September 2013, and it is unclear to what extent it was changed based on member state comments.

EU Trade spokesman John Clancy last week refused to comment on the status of the non-paper. "As is normal practice, the European Commission does not comment on possible leaks," he said in a statement e-mailed on May 19. "Furthermore, the EU has published its position paper on energy which clearly sets our position on what we would like to achieve on the energy issue within TTIP."

That EU position paper, dated June 17, 2013, contains many of the same concepts that are in the leaked non-paper such as non-discrimination, market access and transparency as previously leaked position

papers. For example, the non-paper seeks to establish wide-ranging rules that ensure unfettered access for firms established in either the U.S. and EU to sell, import and export raw materials and energy goods in the others' market under the same conditions as domestic firms.

The non-paper proposes a prohibition against a dual-pricing policy under which a signatory would take measures that increase the export price of an energy good above the domestic price. It also wants to open up the licensing and permit process for exploring energy in each others' markets to firms from one signatory that are established in the others' territory. According to the non-paper, licensing procedures should also be applied without discrimination and with a transparent application process.

But the leaked non-paper is more explicit than the position paper on lifting export restrictions. The non-paper said a party to TTIP automatically is deemed to comply with the requirements of the other for exporting all energy products, which the paper defines as coal, crude oil, oil products, natural gas and electrical energy.

In terms of natural gas, a TTIP deal would mean the EU meets the requirements of the Natural Gas Act, which already stipulates that FTA partners may bypass the public interest review unlike other countries.

But this language, if it prevails, also seems aimed at ensuring that the EU would qualify for the waiver from existing crude oil export restrictions under the U.S. Energy Policy and Conservation Act of 1975. That law directs the president to issue regulations prohibiting the export of crude oil, but provides for a waiver if exports are "consistent with the national interest and the purposes" of the law. The purposes include creating a Strategic Petroleum Reserve and conserving energy.

Sources have said that the EU will likely continue to push for reduced energy export restrictions as a priority to diversify its energy supplies, as indicated by the EU's chief TTIP negotiator last week and German Chancellor Angela Merkel earlier this month.

This is partially to reduce EU dependence on Russian energy, and, according Solomon, due to an EU interest in avoiding hydraulic fracturing to extract its own energy supplies for fear of the environmental damage.

According to the Sierra Club the EU wants access to U.S. "fracked gas" because many member states are opposed to fracking, especially France who has placed a moratorium on the practice. Solomon cited France as having a fracking ban, while countries such as Germany have "de facto" bans.

In response to the non-paper leak, the Sierra Club and the German environmental group Power Shift strongly criticized the EU demands as leading to more environmental damage through increased climate emissions, increased reliance on fossil fuels and an increase in fracking.

But the TTIP rules may only be able to shape the direction of energy exports from the U.S. to a limited extent, according to David Livingston, an associate in the Energy & Climate Program at the Carnegie Endowment for International Peace.

He noted that for liquified natural gas (LNG), the costs of liquefaction, transportation and re-gasification are considerable. In the near term, a potential gas supply disruption by Russia "shutting off the spigot" would have to be sizeable and prolonged before LNG exports from the U.S. would be called on to make up the supply shortfall, he said. This is because spot prices and contracted LNG prices are at a premium compared to EU national gas benchmark prices, he said. Russia could still undercut U.S. prices, he said.

Livingston said that there is no doubt that a TTIP deal, once in place, would lead to a quicker permitting process for exports to the EU. But at the same time, the U.S. is conducting FTA negotiations with Asian countries in the Trans-Pacific Partnership deal and already has an FTA with Korea. Given the price spreads at the moment, these markets would be highly attractive. "At the end of the day, the gas goes to the highest bidder, given particular commercial circumstances," he said in an e-mail. He noted that the export decision are made by companies making commercial decisions.

The TTIP can remove red tape and tinker on the margins, but it is unlikely to do much to override companies' commercial decisions, he said.

The non-paper's proposed provisions on pipeline transit would break new ground because it specifically identifies pipelines as being covered under Article V of the General Agreement on Trade and Tariffs. This is the first time this has been specifically addressed, according to Sarah Burt, a lawyer with Earthjustice. Burt said that pipelines were always assumed to be covered under Article V, but never explicitly specified before.

According to the Sierra Club and Power Shift, the EU demands would limit the flexibility of transatlantic regulators to ensure "environmental, public health, and other public interest safeguards." For example, under the domestic price regulation provisions of the non-paper, parties have the right to establish public service obligations, but they must be limited in duration, non-discriminatory and not "more burdensome than necessary" for the kind of public service defined.

The Sierra Club and Power Shift said this EU proposal follows a precedent that allows countries to successfully challenge laws designed to protect public health and the environment.

The transportation of energy goods is particularly worrisome for environmental groups because it could restrict local or national governments from implementing what they deem to be environmental safety measures. Those safety measures could be deemed as more burdensome than necessary, making a government liable to litigation.

"For us, this is really problematic because there are reasons that a country would need to stop the transit to stop the oil through a country," one environmentalist said.

U.S., Japan Still Far Apart In Ag Talks; Safeguard Among Difficulties

Posted: June 2, 2014

The United States and Japan are still "far apart" in their bilateral negotiations on agricultural market access under the Trans-Pacific Partnership (TPP), and it will be difficult for the two nations to reach a deal before a meeting of TPP chief negotiators next month, Japanese deputy chief negotiator Hiroshi Oe said on May 30.

"Of course I don't exclude the possibility, but it will be very difficult," Oe told reporters, when asked whether the two sides would be able to resolve their differences by the July meeting.

He spoke after two days of market access negotiations in Washington with Acting Deputy U.S. Trade Representative Wendy Cutler that both sides indicated yielded only incremental progress. "We made some progress, but we are still far apart," Oe said.

A USTR spokesman delivered a similar message in a prepared statement provided to *Inside U.S. Trade* on June 2, saying Cutler and Oe "continued to make progress with respect to market access for agricultural products, but difficult issues remain." The spokesman added that Cutler and Oe agreed to meet again in the "near future, with dates to be set through diplomatic channels." Oe told reporters that the next round of bilateral market access talks would take place in a "couple of weeks," maybe in Tokyo.

Oe said the two sides during last week's meeting did not discuss the possibility of concluding the TPP negotiations without Japan, as some U.S. agriculture groups have said should happen if Japan does not provide "meaningful agricultural market access" for U.S. farm goods. Oe acknowledged that both U.S. and Japanese agriculture groups have called for Tokyo to exit the talks, but emphasized that "we are not negotiating with the stakeholders."

One of the difficult issues that the two sides are wrestling with is the parameters of a safeguard mechanism for beef and pork, Oe said. Such a mechanism would allow tariffs on those products to snap back to higher levels if tariff reductions under a TPP deal led to a surge in meat imports.

One observer said the U.S. would likely want a "tight" trigger for such a safeguard that would make it difficult for Japan to invoke, as well as a short time period for the higher tariff level to stay in effect if the safeguard were invoked. But Japan is likely to resist those demands, this source said.

A safeguard is just one element of the market access deal for a specific product; other elements include the final tariff levels and the length of the phaseout. Sources said the U.S. and Japan

are likely negotiating all of these elements in parallel. This is because, in the U.S. view, a strong safeguard that is easy to invoke could undermine the value of any agreement to reduce tariffs, the observer noted.

The two sides already worked out some parameters of a potential market access deal on beef and pork during President Obama's April trip to Japan, but left other issues open, sources said. During that visit, Obama delivered the message that the U.S. would not press for Japan to eliminate all tariffs on beef and pork.

INSIDE US TRADE

Monday, June 02, 2014

Daily News

House-Passed Funding Bill Aims To Block USTR From Negotiating On Procurement

Posted: May 30, 2014

The House early this morning (May 30) passed a bill funding federal trade agencies after making several changes on the floor, including the addition of language aimed at preventing the Office of the U.S. Trade Representative from negotiating trade agreements that would further open up the U.S. government procurement market to other countries.

The language was proposed by Rep. Alan Grayson (D-FL) as an amendment to the fiscal year 2015 Commerce, Justice, Science (CJS) Appropriations bill, known as H.R. 4660. The amendment was approved by voice vote, and the underlying bill was passed on a bipartisan vote of 321-87.

Grayson's amendment, H. Amdt. 761, consists of one sentence stating that "[n]one of the funds made available by this Act may be used to negotiate an agreement that includes a waiver of the 'Buy American Act.'"

Sources indicated it is unclear what the exact impact of the provision would be if it were included in a final appropriations bill passed by Congress. A congressional aide supportive of the language said it is intended to block USTR from negotiating agreements like the Trans-Pacific Partnership (TPP) and the Transatlantic Trade and Investment Partnership (TTIP) that would provide foreign suppliers the same treatment as domestic companies when it comes to procurement of goods by the U.S. federal government.

The 1933 Buy American Act (BAA) generally requires a preference for U.S.-made goods in direct purchases by the federal government, but it does not apply to procurement of services or to non-federal agencies.

The aide argued that the House passage of the amendment also sends a signal to U.S. negotiating partners that there is serious opposition in Congress to new trade agreements. This should give these negotiating partners greater pause in proceeding in the negotiations, especially given that the president lacks fast-track negotiating authority.

But one informed source noted that U.S. free trade agreements with procurement commitments do not in and of themselves waive the Buy American Act. Instead, such FTAs establish an obligation for the U.S. to provide national treatment to suppliers of signatory countries.

The U.S., however, has typically implemented those national treatment obligations by waiving the BAA requirement, using authority provided under the Trade Agreements Act of 1979. That law expressly allows the president to waive BAA requirements for countries with which the U.S. has a reciprocal procurement agreement. Typically, once a new FTA enters into force, USTR will implement this waiver by issuing a *Federal Register* notice.

One House aide said Grayson's amendment could be changed, removed or altered in a potential conference committee on a CJS appropriations bill. In the meantime, the Appropriations Committee will likely hold consultations with USTR and the Ways and Means Committee on the potential impact of Grayson's amendment. The Senate has not yet passed its own CJS funding bill.

In addition to Grayson's amendment, the House passed an amendment from Rep. Mark Meadows (R-NC) that would prevent funds from being used for negotiations to enter into a trade agreement that regulates greenhouse gas emissions. The amendment was adopted on a vote of 226-179.

In his floor speech defending his amendment, Meadows pointed to Congress's previous rejection of so-called "cap and trade" legislation in 2009, as well as an analysis by the U.S. Chamber of Commerce analysis that new rules from the Environmental Protection Agency set to be released next week could cost 3.6 million jobs over the next 15 years.

The U.S. has not sought to regulate greenhouse gas emissions through free trade agreements. However, New Zealand has proposed non-binding language in the TPP that would have countries reaffirm the benefit of pricing carbon, with a view towards establishing a regional carbon emissions trading system.

The House also passed amendments that reduced the funding of the Commerce Department's International Trade Administration (ITA) and increased appropriations for the U.S. International Trade Commission.

Under an amendment sponsored by Rep. Stephen Lynch (D-MA), \$3 million of ITA's funding has been re-directed to the drug courts program in the Department of Justice (DOJ). This leaves the congressional allocation for ITA at \$460 million, which is a 0.1 percent decrease compared to the funding the agency is currently receiving under the FY2014 appropriations bill Congress passed in January.

Lynch's amendment was approved by a voice vote. Rep. Susan Davis (D-CA) sought to restore the ITA funding by moving \$3 million from the Federal Bureau of Prisons within DOJ. However, the amendment was opposed by CJS appropriations chairman Frank Wolf (R-VA), and Davis's amendment was rejected.

Separately, Rep. David McKinley (D-WV) successfully pushed an amendment that diverted \$1.5 million from DOJ's general admissions fund to ITC. This brings ITC's total budget to \$86 million, which is a roughly 1.8 percent increase compared to the funding the agency is currently receiving.

McKinley emphasized that small businesses were being harmed by "unfair, low-cost imports." He singled out China, faulting its alleged currency manipulation and its state-owned enterprises for undercutting U.S. businesses through unfair trade practices.

McKinley questioned why the U.S. does not provide pro bono representation for small businesses in trade remedy cases, similar to the representation defendants receive in criminal cases, although none of the new money going toward ITC would be used for that purpose.

"They don't have access to the same legal resources as larger companies, and they can't afford the cost to file a claim against large state-supported industries like we find in China," he said.

The House also passed by voice vote an amendment from Rep. Jim Langevin (D-RI) that would shift \$5 million within BIS to conduct surveys among companies to measure the extent they have adopted the cybersecurity framework from Commerce's National Institute of Standards and Technology (NIST).

In February, Commerce released the NIST framework, which is a voluntary set of guidelines and practices companies can undertake to protect the nation's critical infrastructure. In President Obama's executive order establishing the framework, critical infrastructure was defined as any system or asset that could debilitate the country's national security, economic security, and public safety and health.

Langevin's amendment did not detail what the survey would cover, or how often it would be used. In his floor speech in support of the amendment, Langevin praised Obama for establishing the framework, but stressed the need for congressional involvement as well as data on how companies have adopted the NIST framework. He also referenced the DOJ indictments of Chinese military officers who have allegedly hacked U.S. entities, most of which were involved in trade cases against Chinese companies.

"It will take congressional action to address issues such as incentives, liability protections, information sharing, and breach notification," Langevin said. "However, while we continue to work toward passage of bipartisan cybersecurity legislation, it is important that we measure how well the NIST framework is faring."

Transatlantic trade: Hard sell

By Shawn Donnan

Today the EU-US trade talks are facing a growing number of political obstacles

One morning last month Giorgio Bocedi, a rotund Italian lawyer with a practised charm, stood up in a brightly-lit university classroom in the Washington DC suburbs and began extolling the virtues of eight centuries of cheesemaking tradition – and the 245,170 cows responsible for producing the world's *Parmigiano reggiano*.

Those cows – and the 3,439 dairy farmers around the northern Italian city of Parma that they belong to – helped produce 3.279m wheels of parmesan each year, Mr Bocedi boasted. And yet still there were pretenders. “The name Parmesan has been used for a long time in America. But we don't know why. Usually it is used in association with Italy!”

Within minutes he had handed over to Patrick Kole, a representative of the Idaho Potato Commission, who was eager to defend the importance of Idaho's soil in growing the unique tuber and to point out the injustice of a pizza company registering the US state's name as a trademark in Germany.

“We know exactly what is going to go on top of that pizza,” Mr Kole declared. “Kartoffel! Potatoes!”

Both men's presentations in defence of the value of regionally-linked foods were made to EU and US negotiators now engaged in the laborious process of trying to construct what, should their work succeed, will be the largest regional trade alliance in the world. They were also emblematic of what, a year after talks were launched, has become one of the dominant features of the negotiations.

Hailed by David Cameron, the UK prime minister, as a “once-in-a-generation prize” that would “fire up” economies on both sides of the Atlantic as they tried to escape the shadow of the 2008 global financial crisis, the Transatlantic Trade and Investment Partnership, to give it its official name, has from day one been billed as a “21st-century” trade agreement. It would eliminate duelling regulatory regimes and the other non-tariff barriers that now complicate the flow of goods, services and capital across the Atlantic. It would move beyond the realm of tariffs and other traditional trade topics and tackle issues relevant to today's digital economy. Beyond that

the goal, as US and EU trade officials regularly point out, is to create something “transformative” that will serve as a model for all future agreements.

Yet a year into the negotiations, the pursuit of a 21st-century agreement looks as though it risks becoming bogged down in 19th-century issues such as the trade in cheese or potatoes.

Days before Mr Bocedi made his case for Parmesan, 175 members of the US Congress issued a call for US negotiators to resist the EU’s push to include its own strict geographical rules governing the branding of cheeses such as Parmesan. The call from Congress had even made the front page in the tiny dairy state of Vermont, where the Burlington Free Press boldly told the EU to “Back off our cheese”. “Hang on to your Gorgonzola, America,” the article began.

The threat that a trans-Atlantic-cheese war might break out is minuscule and the issue of “geographic indicators”, as the regional labels are known, is undoubtedly a small, though sensitive, part in the discussions over building a transatlantic trade pact.

But it is also emblematic of the increasing noise that is surrounding the negotiations as they accelerate towards a goal of concluding a deal by the end of 2015. Whether it is the volatile politics of globalisation in the EU and the US, a heated debate over what rights investors should have guaranteed under any agreement, or simply the head-spinning complexity of the regulatory task at hand, it is clear that the honeymoon is over and that the obstacles are emerging.

When we bring something up with the US they say: ‘We’re willing to talk about it. But don’t mention it in public before the elections’

Negotiators insist that, behind closed doors, a pact is taking shape, even if talks are still at the early stages. Most of the past year has been spent discussing how to approach big subjects such as bringing “coherence” to transatlantic regulation of cars, chemicals and other sectors, and how to overcome longstanding stumbling blocks such as an EU ban on hormone-fed beef and strict import rules for genetically modified organisms. But they have now begun to hammer out actual texts in some areas.

“There is a lot of work ahead of us, but we are making steady progress and we have a firm understanding of the key issues that need to be resolved,” Mike Froman, the US trade representative, said at the end of May’s fifth round of negotiations.

Backers of a deal on both sides of the Atlantic insist the economic case remains strong. The US and EU still face difficult recoveries from the financial crisis. And, while the real economic impact will depend on what an agreement ends up looking like, business groups and governments in both the US and Europe still frame the argument in favour of a deal in terms of boosting trade and creating jobs.

Its advocates also argue that the strategic case for an agreement has only grown stronger over the past year.

When the talks started, the geopolitical justification offered for an EU-US trade deal was the rise of China and the need to get on the front foot in writing the rules of global commerce for the next century – particularly in a world where multilateral negotiations were stalled.

“We need to maximise our influence by sticking together, and leading by example,” Karel De Gucht, the EU trade commissioner, told an audience in Poland on Friday.

These days, however, the strategic reasoning more often has to do with the Ukraine crisis and the newly-aggressive Russia it has revealed. The signing in May of a \$400bn, 30-year gas supply contract between Moscow and Beijing came as EU negotiators were again pressing their case for including an ambitious energy chapter in TTIP. Besides finding a way to accord European companies the same access to cheap oil and gas that their American counterparts now enjoy, EU negotiators also are eager to secure an alternative supply of gas to Russia in order to reduce members’ dependence on the country.

For all the progress and the geopolitics, however, the reality is that the deal is facing a growing number of obstacles, many of them political.

The shadow cast by the revelations that the US National Security Agency was listening in on Europeans, including Angela Merkel, the German chancellor, remains. It has made negotiations over how to guarantee the free transatlantic flow of data, something businesses argue is crucial in today’s economy, incredibly sensitive, even as officials have vowed to treat privacy issues in a separate agreement.

A surge in support for anti-establishment parties in last month’s European Parliament elections has also complicated the politics of trade in the bloc. Some of the biggest winners in that election, such as Marine Le Pen’s National Front, have actively campaigned against the deal.

Even if a majority of the European Parliament that will eventually have to ratify a deal remains firmly pro-trade, there are fears the election result will begin to infect the national politics of EU member states.

President François Hollande of France and his Socialist party, which has traditionally viewed the cause of free trade with a sceptical eye, have become vocal backers of the EU-US deal. But Ms Le Pen’s strong showing in the May elections may be changing that. Already last week Laurent Fabius, the French foreign minister, was linking a looming heavy fine for BNP Paribas, France’s largest banks, to the EU-US trade talks and threatening consequences, echoing a line first uttered by Ms Le Pen.

The reality is that politics was having an impact on the negotiations even before the elections.

Both sides have agreed to put off hard negotiations on some of the most controversial areas of discussion – such as agricultural tariffs – until after the seating of a new European Commission and November midterm elections in the US. The latter has already complicated President Obama’s efforts to secure “fast-track” negotiating powers for trade deals.

They have both also displayed a willingness to bend easily to politics. Vocal opposition in Germany and other EU member states to a proposed dispute settlement mechanism, which would allow foreign investors to take governments to international arbitration panels to seek compensation, caused the EU to suspend negotiations on the investment chapter earlier this year. The US has also stuck by its refusal to include financial services regulation in the

negotiations, with the Treasury opposed on territorial ground. Some Democrats worry it would weaken post-crisis financial regulations such as the Dodd-Frank law.

Privately, officials on both sides complain that the other seems stuck in limbo and unwilling to make what ought to be even easy decisions. “Whenever we bring something up with the US side they say: ‘That’s very interesting, we’re willing to talk about it. But please don’t mention it in public before the fourth of November’,” when the US has midterm elections, says one senior EU official.

There are other signs of tensions. The tabling of initial tariff offers from both sides in February triggered a pointed back and forth after Mr De Gucht complained publicly about the US’s “lack of ambition”. The episode has caused officials to move more deliberately on the offers on services and government procurement, though all are expected to have been tabled by the end of the summer.

For now, the political will to overcome the obstacles and pull off a deal seems to be firm. Business groups are continuing to speak out in its favour. Mr De Gucht and Mr Froman are also determined to set the negotiations on an “irreversible” path, aides say.

There are concerns about timing, however. Mr De Gucht is due to fly to Washington this week in part to try to keep the talks on track. If a deal is not concluded by the end of next year, the 2016 US presidential campaign could interfere, leaving its fate in the hands of Mr Obama’s successor. The trope in Washington is that trade votes rarely succeed in election years, although experts insist that a deal with Europe is likely to be less contentious than most the US has signed.

Bernard Hoekman, director of the global economics programme at the European University Institute in Florence, argues that the biggest challenge on both shores of the Atlantic remains selling the value of a deal that is being negotiated behind closed doors. It is also difficult to make the case for a free-trade agreement when debates over inequality and globalisation are very much in the public conversation.

Ultimately, making that case is going to depend on the deal itself and whether it ends up being as transformative as promised. “It’s fundamentally still the same challenge,” Mr Hoekman says. “How much is going to be there? And is it really worth the effort in terms of the gains?”

Legal protections: clause at centre of disputes with states

Until recently, “investor-state dispute settlement” was a term used mostly in trade and investment treaties to protect foreign investors from rogue actions by governments, usually in the developing world.

These days the clauses are at the centre of negotiations on a trade deal between the advanced economies of the EU and the US.

Faced with increasingly vocal opposition to ISDS articulated on social media and by member states including Germany, the European Commission was forced this year to suspend

negotiations with the US over the investment chapter of the mooted Transatlantic Trade and Investment Partnership.

- **What is at issue?**

ISDS clauses allow companies to take governments to international arbitration panels to seek compensation if they feel their investment has been hurt by government action.

Until a few years ago cases were rare. But there has been a surge in filings by companies taking an ever broader view of what constitutes a legitimate cause for action. According to the Organisation for Economic Co-operation and Development, 57 ISDS cases were filed against governments in 2013, almost half of them in developed economies.

- **Why is that contentious?**

Increasingly ISDS cases are based on regulatory actions rather than simple cases of expropriation. In a high-profile case, Philip Morris International has taken Australia to an arbitration panel over its introduction of plain-packaging laws for cigarettes. Vattenfall, the Swedish energy company, has challenged Germany's decision to phase out nuclear power. Eli Lilly has filed a case against Canada over a court decision invalidating two drugs.

Opponents argue the cases have become a tool for big corporations to challenge domestic regulations.

- **So what's the solution?**

EU and US trade officials argue that by closing loopholes and tightening the rules, an ISDS clause in a transatlantic deal would go a long way to ending abuses. It would also set an example for investment treaties both parties are negotiating with China and other countries

Opponents, including some trade lawyers and the conservative Cato Institute, argue such a clause is simply unnecessary. The EU and US have functioning judiciaries that provide protection for foreign investors.

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BUSINESS V STATE INVESTMENT DISPUTES IN EU SPOTLIGHT

By **Andrew Walker** BBC World Service Economics correspondent

Should foreign businesses have the right to take a sovereign state to arbitration to seek compensation for a change in the law or government policy? And if so, in exactly what circumstances?

These issues have been raised as a result of a plan being negotiated by the EU and the US called the Trans-Atlantic Trade and Investment Partnership (TTIP).

The questions about companies' rights to seek arbitration are the subject of a public consultation exercise that is under way in the EU, ending in early July.

The European Commission has a [page on its website](#) for members of the EU public wanting to contribute.

"[ISDS] serves as a powerful corporate weapon to delay, weaken and kill regulation"

-Olivier Hoedeman Corporate Europe Observatory

TTIP is controversial and the proposed rights for foreign investors are especially contentious. That part of the plan is known as investor-state dispute settlement (ISDS - not to be confused with the International Sheepdog Society).

The basic idea of ISDS is that foreign investors should be able to go to independent arbitration if they believe they have been treated by a host government in a way that breaches an international investment agreement. If they win, they may get compensation.

The potential benefits for the foreign investors are clear enough. But why would governments subject themselves to this kind of constraint?

'Chilling factor'

There are two arguments. The legal protection can be appealing to foreign companies, so it could encourage them to invest when they might not otherwise have done.

And if you offer this arrangement in a bilateral agreement, the same protection would be available to your own companies when they invest in the other country involved.

The inclusion of ISDS in the transatlantic negotiations is hotly debated. Critics say that it could inhibit governments' rights to regulate in the public interest, and expose them and taxpayers to hefty compensation bills if they do regulate in a way that hits foreign investors' profits.

Brussels-based Corporate Europe Observatory (CEO) is one of the leading groups campaigning against ISDS.

It rejects the idea that ISDS protects investors against unfair behaviour by host states. Instead, the group argues: "It serves as a powerful corporate weapon to delay, weaken and kill regulation."

"It will be made crystal clear that this agreement will not limit the scope for governments to take decisions on, for example, the balance between public provision of healthcare and private services"

- European Commission

Olivier Hoedeman of the CEO says that ISDS will impose a "chill factor" on regulation, as governments will be reluctant to act for fear of being sued.

The group also complains that ISDS gives special privileges to foreign companies and says that it will not bring the economic benefits claimed.

Company v country disputes

This type of provision is not new in international agreements. They have existed for decades and the World Bank has had an agency dedicated to arbitration in such disputes since 1966. But there is some strong evidence that international companies are making more use of them than they used to.

Research by the United Nations Conference on Trade and Development found a cumulative total of 568 known cases (and the agency suggests there probably are further cases where there are no public records), most of them happening since the turn of the century.

About half have been concluded, 43% in favour of the state defending itself, 31% in favour of the investor. The remainder were settled.

The largest award to date, so far as is known, went to the oil company Occidental in a dispute with Ecuador over the cancellation of an exploration and drilling agreement. The amount awarded by arbitrators was \$1.77bn (£1.06bn) plus interest.

Other cases have involved regulation of energy prices, invalidation of patents and alleged wrongful criminal prosecution. A number of cases have been brought against Spain and the Czech Republic over changes to their treatment of the renewable energy sector.

One of the most famous, or infamous, examples is the complaint by the tobacco company Philip Morris about Australia's plain packaging law. There has been no ruling in that case.

Limited investor protection

In the UK, some campaigners have a specific concern about how ISDS might interact with domestic UK legislation on the National Health Service.

One group, called patients4nhs, says that ISDS means it will be "virtually impossible in future for the UK government to reverse the privatisation of the NHS that we see as a result of the Health and Social Care Act (2012) - even if this proves to be a disaster."

The worry for them and other groups is that once foreign companies have a place in the market, they might be able to seek compensation if a British government wanted to revert to public sector provision.

The European Commission does not accept this argument. It says: "It will be made crystal clear that this agreement will not limit the scope for governments to take decisions on, for example, the balance between public provision of healthcare and private services."

John Clancy, a spokesman for the Trade Commissioner, Karel de Gucht, says the protection that investors would get would cover a limited number of actions, such as "discrimination, denial of access to justice, expropriation without compensation and the inability to transfer capital to invest".

Many campaigners, however, are not reassured by what the Commission says or by its consultation.

Chem Watch

US states demand more say in TTIP negotiations

Retaining rights to regulate chemicals a concern

12 June 2014 / United States

Fears that provisions under discussion at the Transatlantic Trade and Investment Partnership (TTIP) talks could impede their ability to regulate chemical safety, environmental protection and public health, have prompted several US state, led by Vermont, to demand a "seat at the table".

Citing leaked information, Senator Virginia Lyons, co-chair of Vermont's Commission on International Trade and State Sovereignty, says she is concerned by the proposal to bring states under the purview of the regulatory co-operation provisions. That could hinder states' ability to regulate, she says.

As a consequence Ms Lyons has been talking to counterparts in other New England states like Maine, New Hampshire, Massachusetts, Connecticut and Rhode Island, with the aim of crafting a common position on states' rights, she tells *Chemical Watch*.

Another issue that could affect states is the potential inclusion of provisions to have investor-state dispute settlements carried out by tribunals, rather than US courts, she says. "It is critically important that state authority be recognised in any process and that the US court system be utilised rather than a tribunal process for decision-making." The dispute resolution process through tribunals should be outside the scope of TTIP, she says. "State laws need to be respected, particularly in this country, where we have such a robust judiciary."

The United States Trade Representative's (USTR) office should have a "more collaborative process with states," Ms Lyons says. When talking about "standards for chemical regulations... it seems to me that with states engaged in the conversation, we could reach some pretty important decisions," she says, pointing out that several states regulate toxic chemicals in consumer products, and adding that negotiations about chemical regulations "must be transparent and inclusive to protect future generations".

Saying that TTIP negotiations have a "very blind process," Mr Lyons says states are having a hard time because "we don't know what is being negotiated. The only way we learn about what is being negotiated is if there is a leak or if the USTR asks for input on specific issues." States are used to a very transparent, democratic process, she says, urging the USTR to "reach out" to states in a "more robust fashion." Members of Congress and senators are also being lobbied to ensure state rights in any US-EU trade pact, she says.

The leaked position paper on regulatory cooperation "clearly implicates the states and mentions explicitly that the states would be subject to regulatory cooperation provisions," says Baskut Tuncak, attorney at the Center for International Environmental Law (Ciel). Those provisions would require trade impact analyses and ensuring that regulatory measures are the least trade restrictive options. "These sort of analyses would be very, very onerous for the federal government, and for states it would make it virtually impossible for them to actually exercise their right to regulate."

There is also the potential for investor-state dispute settlement provisions where foreign investors, in the past, have sued states "demanding compensation for public interest measures that decrease their expected profits," Mr Tuncack says. Such lawsuits are not conducted in US courts, but by foreign arbitration tribunals. Such actions not only cause the taxpayers to compensate these companies, but, he says, are also used as a "tool to chill the development of laws by threatening these sorts of investor-state settlement lawsuit."

The investor dispute resolution mechanism could be used against regulation of hydraulic fracturing in many states, including California, according to William Waren, trade policy analyst at the NGO Friends of the Earth. Although international agreements are unlikely to roll back state regulations already on the books, they could limit states' ability to act in the future, he says.

French concerns over geographical indications will hamper TTIP talks

Published: 18/06/2014 - 08:25

Wine is a casus belli for the French government, who may block transatlantic negotiations if geographical indications are not protected. EurActiv France reports.

Internet domain names like '.vin' and '.wine' and geographical indications could emerge as the thorn in the side of the TTIP talks.

TTIP has already come under fire from both sides of the Atlantic. European governments - and especially France - have highlighted geographical indications and domain names as major stumbling block for trade negotiations. According to the Commission, "a geographical indication is a distinctive sign used to identify a product as originating in the territory of a particular country, region or locality where its quality, reputation or other characteristic is linked to its geographical origin."

"We have written to the President of the European Commission to ask him to act, especially regarding the .vin and .wine domain names," said France's Secretary of State for Digital Affairs, Axelle Lemaire, in a report on 13 June.

Her letter to the EU executive was also signed by Stéphane Le Foll, French Minister for Agriculture, and Laurent Fabius, Minister for Foreign Affairs, who called on the European Commission to oppose giving the domain names .vin and .wine without guaranteeing protection for French geographical designations.

"This decision undermines ongoing talks on the transatlantic partnership by forcing it to be based on technical discussions regarding internet naming," said one of the three Ministers in the report.

The US also has its reserves. "The American government worries that if it starts recognising wine geographical indications in the framework of internet domain names, it will be weakened during transatlantic negotiations," said Pascal Bobillier-Monnot, Director of France's national confederation for producers of products that come under French geographical indications.

Safeguard

The problem of internet domains is not new. In 2011, the institution that manages and coordinates the attribution of domain names in the world, ICANN (Internet Corporation for Assigned Names and Numbers) started a world-wide attribution process for new thematic or geographical extensions such as '.paris', '.food', '.hotel' or '.wine', as opposed to the classic '.fr' or '.com'.

The attribution rules were put in place by ICANN and do not take account of safeguards that are important to many European countries, such as limiting speculation on domain names and protecting the commercial use of wine geographical indications.

In late September 2013, the EU's Commissioner for Digital Agenda, Neelie Kroes, asked the ICANN not to assign '.vin' and '.wine' without an agreement to protect geographic indication in the wine sector.

On 4 April, ICANN decided to push back the attribution process and grant 60 days of extra negotiations to parties involved. However after the extension period ended on 3 June, "no agreement could be found," according to the French confederation for producers. "Since then, no one knows if the attribution process has resumed or not," added Pascal Bobillier-Monnot.

Meeting in London

The letter from Paris to Brussels comes at an important time. There will be an ICANN meeting in London between 22-26 June, where the issue of '.vin' and '.wine' will be central.

A letter signed by the European Commission and numerous member states will be presented at the meeting. "However, it is unlikely that the Commission will have the same position as France in transatlantic negotiations," said Pascal Bobillier-Monnot.

Not everyone is as concerned by the matter. "The problem is that ICANN don't give a damn!" said one of Axelle Lemaire's advisors.

>>Read: EU challenges US hegemony in global internet governance

"ICANN takes decision that it deems technical, when they actually have political and economic consequences that are totally out of proportion with their legitimacy!" said David Martinon, French representative for international negotiations on the information and digital economy.

"ICANN's board of directors [...] is getting ready to take decisions, and there is strong evidence that they will be bad for European interests," he added.

France is counting on support from Italy, which will take over the presidency of the European Union on 1 July 2014

<http://www.reuters.com/article/2014/06/20/us-usa-trade-tpp-idUSKBN0EV2KE20140620>

Obama says hopes for Pacific trade pact in November

WASHINGTON Fri Jun 20, 2014 5:44pm EDT

(Reuters) - Pacific trading partners hope to have a free trade agreement ready to present to the public and stakeholders in November, U.S. President Barack Obama said on Friday.

He said the aim was to have a document to discuss with other leaders of Trans-Pacific Partnership nations when he travels to Asia in November, a trip that will include the Group of 20 leaders meeting in Australia on November 15-16. Asia Pacific Economic Cooperation (APEC) leaders also meet that month.

The United States holds mid-term elections on Nov. 4, and many trade experts had despaired of finalizing the TPP this year because of the risk that it could cost Obama's Democrats votes at the poll, given the party's links to trade unions worried about the impact of trade agreements on jobs.

Obama said he discussed a timeline to complete the deal this year with New Zealand Prime Minister John Key, whose country is one of 11 others in the pact covering two-fifths of the world economy and a third of global trade.

"Our hope is by the time we see each other again in November, when I travel to Asia, we should have something that we have consulted with Congress about, that the public can take a look at, and we can make a forceful argument to go ahead and close the deal," he told reporters after the meeting.

"But we've got a lot of work to do between now and then."

The White House hoped to complete the TPP, part of Obama's strategic shift toward Asia, last year, but talks stalled over Japanese tariffs on agricultural imports. Tokyo wants to shield rice, wheat, dairy, sugar and beef and pork products, while Washington seeks to protect U.S. carmakers from increased Japanese competition.

But participants reported new momentum after a U.S.-Japan summit in April. A Mexican official told Reuters some countries were pushing to get an agreement in September at the latest, although other participants are less optimistic. [ID:nL1NoOL1MB]

Australian Trade Minister Andrew Robb, who visited the United States last week, was reported as saying on June 18 there was no chance of a deal this year, though he hoped it could be concluded in the first half of 2015.

Key, who has said Japan should be cut out of the deal if it cannot make the necessary concessions, said he was confident of reaching a high-quality, comprehensive TPP.

"There's always a period of sort of arm-wrestling that goes on between the parties, and sometimes it always feels a bit darkest before the dawn," he said. [ID:nL2NoPo16P]

The other TPP members are Brunei, Canada, Chile, Malaysia, Mexico, Peru, Singapore and Vietnam.

(Reporting by Roberta Rampton; Writing by Krista Hughes; Editing by Dan Grebler)

<http://www.foe.org/news/blog/2014-06-2014-election-dont-fast-track-pacific-trade-deal>

The Pacific trade deal, Fast Track, and the 2014 elections

Posted Jun. 20, 2014 / Posted by: Bill Woren

Recently, I had the opportunity to appear with Ian Levitt, the host of The Daily Report on Minnesota radio station KTNF. He is conducting a series of interviews with me regarding the environmental threat posed by legislation that would "fast track" the Trans Pacific Partnership trade agreement and a similar trans Atlantic free trade agreement, which is the early stages of negotiation.

The focus of our discussion was the TPP, which appears to be in the final stage of closed-door bargaining among the parties. It is a colossal trade deal in terms of its geographic and economic reach. The participants in the secretive negotiations include Japan, the communist dictatorship of Vietnam, the Sultanate of Brunei (ruled under sharia law), and eight other Pacific nations: a mixed bag in terms of observance of human rights standards, to say the least.

The TPP would undercut sensible safeguards related to food safety, financial industry abuses and global warming, among many others. As I told KTNF listeners, "a long list of special favors to the wealthy and the corporations is in this so-called trade agreement. It's a Wall Street Bill of Rights."

"The TPP is not a trade agreement in the traditional sense. It is an attempt to constrain the capacity of governments to act in the public interest." The U.S. Trade Representative, Mike Froman, is attempting to lower so-called non-tariff barriers to trade such as economic and environmental regulations.

The TPP and other trade deals are intended to deregulate the world economy, expand corporate property rights and establish principles in international law of what I'd call market fundamentalism. This would allow global corporations, in many instances, to have their way regardless of the views of the people and parliaments and regardless of international human rights standards.

Of particular concern are the leaked U.S. intellectual property proposals that would grant monopoly rights to multinational pharmaceutical corporations. As I explained in the interview, the TPP "still contains provisions on intellectual property that could cause the price of lifesaving medicines to skyrocket." You're really talking about the putting lives of millions of people at risk.

Intellectual property provisions would also allow biotechnology firms "to patent life forms, taking title to our common genetic inheritance."

Similarly, Biotech giants like Monsanto want to protect trade in genetically modified food and restrict GMO labeling through TPP provisions on so-called "technical barriers to trade."

Even worse, "The TPP still contains 'investor-state dispute settlement ... which would create a 'private court' for multinational corporations..." We have lots of horror stories to tell about existing investment agreements on the same general model.

For example, take the "rain forest Chernobyl" case, Chevron v. Ecuador. The oil company refused to clean up an oil spill that polluted an area the size of Rhode Island, destroying a wild and biodiverse place and causing deaths, miscarriages and illness among the indigenous peoples of the Amazon. Yet, the oil giant is suing Ecuador before an international tribunal and hiding behind the U.S.-Ecuador bilateral investment treaty in order to resist the Ecuadorian courts and the call of common decency to make amends.

The TPP investment chapter could also be used to protect the fossil fuel industry from climate regulations. "They want to use these agreements to protect their investments in shale oil and shale gas and to continue to 'frack' and to continue to export planet-killing, carbon -polluting products around the world."

Fast Track legislation is the key to getting the any trade deal approved by Congress. Fast Track would allow the TPP to be ratified on an expedited schedule with little debate, no amendments, and a straight up or down vote. This turns the U.S. Constitution upside-down -- the founders intended for Congress, not trade bureaucrats, to regulate trade with foreign nations.

"If they pass Fast Track," I explained, "we are going to be in a corner. We will not have lost everything, but it would be like going into the fourth quarter of a football game two or three touchdowns behind." Pressure from big campaign contributors would make it tough for legislators to shoot down the whole deal, when it's presented on a take it or leave it basis.

Ian asked me whether the amount of public attention on the TPP has been successful in stopping it thus far. As I explained, "We have been successful in the last part of 2013 and the first part of 2014. The corporations and the U.S. trade representative made a serious push to complete the TPP and more immediately threatening to push through Congress the Fast Track trade promotion legislation that would be necessary to ratify such a radical plan."

"In the short term, I'm optimistic. But, we have mid-term congressional elections coming up and because progressives are not as active in mid-terms and do not vote in the same numbers as the folks who are rallied by corporate money, people are expecting the Republicans to take control of the Senate and perhaps increase their margin in the U.S. House of Representatives. And, that will bring Fast Track legislation and the Trans Pacific Partnership roaring back."

We could even see an attempt to move a Fast Track bill in the lame duck session of Congress after the November election. "So, this is no time for people to be complaisant... Unfortunately, too many good progressives only show up at the polls when it is a presidential election year."

People need to talk to their members in Congress today about the dangers of Fast Track and the TPP. And, they need to vote in November.

- See more at: <http://www.foe.org/news/blog/2014-06-2014-election-dont-fast-track-pacific-trade-deal#sthash.tfAKTqW7.bRXdc8R0.dpuf>

<https://www.techdirt.com/articles/20140625/04305727679/why-taftattip-isnt-worth-it-economically-how-we-can-do-much-better.shtml>

Why TAFTA/TTIP Isn't Worth It Economically, And How We Can Do Much Better

from the *doing-it-by-numbers* dept

As recent posts on Techdirt have made clear, resistance to TAFTA/TTIP is growing on many fronts. In countering that, supporters of the negotiations unfailingly cite the "unique opportunities" or "huge benefits" of the deal. There's no denying that potentially TAFTA/TTIP will be huge: the European Commission's pages on the negotiations point out that the US and EU trade €2 billion every day (around \$2.7 billion). They also note the following important facts about investment between the two regions:

Total US investment in the EU is three times higher than in all of Asia.

EU investment in the US is around eight times the amount of EU investment in India and China together.

Of course, those impressive figures completely undermine the case for including corporate sovereignty provisions in TAFTA/TTIP, since investors are clearly happy to put their money into the US and EU even in the absence of ISDS mechanisms.

But what counts is not just the present size of the trade and investment between the US and EU, but the future gains that TAFTA/TTIP would bring. This is clearly the central question about the negotiations, because if those benefits are small, there is no point making painful concessions of the kind that will be required to conclude the deal. And yet, surprisingly, there is precious little in the way of rigorous research into what the effects of TTIP would be on the US and EU economies. It's true that figures about the benefits are regularly trotted out by those involved, but these come almost exclusively from one source: econometric modelling carried out by the Centre for Economic Policy Research (CEPR) in London (pdf), and paid for by the European Commission. Here are its key claims about the benefits of TAFTA:

An ambitious and comprehensive transatlantic trade and investment agreement could bring significant economic gains as a whole for the EU (€119 billion a year) and US (€95 billion a year). This translates to an extra €545 in disposable income each year for a family of 4 in the EU, on average, and €655 per family in the US.

Those figures of €119 billion a year (about \$160 billion) for the EU and €95 billion a year (about \$130 billion) for the US are uncritically quoted in most articles about TAFTA. That's a pity, because they are misleading in the extreme. For example, the passage quoted above speaks of "€119 billion a year" as if this would be the gain from TTIP each year. But a footnote on page 3 of the CEPR study, where a table lays out the predicted change in GDP, explains:

Note: estimates to be interpreted as changes to a projected 2027 global economy.

That is, the €119 billion figure is the extra GDP that would be seen in 2027 as the result of TTIP being in place for the previous ten years, compared to the situation in 2027 without the agreement: it is

a cumulative GDP gain. That means the other figure often thrown around -- that TAFTA will increase the GDP of the EU and US by around 0.5% is similarly misleading: it refers to the cumulative GDP gain after ten years. In terms of how much TAFTA would add to GDP each year, that would be far less -- roughly 0.05%, a rather different matter. Here's what the economist Dean Baker has to say on this misdirection, in a blog post on the TTIP negotiations with the provocative title: "Why Is It So Acceptable to Lie to Promote Trade Deals?"

Implying that a deal that raises GDP by 0.4 or 0.5 percent 13 years out means "job-creating opportunities for workers on both continents" is just dishonest. The increment to annual growth is on the order of 0.03 percentage points. Good luck finding that in the data.

He goes on to make a great point about the impact of strengthening intellectual monopolies in these trade agreements:

there are reasons to believe the growth effect could go in the opposite direction. The model used by the London CEPR does not assume any negative growth impact from higher prices for drugs or other goods that might be more costly due to stronger patent and copyright protections coming out of the deal.

These will likely be a drag on growth. Economists tend to like patents and copyrights (probably because their friends and family members benefit from them), but that doesn't change the fact that they lead to market distortions and have major economic costs. If the price of a drug rises by 1000 percent because we imposed stronger or longer patent protection it has the same effect in the market as if we imposed a 1000 percent tariff on the drug.

Nor is this the only negative factor that is ignored in the CEPR projections. A study by a group of economists at the Austrian Foundation for Development Research, commissioned by the Confederal Group of the European United Left/Nordic Green Left in the European Parliament, points out that a number of major costs have been omitted when calculating the overall benefit of TTIP (pdf). The most important of these are the costs that arise from TAFTA's stated aim to eliminate "non-tariff barriers", or "non-tariff measures", by harmonizing regulations and standards. As the researchers point out:

All studies, but particularly the Ecorys study, assume that a reduction of NTMs [non-tariff measures] is welfare-enhancing. This ignores that NTM such as laws, regulations and standards pursue public policy goals. They correct for market failures or safeguard collective preferences of a society. As such they are themselves welfare-enhancing. The elimination or alignment of an NTM thus will imply a social cost for society. This applies equally to NTM elimination, harmonization and mutual recognition.

In other words, eliminating or harmonizing regulations may well produce a boost for companies, which no longer need to worry about stringent health and safety standards, say, but represent a loss for society, which suffers through increased health costs. Many of the supposed gains from TAFTA/TTIP are actually counterbalanced by similar losses that society as a whole will be forced to accept.

It's also worth emphasizing that the "€119 billion a year" figure that is used by supporters of TAFTA is what the CEPR research calls an "ambitious, comprehensive agreement" -- in other words, the most optimistic prediction. Strangely, no one ever talks about the other figures in the study -- the less

optimistic, more realistic ones. Naturally, those would produce even lower growth than the tiny 0.05% extra GDP per year discussed above.

Because mainstream media unquestioningly accept this "€119 billion a year", and fail to challenge the assumptions that lie behind it, we don't know how the US and EU negotiators would attempt to justify TAFTA given the extremely small economic benefit predicted by the European Commission's research. Presumably, they might say that it's better than nothing at a time when both the US and EU are keen to boost their economies and create jobs.

But that's not really true, because it ignores the fact that there are other ways of achieving this goal that don't involve placing companies above nations through corporate sovereignty provisions, or require massive changes to regulations on both sides of the Atlantic. For example, a report commissioned by the Omidyar Network, entitled "Open for Business: How Open Data Can Help Achieve the G20 Growth Target" (pdf), claims that:

implementation of open data policies including in areas corresponding to G20 agenda items could increase G20 output by around USD 13 trillion over the next five years. This would boost cumulative G20 GDP by around 1.1 percentage points of the 2% growth target over five years.

That would work out as an extra GDP boost per year of around 0.22% -- four times what TAFTA might offer in the most optimistic case. And of course, open data initiatives do not require negotiations or concessions: governments can implement them unilaterally for very little cost. Or how about this new report on "climate-smart development"?

Government policies that improve energy efficiency and public transport could increase global economic output by more than \$1.8 trillion per year, and also save lives, reduce crop losses and tackle climate change, according to new analysis released today from the World Bank and the ClimateWorks Foundation.

The increased economic output (pdf) works out at \$242 billion for the US, and \$271 billion for the EU, both in 2030. In this case, a collateral benefit of taking this route is that it would help to improve the environment and tackle climate change, too -- not something that can be claimed for TTIP. The current negotiations between the US and EU are being presented as a "once-in-a-generation" chance to boost transatlantic economies. They are nothing of the sort. TAFTA/TTIP is merely one of a number of ways of achieving that, and, as the above discussion indicates, not even a very good one.

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US embassy in Berlin sparks TTIP Twitter tangle

http://www.euractiv.com/sections/trade-industry/us-embassy-berlin-sparks-ttip-twitter-tangle-302869?utm_source=EurActiv+Newsletter&utm_campaign=e441a78592-newsletter_daily_update&utm_medium=email&utm_term=0_bab5f0ea4e-e441a78592-245709193

6/26/14

EXCLUSIVE / A tweet by the US embassy in Berlin offering grants of up to \$20,000 for pro-TTIP projects has triggered a row with campaigners dismissing it as a propaganda campaign that reveals a desperate shortfall of original ideas in the US establishment.

The Transatlantic Trade and Investment Partnership (TTIP) is a free trade agreement currently being negotiated between the EU and US which its proponents say would remove tariffs on goods and services worth billions of dollars, and offer a massive boost to jobs and growth. But environmentalists, unions and health campaigners are concerned that its investor-state provisions could lead to a spate of lawsuits challenging EU legislation from corporations claiming breaches of their legitimate expectations of profit.

The tweet from the US embassy, translated from German said: “Are you pro-TTIP and angry at the negative coverage it’s been getting? Send us your ideas and we’ll support you!”

US diplomats say that the tweet was intended to spark a contest that would raise the tone of the public debate and move it beyond the image of “the famous chlorinated chicken,” as Peter Claussen, a US diplomat at the Berlin embassy put it.

However, many of the tweeted replies to the post were not enthusiastically supportive:

“@U.S. Embassy: Your TTIP PR will not save this project no matter how much money you paid,” one said.

“@U.S. Embassy here is my proposal: Democracy has never been so cheap: On sale at only €545 per year per household!” said another

“At first I thought this #TTIP campaign by @U.S. Embassy was satire...” a third read.

“Frankly we had an awful lot of responses to these tweets which were not particularly positive,” Claussen told EurActiv.

Famous broadsides

“A lot of the [TTIP] discussion has been very un-nuanced,” Claussen said. “We were looking for ways of encouraging people with different perspectives by providing a venue for them and asking: ‘Is everybody against this or do some people have a different perspective? We wanted to open up a conversation, which is what social media is for’.”

The embassy was looking for positive ideas that supported TTIP he said, but campaigners countered that this was a mission the US government should not be undertaking.

“As a public administration you have a different responsibility,” said Pia Eberhardt, a spokeswoman for the Corporate Europe Observatory, an activist group campaigning against excessive corporate influence and lobbying. “It would be an OK position for industry to take but the US government has a duty to negotiate for its whole population, not just the big industrial sector,” she told EurActiv.

“If large sections of the population are coming out against that agreement, the appropriate thing would be to reconsider and listen to the voices of your critics,” she added.

A Pew Research Study recently reported that a majority of Germans and Americans backed a TTIP agreement. But the same research paper also found that 96% of Germans trusted European environmental protection while only 2% trusted the US's corresponding regulatory framework. In response, even centre-right German politicians have begun taking sceptical positions about the desirability of an agreement. For Washington, such phenomena merely proves the need for new initiatives, such as the tweet contest.

'Demonising TTIP'

"This image of the chlorinated chicken is a stereotypical way of over-simplifying and demonising the nature of the debate, suggesting that standards are different [in the US] and that's something that politicians have also addressed in Germany," Claussen said.

In its place, he suggested an image of two partners who have been working hard for years to improve trade relations, shaking hands.

Ideas sent in for the initiative so far have ranged from conferences to speaker programmes, online activities, and various digitally-linked online programmes, he said, adding that all of Europe's US embassies were "reaching out and doing support work" but the tweet contest had been the brainchild of the Berlin embassy alone.

The US embassy's literature on the project says that grants could also go to projects aimed at creating 'a Twitterfall wall during a conference', online discussion forums, TTIP websites, and digital posters in German with QR codes to inform about TTIP objectives.

"Because of the nature of the medium, we assume that young people may respond more energetically than others," Claussen said.

Escalating campaign

Campaigners though dismissed the enterprise as a propaganda campaign illustrating a lack of original ideas in the US embassy and a PR campaign that it was losing.

"It is a clear and definite sign of a first success of this growing movement against TTIP," Eberhardt said. "I'm sure there is a fear that they have lost the public debate in the last months - at least in Germany - and so they are intervening with more resources."

"But it is also a sign that defenders of the agreement in government and business will invest much more in the coming months to sell TTIP to the public," she cautioned.

Corporate Europe Observatory says that industry lobbyists are currently hiring PR representatives and are expected to escalate pro-TTIP campaigning in the months ahead.

<http://www.nytimes.com/2014/06/28/us/catfish-inspection-trans-pacific-partnership.html> 1/3
<http://nyti.ms/1mlGEwI>

POLITICS

U.S. Catfish Program Could Stymie Pacific Trade Agreement

By RON NIXON JUNE 27, 2014

WASHINGTON — Ten Asian and Pacific nations have told the Office of the United States Trade Representative that the Agriculture Department's catfish inspection program violates international law, and their objections could hamper Obama administration efforts to reach a major Pacific trade agreement by the end of next year.

They say that the inspection program is a trade barrier erected under the guise of a food safety measure and that it violates the United States' obligations under World Trade Organization agreements. Among the countries protesting are Vietnam and Malaysia, which are taking part in talks for the trade agreement — known as the Trans-Pacific Partnership — and have the ability to derail or hold up those negotiations.

The complaints are outlined in a May 28 letter signed by diplomats from the 10 countries. The letter does not threaten retaliation, but it stresses that the American catfish program stood in the way of the trade talks.

Vietnam, a major catfish producer, has long complained about the program, but it has never before won international support for its fight. Several of the countries whose representatives signed the letter — including the Philippines, Myanmar, Thailand and Indonesia — do not have catfish industries to protect and are not involved in the trans-Pacific trade talks. But the letter expresses the concern that the inspection program could lead the Agriculture Department to expand its ability to regulate seafood exports to the United States, catfish or not.

"Many of these countries are looking to see what happens to Vietnam on the catfish issues, and what precedence it might set for other trade deals in the region," said Jeffrey J. Schott, a senior fellow at the Peterson Institute for International Economics in Washington and the co-author of a book on the Trans-Pacific Partnership. The United States and 11 countries on both sides of the Pacific — as well as Australia, New Zealand and Brunei — are still negotiating the trade pact, which has been repeatedly delayed over various disputes.

The Vietnam Association of Seafood Exporters and Producers recently hired James Bacchus, a former chairman of the World Trade Organization's appeals panel, to prepare a possible legal challenge to the catfish inspection program.

Mr. Bacchus said in an interview that only governments have standing to bring a case before the trade organization, but that the export group was working closely with Vietnamese officials to monitor the catfish inspection program.

"I'm confident that Vietnam would have a case before the W.T.O. if they decided to bring one," said Mr. Bacchus, a former United States House member from Florida who is now a lawyer with Greenberg Traurig in Washington.

The inspection program was inserted into the 2008 farm bill at the urging of catfish farmers, who have been hurt by competition from both Vietnam and China and by the rising cost of catfish feed. The domestic catfish industry has shrunk by about 60 percent since its peak about a decade ago, and in the past few years about 20 percent of American catfish farming operations have closed.

The catfish industry and lawmakers led by Senator Thad Cochran, Republican of Mississippi, fought for the new office, saying it was needed to protect Americans from eating fish raised in unsanitary conditions or contaminated with drugs. The Food and Drug Administration has a similar program, but it inspects less than 2 percent of food imports, and advocates of the Agriculture Department program said that was not good enough.

The Agriculture Department has traditionally inspected meat and poultry, while the F.D.A. has been responsible for all other foods, including seafood.

Agriculture Department inspections are more stringent than those conducted by the F.D.A. The Agriculture Department requires meat- and poultry-exporting countries to set up their own inspection programs — an expensive and burdensome regulation that Vietnam says is unnecessary for catfish.

A Government Accountability Office report in May 2012 called imported catfish a low-risk food and said an Agriculture Department inspection program would "not enhance the safety of catfish." The Agriculture Department said it had spent \$20 million since 2009 to set up its office, which has a staff of four, although it has yet to inspect a

single catfish. The department said it expected to spend about \$14 million a year to run the program; the F.D.A., by comparison, spends about \$700,000 annually on its existing seafood inspection office.

Senator John McCain, Republican of Arizona, and other critics say the Agriculture Department program is a waste of money, and Mr. McCain sponsored an amendment in the latest farm bill that would have killed the program. But the measure was never brought up for a vote. The Obama administration has also called for eliminating the Agriculture Department program.

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Contact: Andrew Bates
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United States and WTO Partners Announce Launch of Negotiations for Environmental Goods Agreement

Washington, DC –The United States and 13 other WTO Members, representing 86 percent of global trade in environmental goods, launched negotiations on the new Environmental Goods Agreement (EGA) at the World Trade Organization (WTO) today.

Global trade in environmental goods totals nearly \$1 trillion annually, and some Members currently apply tariffs as high as 35 percent on these products. Tariffs add unnecessary costs to the green technologies and solutions we need to protect the environment. By taking action to eliminate those barriers, the EGA can make a major contribution to green growth and sustainable development. It will also increase market access for U.S. manufacturers and workers – supporting more green jobs.

The EGA is the primary trade aspect of President Obama’s Climate Action Plan, announced at Georgetown University in June, 2013.

U.S. Trade Representative Michael Froman announced U.S. plans to prepare for the initiative earlier this year, and today’s launch marks an important step forward in our efforts to eliminate tariffs on environmental goods, such as wind turbines, water treatment filters, and solar water heaters. The United States is joined in the EGA negotiations by Australia, Canada, China, Costa Rica, the European Union, Hong Kong, Japan, Korea, New Zealand, Norway, Singapore, Switzerland, and Chinese Taipei.

“Today’s launch of the Environmental Goods Agreement underscores President Obama’s commitment to tackling environmental protection on all fronts,” said Ambassador Froman. **“The Obama Administration is advancing a trade policy that reflects our core values and unlocks new economic opportunities for American exporters and families – especially when it comes to fostering exports of Made-in-America environmental goods. By eliminating tariffs on the technologies we all need to protect our environment, we can make environmental goods cheaper and more accessible for everyone, making essential progress toward our environmental protection and trade policy goals.”**

On March 21, Ambassador Froman notified Congress of the Administration’s intent to enter into negotiations on the EGA, which aims to eliminate tariffs on a wide range of environmental

goods. Since then, USTR has engaged in broad consultations on the objectives and priorities for the EGA negotiations, including by soliciting written comments, holding a public hearing on June 5, and meeting with Congress, businesses, environmental groups, and labor unions. We will continue to consult with these and other stakeholders as the negotiations progress in order to ensure that the EGA is commercially meaningful and environmentally credible, and delivers concrete benefits for the United States.

<https://www.techdirt.com/articles/20140712/10031927860/bolivia-shows-how-to-dismantle-corporate-sovereignty-provisions-treaties-without-losing-foreign-investment.shtml>

7/15/14

Bolivia Shows How To Dismantle Corporate Sovereignty Provisions In Treaties Without Losing Foreign Investment

from the *they-said-it-couldn't-be-done* dept

As Techdirt has reported, corporate sovereignty chapters in TAFTA/TTIP and TPP have emerged as some of the most **controversial** elements in those agreements. Meanwhile, countries that already have bilateral investment treaties (BITs) with investor-state dispute settlement (ISDS) mechanisms are looking for ways to **get rid of them** in order to avoid the loss of sovereignty they imply. One nation that already has considerable experience in this area is Bolivia. A new report provides **fascinating background information on exactly how it has gone about this** (pdf), with valuable lessons for others looking to do the same.

Things began back in 2000, during what was called the "Water war." After Aguas del Tunari, a subsidiary of the US company Bechtel, had taken control of water supplies in the central Bolivian city of Cochabamba, it raised prices to such an extent that the poorest citizens struggled to pay for drinking supplies. This led to demonstrations in the streets, with many people injured (**original in Spanish**.) Control of the water company was removed from Bechtel, which demanded \$50 million compensation for the loss of its investment. The case was finally settled in 2006, when Bechtel agreed to sell its shares in the water company to the Bolivian state -- for 2 Bolivianos (then about \$ 0.30).

That experience led the Bolivian people to give their new president of the time, Evo Morales, a mandate to withdraw from all investment agreements and tribunals that allowed claims to be made against the country. Here's how he did that:

The Evo Morales government rejected the Investor-State Dispute Settlement mechanism from the outset. This was reflected in the country's withdrawal from ICSID -- the most widely used Investor-State Dispute Settlement forum -- in May 2007. In addition, the new [Bolivian] Constitution prohibits the state from settling investment related disputes with foreign investors in international tribunals.

...

one of the most important provisions of the new Constitution in this regard is to denounce and renegotiate all international treaties that are contrary to the constitutional text, that is to say, the BITs, which is ultimately where the power lies for corporations to do whatever they want in the countries in which they operate. The BIT's are where the rules of the game between companies and states are established. They are also the reason why Bolivia, despite regaining sovereignty from corporations and shielding itself from this system, could still be liable to further lawsuits in international tribunals similar to ICSID, which establish their jurisdiction in such treaties.

Bolivia has now cancelled all 21 of its previously-signed BITs, and its subsequent experience is instructive. The conventional wisdom is that without such treaties, foreign investment will plummet, and that the economy of the country concerned will suffer. Here's what actually happened in Bolivia:

When we asked about the reaction of other countries, [Walter Clarems Endara Vera, Deputy Minister for Trade and Integration of Bolivia] said that obviously there was concern on the part of European countries and the United States, which are among those that invest most overseas, and with which Bolivia signed most of its BITs. However, he also said that "in all of these cases there has not been a negative response", and that, "in conclusion, our understanding is now that we do not have bilateral investment agreements."

Deputy Minister Endara also noted that "...many countries are interested in signing a new investment agreement with Bolivia."

There are two important reasons why withdrawing from these BITs with their corporate sovereignty clauses has not been the disaster that many pundits predicted:

When we asked the Deputy Minister Endara why he believed that these countries were being so accommodating, his response was that "... chickens have now come home to roost. Countries promoting BIT's are now also being sued in forums such as ICSID as well as other tribunals, sometimes by their own investors. Unfortunately, the economic crisis in Europe has led some countries to take measures affecting foreign investments and they are now being sued. This means that the conversation with some European countries is now different. We can now talk as equals because they are suffering the same problems we have suffered ... I mean, we can now see some of the biggest defenders of the investor-state dispute settlement mechanism defending their own countries against these cases. The situation really has changed."

But perhaps the most significant reason is the following:

In the Bolivian context, it is important to note that, unlike at the time of the first case with Aguas del Tunari, the country now has a legal and constitutional framework, as well as public institutions and a clear policy, to address these Bilateral Investment Treaties and the system of international arbitration that corporations are using to undermine the actions of sovereign countries.

That is, with a functioning government and fair legal system that can resolve investment disputes, there is simply no need to hand over so much power to opaque and expensive supranational tribunals of the kind that lie at the heart of ISDS. Bolivia's success in cancelling its BITs while boosting foreign investment -- \$2 billion in 2013, 35% more than in 2012 -- is clear evidence the argument that agreements like TAFTA/TTIP "must" contain corporate sovereignty chapters to achieve the same, is incorrect.

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<https://www.theparliamentmagazine.eu/articles/news/meps-wary-commissions-approach-ttip-negotiations>

MEPs wary of commission's approach to TTIP negotiations

Written by Kayleigh Rose Lewis on 16 July 2014 in News

The European commission's TTIP proposals could lead Europe "down a regulatory race to the bottom" and there is "a growing sense of unease and concern" surrounding the negotiations, say MEPs.

MEPs have raised concerns in a plenary debate with EU trade commissioner Karel De Gucht regarding the nature of the transatlantic trade and investment partnership (TTIP) as the sixth round of negotiations take place.

S&D deputy Nessa Childers said, "We have recently been brought up to date on the commission's trade dealings through the unfortunately usual means of leaked documents.

"The leaked commission papers show that it is pushing for the mutual recognition of banking and finance rules that would enable market players to do business across the Atlantic under the laws that apply in their own jurisdiction.

"This proposal from the commission will give a competitive advantage to those hailing from the side that applies the lightest touch to finance. This may well lead us down a regulatory race to the bottom," she warned.

"This proposal from the commission will give a competitive advantage to those hailing from the side that applies the lightest touch to finance" - Nessa Childers

The Irish MEP went on, "The US authorities are actually the ones who have so far resisted this idea, as they rightly fear it will make it more difficult to regulate banks and tie regulators hands on future reforms.

"US banks, on the other hand, will happily endorse the commission's approach, which seems designed to please the European banking sector in the first place," suggested Childers.

"I am very interested in learning how wedded the commission is to pushing for this mutual recognition approach and what it is willing to concede to the US in exchange.

"US multinationals stand to profit from the downgrading of the more stringent labour, environmental and data protection standards in force in the EU.

"Our American counterparts also want to include an investor-state dispute system, which is trade lingo for the ability for big corporations to sue governments in arbitration courts, for multimillion sums in compensation when regulations passed in the public interest eat into their profits," she complained.

"This is simply not acceptable. I expect the newly elected commission president Mr Juncker to stand by his commitment, given to us in writing, not to undermine EU legislation and reject any such invidious parallel mechanisms."

During Tuesday's plenary session GUE/NGL deputy Helmut Scholz addressed De Gucht, saying, "You carried out a public consultation on the inclusion of an investor state dispute settlement (ISDS) clause which received over 115,000 responses.

"Citizens don't want ISDS; neither in TTIP nor in the agreement with Canada," the German deputy argued.

"I urge you again to take the concerns expressed by broad sections of civil society seriously. Do you really think small-scale producers and consumers want further liberalisation of trade in agricultural products? I assure you, this is not the case."

He continued, "In the eyes of our citizens, the US is guilty of espionage and data theft. There is no confidence in these negotiators.

"In the eyes of our citizens, the US is guilty of espionage and data theft" - Helmut Scholz

"As long as the Americans do not want to commit to protecting EU citizens' data and to respect us, there is no basis for a trade agreement," he concluded.

Meanwhile, the Greens/EFA group have backed a citizens' initiative on TTIP. A joint statement from the group's trade spokespersons Yannick Jadot and Ska Keller said, "There is a growing sense of unease and concern among European citizens and civil society about the ongoing TTIP negotiations.

"This concern reflects the broad scope of the negotiations and their possible implications on European standards, and is reinforced by the opaque negotiation process," they explained.

"The voices of these citizens must be heard and this European citizen's initiative is a landmark development to this end."

However, in his speech to parliament in Strasbourg on Tuesday, De Gucht addressed the three themes which have "been on the forefront of the criticism levied against TTIP: the

alleged lack of transparency, the alleged risk of lowering of regulatory standards which underpin our way of life and ISDS".

He told parliamentarians, "You have a very serious responsibility as it will ultimately fall to you to vote on what will have been negotiated. Your thumbs up or down will make or break TTIP.

"Given the wide spectrum of opinion in this parliament, disagreement is unavoidable" - Karel De Gucht

"Given the wide spectrum of opinion in this parliament, disagreement is unavoidable. But I hope the debate will be based on facts and logic, we cannot afford to let it be controlled by irrational fears or false information."

The Belgian official told the plenary debate that, "We do approach many areas differently than in the US, and sometimes our rules here are stricter than in the US.

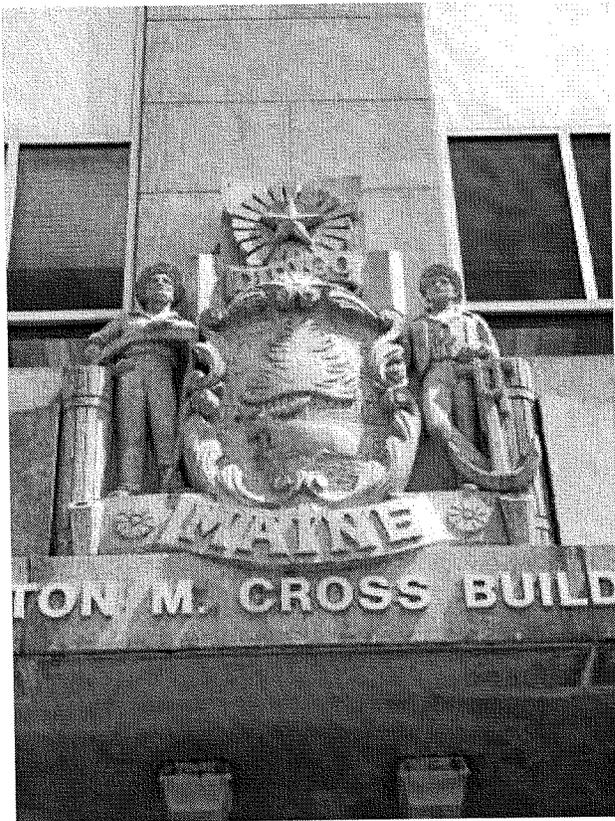
"But we share the same objectives of quality and protection and even where we differ, our values and concerns are much more similar than with any other part of the world.

"That is why president Obama flatly stated in Brussels that he would not agree to any deal if it lowered the standards of protection. Neither would the commission," he stressed.

<http://iatp.org/blog/201407/states-get-proactive-on-trade-agreements-the-maine-model#sthash.waC31SNe.dpuf>

States get proactive on trade agreements: The Maine model

Posted July 16, 2014 by [Karen Hansen-Kuhn](#)
TTIPFree trade agreements



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Trade agreements are negotiated in a top down process: negotiators cut secret deals and then push for approval. These trade deals set rules on investment by corporations and banks, and lowering standards and regulations to the “least trade restrictive” possible. Local decision-makers are then left to figure out exactly what these rules mean for their state or community programs to build local

economies, protect the environment or promote public health, or face challenges in special trade courts. This problem, and the fact that trade talks are held in secret until the completed deal is dropped on lawmakers' desks, is a huge point of tension in the public debate on the Transatlantic Trade and Investment Partnership (TTIP) and Trans Pacific Partnership (TPP), as well as the continuing debate on fast track authority, which would restrict Congressional input to an up or down vote.

The Maine Citizen Trade Policy Commission (CTPC) takes a proactive approach to this dilemma. The CTPC, made up of state representatives and senators, along with representatives of important state agencies and civil society, holds public hearings and weighs in with the U.S. Trade Representative on issues of concern to local citizens. Under Maine law, the commission is mandated to "conduct an assessment of the impacts of international trade agreements on Maine's state laws, municipal laws, working conditions and business environment."

This year, the CTPC asked IATP and the Maine Farmland Trust to look into the potential impacts of TTIP on Maine agriculture and food systems. Tariffs between the U.S. and EU are already quite low. The real focus of agriculture in the trade talks are "behind the border" (i.e., local) rules on such issues as food safety and public procurement. Maine is known for its vibrant local foods movement, in which farmers and consumers have found common ground to increase the value of healthy and sustainable food crops. This includes a special dairy support program to balance erratic price swings, and the expansion of artisanal cheese production. Lawmakers are exploring new ways to strengthen local Farm to School programs to increase the use of locally grown fruits and vegetables in school lunches, hospitals and daycare.

The assessment focused on four sets of issues that could be impacted by TTIP, along with recommendations for follow-up by the commission:

- **Food safety:** There are some real differences in U.S. and EU rules on food additives, pesticides and other agrochemicals. The EU's restrictions on genetically modified organisms (GMOs) and its labeling laws could come under pressure in TTIP. Any changes in those rules made under TTIP would apply to the U.S. as well as the EU, potentially limiting Maine's GMO labeling law and other state-specific programs.
- **Public procurement:** Procurement programs, whether for local foods, roads, or renewable energy, are important tools to strengthen local economies. Maine (along with 36 other states), the U.S. and the EU are already included in the plurilateral Government Procurement Agreement at the World Trade Organization, which requires many procurement programs (but not federally funded Farm to School programs, at least for now) to be open to bids from foreign companies. The EU is seeking to expand those commitments in TTIP at the state level to include all goods, all services and all sectors, potentially undermining these important programs.
- **Geographical Indications (GIs).** GIs establish legal protections for products based on their place of origin, specific production techniques, and the reputation of quality for those goods. The EU protects over 1,200 such products through intellectual property rules