

**CITIZEN TRADE POLICY COMMISSION
DRAFT AGENDA**

Friday, May 24, 2013 at 9:30 A.M.
Room 214, Burton M. Cross State Office Building
Augusta, Maine

9:30 AM Meeting called to order

I. Welcome and introductions

II. Review of Legislative Bills of Interest (Lock Kiermaier, Staff) (9:30 AM)

III. Presentation from Daniel Deveau, Maine Canada Trade Ombudsman (10 AM)

IV. Presentation from Representative Sharon Treat regarding her written comments submitted to the USTR on the Trans-Atlantic Trade and Investment Partnership (TTIP) (10:30 AM)

V. Update on IGPAC/USTR activity (Representative Sharon Treat, CTPC Chair) (11:00 AM)

VI. Articles of interest (Lock Kiermaier, Staff) (11:30 AM)

VII. Proposed next meeting date and suggestions for agenda topics

Adjourn

Citizen Trade Policy Commission

Bills of Possible Interest

126th Maine State Legislature; 1st Regular Session

Updated 5/23/13

<u>LD #</u>	<u>Bill Title</u>	<u>Bill Sponsor</u>	<u>Committee of Reference</u>	<u>Date of Public Hearing</u>	<u>Date of Work Session</u>	<u>Current status</u>	<u>Fiscal Impact?</u>	<u>Summary</u>	<u>CTPC Staff Comment</u>
890	An Act To Buy American-made Products	Sen. Troy Jackson	Labor, Commerce, Research, and Econ. Dev	3/14/2013	5/16/2013	Divided Report	Not yet determined	This bill is a concept draft pursuant to Joint Rule 208. This bill proposes to provide a preference in state purchasing for American-made products.	As a concept bill there is not much to react to , plus the bill has been tabled.
491	An Act Regarding Timber Harvesting on Land Managed by the Division of Parks and Public Lands	Sen. Troy Jackson	Labor, Commerce, Research, and Econ. Dev	3/14/2013	5/16/2013	tabled in Senate	No Fiscal Impact	This bill prohibits the Department of Agriculture, Conservation and Forestry, Division of Parks and Public Lands from contracting for timber harvesting on land under its management if the contractor uses persons employed under the federal labor certification process for employment of foreign workers in logging for that purpose.	The purpose of this bill could conceivably be overridden by prospective sections of the TPPA or other existing or prospective international trade treaties
1315	An Act To Ensure the Safety of Compounded Drugs	Rep. Sharon Treat	Labor, Commerce, Research, and Econ. Dev	4/22/2013	4/30/2013	OTP-AMD	Not yet determined	This bill strengthens Maine's laws on compounding pharmacies. See detailed summary on CTPC WORD document	The purpose of this bill could conceivably be overridden by prospective sections of the TPPA or other existing or prospective international trade treaties

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171	An Act To Facilitate the Licensing of International Mail Order Prescription Pharmacies by the Maine Board of Pharmacy	Sen. Troy Jackson	Labor, Commerce, Research, and Econ. Dev	2/19/2013	5/17/2013	Divided Report	No Fiscal Impact	The purpose of this bill is to facilitate the licensing of international mail order prescription pharmacies by the Maine Board of Pharmacy. See detailed summary on CTPC WORD document	The purpose of this bill could conceivably be overridden by prospective sections of the TPPA or other existing or prospective international trade treaties
449	An Act To Ensure Consumer Choice in the Purchase of Prescription Drugs	Sen. Doug Thomas	Labor, Commerce, Research, and Econ. Dev	3/13/2013	5/17/2013	Carry Over Request	Not yet determined	This bill clarifies and affirms the ability of Maine consumers to purchase mail order prescription drugs from licensed pharmacies that are located in certain nations specified under federal law.	The purpose of this bill could conceivably be overridden by prospective sections of the TPPA or other existing or prospective international trade treaties
813	An Act To Promote the Sale of Maine Milk	Rep. Joseph Brooks	State & Local Gov	3/27/2013	4/8/2013	Senate; Dead	Not yet determined	This bill requires a state-owned or state-operated facility that sells or contracts with a person to sell beverages directly to the public, including a facility on the Maine Turnpike, to have available for sale milk processed at a milk plant in the State. This bill exempts facilities in an institutional setting in which sales of beverages to the public are incidental, including a state-owned postsecondary institution or correctional facility.	The purpose of this bill could conceivably be overridden by prospective sections of the TPPA or other existing or prospective international trade treaties
1326	An Act To Prevent Youth Tobacco Use	Rep. Megan Rochelo	Taxation	5/6/2013	5/14/2013	ONTP	Not yet determined	This bill requires that all tobacco products be taxed at rates equivalent to the current tax on cigarettes. The bill provides an appropriations and allocations section to fund anticipated increased demand on the tobacco hotline for those people who are seeking to quit tobacco use.	The purpose of this bill could conceivably be overridden by prospective sections of the TPPA or other existing or prospective international trade treaties

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1338	An Act To Prohibit State and Local Governments from Contracting with Corporations That Engage in Business in Known Terrorist States	Rep. Teresea Hayes	State & Local Gov	4/22/2013	5/6/2013	Divided Report	Not yet determined	This bill requires that, beginning January 1, 2014, the State, the University of Maine System, the Maine Community College System, the Maine Maritime Academy and municipalities exclude any business entity or individual from doing business with the State, the University of Maine System, the Maine Community College System, the Maine Maritime Academy or a municipality if that business entity or individual does business with any company, or any subsidiary, affiliate or parent of any company, that does business with a country designated by federal law as a state sponsor of terrorism. It also requires that counties and school boards adopt policies by January 1, 2014 that require counties and school boards to exclude any business entity or individual from doing business with a county or school board if that business entity or individual does business with any company, or any subsidiary, affiliate or parent of any company, that does business with a country designated as a state sponsor of terrorism.	The purpose of this bill could conceivably be overridden by prospective sections of the TPPA or other existing or prospective international trade treaties

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1381	An Act To Promote Rural Job Creation and Workforce Development	Sen. Troy Jackson	Labor, Commerce, Research, and Econ. Dev	4/22/2013	5/3/2013	Senate; Dead	Not yet determined	This bill gives a preference in state contracting to bidders who primarily employ residents of the State and to bidders who coordinate with regional workforce development programs and who fill at least 20% of positions on the project with low-income or long-term unemployed people. The bill requires that successful bidders on public building or public works contracts with the State, counties, cities and towns and every charitable or educational institution that is supported in whole or in part by aid granted by the State or by a municipality commit to coordinate with regional workforce development programs and make best efforts to hire low-income and long-term unemployed people. The bill also requires state public works programs to give hiring preference to residents of the county where the work is being performed.	The purpose of this bill could conceivably be overridden by prospective sections of the TPPA or other existing or prospective international trade treaties

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1254	An Act To Increase Consumption of Maine Foods in All State Institutions	Rep. Craig Hickman	State & Local Gov	4/22/2013	5/1/2013	Divided Report	Not yet determined	Current law requires state and school purchasers to buy meat, fish, dairy products, excluding milk and eggs, and species of fruits and fresh vegetables directly from Maine food producers or from food brokers. This bill establishes a minimum percentage of Maine foodstuffs that must be purchased, requiring at least 15% for the 10 years beginning January 1, 2014, at least 25% for the next 10 years and at least 35% beginning in 2034.	The purpose of this bill could conceivably be overridden by prospective sections of the TPPA or other existing or prospective international trade treaties
1103	An Act To Encourage Development in the Logging Industry	Sen. Troy Jackson	State & Local Gov	4/8/2013	4/12/2013	Divided Report	Not yet determined	This bill would withhold a tax incentive, eliminate General Fund money for forest fire protection, and would proscribe a tax penalty for individuals who, either directly or through a contracting entity, hire foreign H-2A visa workers for timber harvesting operations or fail to give required notice concerning their use of H-2A foreign workers for timber harvesting on their land.	The purpose of this bill could conceivably be overridden by prospective sections of the TPPA or other existing or prospective international trade treaties

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1151	An Act Regarding the Administration and Financial Transparency of the Citizen Trade Policy Commission	Rep. Joyce Maker	Labor, Commerce, Research, and Econ. Dev	4/8/2013	4/12/2013	Enacted; on the Appropriations Table	Appropriations to a new Citizen Trade Policy Commission program in the Legislature and offsetting deappropriations	This bill modifies the law governing the Citizen Trade Policy Commission to provide that: 1. To the extent funding permits, the Legislature, through the commission, must contract for year-round staff support for the commission. To the extent the commission lacks adequate staff support, the commission may request staff support from the Legislative Council, except that Legislative Council staff support is not authorized when the Legislature is in regular or special session; and 2. All funds appropriated, allocated or otherwise provided to the commission must be separately accounted for and used solely for the purposes of the commission and are nonlapsing. At the beginning of each fiscal year, and at any other time at the request of the cochair, of the commission, the Executive Director of the Legislative Council must provide to the commission an accounting of all funds available to the commission, including funds for staff support. The bill is designated an emergency to ensure that the limited funding available to the commission does not lapse at the end of the current fiscal year.	

Canada and the U.S. share.

A long tradition of cooperation in defending our continent and fighting for freedom.

The world's largest trading relationship.

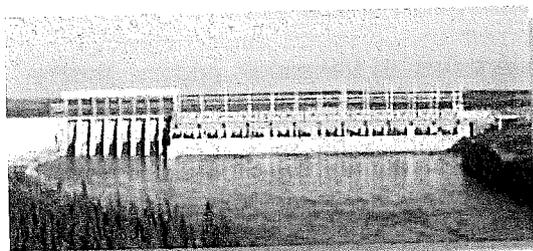
A common border that stretches across 8,893 kilometers (5,526 miles) of land and three oceans.

Stewardship of a rich and diverse environment, including 20 percent of the world's supply of fresh water in the Great Lakes

Canada is the leading market for goods for 35 U.S. states. The U.S. exports more goods and services to Canada than to any individual country – more than to Japan and Mexico combined.

The Canada-U.S. relationship also includes one of the world's largest bilateral investment relationships. The United States is Canada's largest foreign investor and the most popular destination for Canadian investment.

Partners for Energy Security



Canadians and Americans share the closest energy relationship in the world. Canada is the leading and most secure, reliable, and competitive energy supplier to the United States, including crude oil and refined petroleum products, natural gas, electricity, coal and uranium. Canada also imports a significant amount of energy from the US, particularly electricity and natural gas.

In 2011, Canada's energy exports were valued at US\$120 billion (CAN\$119 billion), with virtually all (90%) of it going to the US. In addition, Canada:

- Exported 2.7 million barrels per day of crude oil and refined products to the U.S., representing 24% of total U.S. petroleum imports;

- Supplied approximately 20% of the uranium used in U.S. nuclear power plants;

- Provided 90% of all U.S. natural gas imports, representing 13% of U.S. consumption;

- and Imported US\$56 billion (CAN\$55 billion) of energy products, of which US\$18.2 billion (CAN\$18 billion) (33%) was from the US. Canadian natural gas imports, which now stand at almost 3 billion cubic feet per day, have tripled approximately since 2006. With the exception of very small amounts of natural gas imports, Canada purchases most of its natural gas from the US.

Like natural gas, there is significant two-way trade in electricity between Canada and the US. The Canada and US electricity grid is deeply integrated with more than 30 major transmission interties connecting all Canadian provinces to neighbouring US states, except Nova Scotia, PEI, and Newfoundland.

Oil

Canada: the largest oil supplier to the United States

Canada is the world's 6th largest oil producer. In 2011, Canada's total oil production was 3 million barrels a day; output is expected to rise further with increased development of oil sands.

Canada's oil reserves represent a safe, secure and long-term energy supply for North America.

Canada has the world's third-largest proven reserves (after Saudi Arabia and Venezuela) at 172.8 billion barrels, 168.7 billion of which are in the oil sands. As technology evolves, oil sands reserves could grow even larger, up to an estimated 315 billion barrels. Beyond the oil sands, petroleum development is also taking place in several other parts of Canada, including the north and the Atlantic offshore region.

Canadian oil is a major contributor to U.S. energy security by helping to eliminate dependence on foreign oil. A 2011 study commissioned by the U.S. Department of Energy shows that higher oil imports from Canada, almost all of which would come from the oil sands, could help to eliminate U.S. dependence on imports from foreign suppliers such as Venezuela and the Middle East by 2030.

Canada's stable economic and political environment attracts businesses from around the world. The oil sands represent significant business opportunities for Canadians and Americans. U.S. firms are significant investors, producers and developers of new technology in Canada's oil sector. In the oil sands alone, close to 1,000 U.S. companies of all sizes, from almost every state, and from all sectors of the economy, including engineering, high-tech, and financial services, directly supply goods and services to companies producing oil in Canada.

In fact, between 2010 and 2035, oil sands development is anticipated to support, on average, an estimated 93,000 jobs per year in the U.S. With increased pipeline capacity, this could grow to, on average, 160,000 jobs per year. Oil sands development is also anticipated to contribute, on average, US\$8.5 billion (CAN\$8.4 billion) per year to the U.S. gross domestic product over the same time period, and US\$14.6 billion (CAN\$14.4 billion) with increased pipeline capacity.

Finally, Canada's regulatory framework is among the most stringent in the world. Projects are subject to rigorous environmental and regulatory review, and the federal and provincial governments require extensive environmental monitoring and reporting throughout the life of each project.

Natural Gas

Canada: the largest natural gas supplier to the United States

Canada is the third-largest natural gas producer in the world, producing 5.4 trillion cubic feet per year, and the world's third-largest exporter of natural gas.

In 2011, Canada provided 90% of all U.S. natural gas imports, representing 13% of U.S. consumption. Canadian exports of natural gas go primarily to the U.S. Northeast, Midwest, Rocky Mountains, California and Pacific Northwest.

Canadian Natural Gas Facts - 2011

14.0 billion cubic feet/day — total production
8.7 billion cubic feet/day — total exports
70.0 trillion cubic feet — total proved reserves

Canada is continually investing in natural gas exploration and infrastructure.

Current estimates suggest Canada's marketable natural gas resource ranges between 733 and 1304 trillion cubic feet, representing well over one hundred years of domestic production at current rates.

Shale gas innovative technology is expanding Canadian production. Liquefied natural gas export terminals are being developed to reach overseas markets. Canadian interest in shale gas production is growing quickly, particularly in the Horn River and Montney Basins in northeast British Columbia.

Free trade and open markets, as well as a stable policy and regulatory environment, encourage natural gas investments and strengthen North American energy security.

Electricity

Canada: the largest electricity supplier to the United States

Canada is one of the world's largest producers of hydroelectricity. As the largest source of renewable power in North America, hydroelectricity accounts for about 60% of Canada's total electricity generation, representing over three times the global average.

In fact, over 3/4 of Canada's electricity comes from sources that do not emit greenhouse gases. Clean Canadian electricity represents a reliable source of power and is a key element in ensuring long-term North American energy security and maintaining our collective efforts to reduce greenhouse gas emissions.

The portion of Canada's electricity generated by coal—which totaled 12.6% in 2010—has been decreasing over the last few years. Emissions from the electricity generating sector will continue to fall over the coming years as new emission regulations for power generating facilities will require power plants to meet more stringent emissions standards.

Maine and Canada

29,200 Maine jobs depend on trade with Canada
6,300 Mainers are employed by Canadian-owned businesses
Maine sells more goods to Canada than to any other country in the world
Total Canada-Maine goods trade: \$3.3 billion

Maine-Canada facts

Foreign export markets

Largest export market: Canada
% foreign-bound goods sold to Canada: 32%

Merchandise trade

Maine exports to Canada: \$1.1 billion
Maine imports from Canada: \$2.1 billion
Bilateral trade: \$3.3 billion

Jobs*

jobs that depend on trade with Canada: 29,200
employed by Canadian-owned businesses: 6,300

** Job numbers from trade (2010 data) and Canadian-owned businesses (2009 data) are from a 2012 study commissioned by the Government of Canada*

Tourism

Maine visits by Canadians: 1,143,600, \$356 million spent
Maine visits to Canada: 841,700, \$106 million spent

Top exports

Fish & crustaceans: \$245 million
Paper & paperboard: \$190 million
Wood & semi-finished wood products: \$156 million
Wood pulp: \$45 million
Softwood lumber: \$37 million
Prepared vegetables: \$37 million
Fuel oil: \$33 million
Fruits & nuts: \$32 million
Meat, fish & seafood preparations: \$30 million
Plastics & plastic articles: \$24 million
Automobiles: \$19 million

Optical, medical & precision instruments: \$15 million
Motor vehicle parts: \$14 million

Top imports

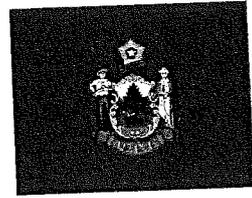
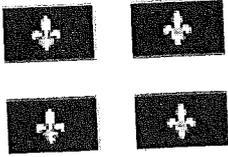
Wood pulp: \$343 million
Fuel oil: \$300 million
Fish & crustaceans: \$152 million
Natural gas & other gases: \$133 million
Paper & paperboard: \$131 million
Electricity: \$130 million
Inorganic chemicals: \$104 million
Plastics & plastic articles: \$59 million
Softwood lumber: \$44 million
Prepared vegetables: \$40 million
Wood & semi-finished wood products: \$37 million
Salt, sulfur, earth & stone, lime & cement: \$27 million
Iron & steel tubes, pipes & sheets: \$23 million

Maine exports \$1.1 billion in goods to Canada

Forest products (38%)
Agriculture (34%)
Equipment & machinery (8%)
Transportation (7%)
Energy (3%)
Minerals & metals (3%)
Other (7%)

Maine imports \$2.1 billion in goods from Canada

Energy (27%)
Forest products (26%)
Agriculture (15%)
Chemicals (6%)
Minerals & metals (4%)
Equipment & machinery (4%)
Other (17%)



COOPERATION AGREEMENT

BETWEEN

THE *GOUVERNEMENT DU QUÉBEC*

AND

THE GOVERNMENT OF THE STATE OF MAINE

THE GOUVERNEMENT DU QUÉBEC,

represented herein by its Premier, Ms Pauline Marois

AND

THE GOVERNMENT OF THE STATE OF MAINE,

represented herein by its Governor, Mr. Paul LePage

Hereinafter referred to as the Parties,

WHEREAS Québec and the State of Maine have a common border, are historically linked and share common interests;

WHEREAS Québec and the State of Maine maintain close economic and cultural relations;

WHEREAS Québec and the State of Maine also maintain cooperative relations through organizations such as the Conference of New England Governors and Eastern Canadian Premiers, the Council of State Governments and the Eastern Border Transportation Coalition;

WHEREAS THE PARTIES WISH to strengthen their ties and increase their cooperation in the areas of regional economic development, energy, natural resources, transportation, public safety, culture and the Francophonie;

WHEREAS THE PARTIES ALSO WISH to encourage and foster relations between their business communities;

AGREE TO THE FOLLOWING:

SECTION 1

The Parties shall encourage and support cooperation in the areas of regional economic development, energy, natural resources, transportation, public safety, culture and the Francophonie within their respective powers.

SECTION 2

The Parties shall also encourage businesses and economic development organizations to participate in international economic events that are held in Québec and Maine.

They shall promote meetings and networking between their respective businesses.

SECTION 3

ENERGY AND NATURAL RESOURCES

The Parties agree to encourage the exchange of information and expertise as well as stronger cooperative relations between stakeholders from different spheres in the areas of clean and environmentally friendly energy technologies, particularly hydroelectricity, wind energy, bioenergy, and the development of smart grids and innovative energy efficiency programs. They also agree to continue their dialogue in an effort to find common solutions to the joint challenges that are affecting energy and other areas, the supply of clean and renewable electricity, competitiveness and the stability of energy prices for consumers.

The Parties emphasize the strategic character of the cross-border infrastructures that are used to transport oil and gas.

The Parties agree to continue their regular dialogue on the forestry sector. They agree to work actively together to promote the use of timber in construction.

SECTION 4

TRANSPORTATION

The Parties recognize the significance of close cooperation between the *Ministère des Transports du Québec* and the Maine Department of Transportation in supporting the greater economic and sustainable development of the region and its competitiveness. As part of their respective objectives, the Parties agree to encourage cooperation between the widest possible range of public and private stakeholders with a view to improving the movement of goods and people and increasing the efficiency, safety and security of transportation systems on both sides of the border.

The Parties agree to work together on issues of common interest, such as the improvement of road infrastructures surrounding border crossing facilities, intelligent transportation systems, road safety, including interactions between road network users and large wildlife, legislation and research, communications in emergency situations that affect transportation, and all other issues that the Parties deem appropriate.

improvement of energy efficiency, the reduction of greenhouse gases and adaptation to the impacts of climate change.

SECTION 5

SECURITY

The Parties agree to encourage their respective law enforcement organizations to cooperate with each other.

They agree to continue to share information in accordance with the Agreement between the *Gouvernement du Québec* and the Government of the state of Maine with respect to the exchange of law enforcement information, which was signed on February 12, 2004.

They also agree to provide mutual assistance to the extent possible in managing any emergency or disaster when the affected jurisdiction requests assistance, whether said request arises from a natural disaster, a hazard, a technological disaster or civil emergency aspects of resource shortages, as stipulated in the International Emergency Management Assistance Memorandum of Understanding, done at Halifax, on July 18th, 2000.

SECTION 6

CULTURE

The Parties agree to work together to encourage exchanges related to culture.

SECTION 7

THE FRANCOPHONIE

The Parties agree to work together to strengthen their ties and exchanges in relation to the Francophonie and share their expertise and know-how in French in a number of areas.

In addition, they intend to cooperate closely to carry out the World Acadian Congress, which will take place August 8 to 24, 2014, in Acadia of the Lands and Forests.

SECTION 8

IMPLEMENTATION OF THE AGREEMENT

The Parties shall create a Québec-Maine Joint Committee that is responsible for implementing this Agreement. The members of this committee shall be appointed

- b) determine the approaches to be used to carry out the activities and projects selected under the Action Plan and determine the resources required by both Parties to ensure their efficient implementation;
- c) monitor the activities undertaken under this agreement, evaluate the results and, as warranted, make the required adjustments;
- d) examine all issues related to the implementation and interpretation of this agreement; and
- e) identify sectoral agreements and joint documents whose signature is planned in the subsequent two years.

The Québec-Maine Joint Committee shall forward to the Premier of Québec and the Governor of Maine an annual report of its activities.

SECTION 9

FINAL PROVISIONS

The Parties may mutually agree to expand this Agreement to include new areas of cooperation or to increase or complete the current degrees of cooperation, where appropriate, by signing agreements, minutes of proceedings, official records or any other joint document concerning the specific sectors, activities or projects.

This agreement shall be in full force and effect on the day it is signed by the Parties and shall remain in full force and effect until terminated by notice given in writing by one or the other Party. This agreement shall terminate the 180th day following the said notice in writing.

This Agreement replaces the Memorandum of understanding on Economic Cooperation between the *Gouvernement du Québec* and the Government of the State of Maine, which was signed on June 8, 1995.

Done at _____ on this _____th day of _____ 2013, in duplicate, in French and English, both texts being equally authentic.

**FOR THE GOUVERNEMENT
DU QUÉBEC**

**FOR THE GOVERNMENT OF
THE STATE OF MAINE**

Proclamation

WHEREAS, Maine potato farmers have had a significant harvest;

WHEREAS, the quality of Maine potatoes meet certain exacting criteria;

WHEREAS, the processing of these potatoes may need to be accomplished in Canada pursuant to an easement granted;

WHEREAS, commercial vehicles may not have the appropriate equipment available to move this product on an expedited basis;

WHEREAS, farmers in the region may be able to transport this product to market on an emergency basis to prevent spoilage; and

WHEREAS, these conditions require immediate action to ensure that crops are not lost due to failure to transport.

NOW, THEREFORE, I, Paul R. LePage, Governor of the State of Maine, by virtue of the authority vested in me by the Constitution and laws of Maine, find that these conditions constitute a limited civil emergency under 37-B M.R.S.A. § 742, and thereby necessitate the suspension of the enforcement of the provisions of Title 29-A, Chapter 5, and of Title 29-A, section 1252 against individuals transporting potatoes pursuant to the Canadian easement, save that the enforcement of Title 29-A, section 1251 shall not be suspended. Accordingly, I do hereby declare that a State of Emergency exists for these limited purposes within the State of Maine as of March 22, 2013 through April 20, 2013.

Paul R. LePage, Governor

AR5/AR5_documents/doc20-rev1.pdf). Authors were nominated starting in January 2010 and selected in May 2010. All IPCC reports go through two broad reviews: a "first-order draft" reviewed by experts, and a "second-order draft" reviewed by both experts and governments. The Second Order Draft of the Working Group II contribution to the 5th Assessment Report will be available for review beginning on 29 March 2013.

As part of the U.S. Government Review of the Second Order Draft of the Working Group II Contribution to the 5th Assessment Report, the U.S. Government is soliciting comments from experts in relevant fields of expertise (Again, the Table of Contents for the Working Group contribution can be viewed here: http://www.ipcc-wg2.gov/AR5/AR5_documents/doc20-rev1.pdf)

Experts may now register to review the draft report at: <http://review.globalchange.gov>; the report will be available for download once it is released, 29 March 2013. To be considered for inclusion in the U.S. Government submission, comments must be received by 01 May 2013.

The *United States Global Change Research Program* will coordinate collection and compilation of U.S. expert comments and the review of the report by a Review Committee of Federal scientists and program managers in order to develop a consolidated U.S. Government submission, which will be provided to the IPCC by 24 May 2013. Expert comments received within the comment period will be considered for inclusion in the U.S. Government submission. Instructions for registering as a reviewer, the process of the review itself and submission of comments—as well as the Second Order Draft of the report—are available at: <http://review.globalchange.gov>.

Experts may choose to provide comments directly through the IPCC's expert review process, which occurs in parallel with the U.S. government review. More information on the IPCC's comment process can be found at <http://www.ipcc.ch/activities/activities.shtml> and http://www.ipcc.ch/pdf/ar5/review_of_wg_contributions.pdf. To avoid duplication, those participating in the U.S. Government Review should not also participate in the Expert Review process which submits comments directly to the IPCC Secretariat. Comments to the U.S. government review should be submitted using the Web-based system at: <http://review.globalchange.gov>.

This certification will be published in the **Federal Register**.

Dated: March 27, 2013.

Trigg Talley,
 Director, Office of Global Change, Department of State.

[FR Doc. 2013-07505 Filed 3-29-13; 8:45 am]

BILLING CODE 4710-09-P

**OFFICE OF THE UNITED STATES
 TRADE REPRESENTATIVE**

**Request for Comments Concerning
 Proposed Transatlantic Trade and
 Investment Agreement**

AGENCY: Office of the United States Trade Representative (USTR).

ACTION: Request for comments and notice of a public hearing.

SUMMARY: On March 20, 2013, the United States Trade Representative (USTR) notified Congress of the Administration's intention to enter into negotiations for a Transatlantic Trade and Investment Partnership (TTIP) agreement with the European Union (EU) aimed at achieving a substantial increase in transatlantic trade and investment. Before initiating such negotiations, the Trade Act of 1974 requires that, with respect to any proposed trade agreement, any interested persons be afforded an opportunity to present his or her view regarding any matters related to the proposed trade agreement. Accordingly, USTR is seeking public comments on the proposed TTIP, including regarding U.S. interests and priorities, in order to develop U.S. negotiating positions. Comments may be provided in writing and orally at a public hearing.

DATES: Written comments are due by midnight, May 10, 2013. Persons wishing to testify orally at the hearing must provide written notification of their intention, as well as a summary of their testimony, by midnight, May 10, 2013. The hearing will be held on May 29 and 30 beginning at 9:30 a.m., at the main hearing room of the United States International Trade Commission, 500 E Street SW., Washington, DC 20436.

ADDRESSES: Public comments should be submitted electronically at www.regulations.gov. If you are unable to provide submissions at www.regulations.gov, please contact Yvonne Jamison, Trade Policy Staff Committee (TPSC), at (202) 395-3475, to arrange for an alternative method of transmission.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning written comments, please contact Yvonne Jamison at the above number. All other questions regarding the TTIP agreement

should be directed to David Weiner, Deputy Assistant USTR for Europe, at (202) 395-9679.

SUPPLEMENTARY INFORMATION:

1. Background

The decision to launch negotiations for a TTIP agreement follows a year-long exploratory process conducted by the U.S.-EU High Level Working Group on Jobs and Growth (HLWG), established by President Obama and EU leaders during their November 2011 Summit Meeting, and led by U.S. Trade Representative Ron Kirk and EU Commissioner for Trade Karel De Gucht. USTR provided two opportunities for the public to comment as part of the HLWG mandate in 2012; comments received in response to these solicitations, and during a large number of advisory committee briefings and other meetings with stakeholders, played an important role in shaping the HLWG's recommendations. In its February 11, 2013 Final Report, the HLWG concluded that an agreement that addresses a broad range of bilateral trade and investment policies, as well as global issues of common interest, could generate substantial economic benefits on both sides of the Atlantic. (See <http://www.ustr.gov/about-us/press-office/reports-and-publications/2013/final-report-us-eu-hlwg>).

USTR is observing the consultative and administrative procedures of the Bipartisan Trade Promotion Authority Act of 2002 (19 U.S.C. 3804) with respect to notifying and consulting with Congress regarding the TTIP negotiations. These procedures include providing Congress with 90 days advance written notice of the President's intent to enter into negotiations and consulting with appropriate Congressional committees regarding the negotiations. To that end, on March 20, 2013, after having consulted with relevant Congressional committees, the USTR notified Congress that the President intends to enter into negotiations of an agreement with the EU, with the objective of concluding a high-standard agreement that will benefit U.S. workers, manufacturers, service suppliers, farmers, ranchers, innovators, creators, small- and medium-sized businesses, and consumers.

In addition, under the Trade Act of 1974, as amended (19 U.S.C. 2151, 2153), in the case of an agreement such as the proposed TTIP agreement, the President must (i) afford interested persons an opportunity to present their views regarding any matter relevant to the proposed agreement, (ii) designate an agency or inter-agency committee to

hold a public hearing regarding the proposed agreement, and (iii) seek the advice of the U.S. International Trade Commission (ITC) regarding the probable economic effect on U.S. industries and consumers of the modification of tariffs on imports pursuant to the proposed agreement. USTR intends to hold a public hearing on specific issues pertaining to the proposed negotiations on May 29 and 30, 2013. In addition, USTR has requested that the ITC provide advice to USTR on the probable economic effects of an agreement.

2. Public Comments

Written Comments: The TPSC Chair invites interested parties to submit written comments to assist USTR as it works with other U.S. government agencies and continues to consult with Congress to develop U.S. negotiating objectives and proposals for the proposed TTIP agreement. Comments may address the reduction or elimination of tariffs or non-tariff barriers on any articles provided for in the Harmonized Tariff Schedule of the United States (HTSUS) that are products of the EU, any concession that should be sought by the United States, or any other matter relevant to the proposed agreement. The TPSC Chair invites comments on all of these matters and, in particular, seeks comments regarding:

- (a) General and product-specific negotiating objectives for the proposed agreement;
- (b) economic costs and benefits to U.S. producers and consumers of removal of tariffs and removal or reduction in non-tariff barriers on articles traded with the EU;
- (c) treatment of specific goods (described by HTSUS numbers) under the proposed agreement, including comments on—
 - (1) product-specific import or export interests or barriers,
 - (2) experience with particular measures that should be addressed in the negotiations, and
 - (3) approach to tariff negotiations, including recommended staging and ways to address export priorities and import sensitivities in the context of the proposed agreement;
- (d) adequacy of existing customs measures to ensure that duty rates under an agreement with the EU apply only to goods eligible to receive such treatment, and appropriate rules of origin for goods entering the United States under the proposed agreement;
- (e) existing sanitary and phytosanitary measures and technical barriers to trade that should be addressed in the negotiations;

(f) opportunities for greater transatlantic regulatory compatibility, including concrete ideas on how greater compatibility could be achieved in a particular economic sector, without diminishing the ability of the United States to continue to meet legitimate regulatory objectives, for example with respect to health, safety and the environment, and which sectors should be the focus of such efforts;

(g) opportunities to reduce unnecessary costs and administrative delays stemming from regulatory differences, including how that could be achieved in a particular economic sector;

(h) opportunities to enhance customs cooperation between the United States and the EU and its member states, ensure transparent, efficient, and predictable conduct of customs operations, and ensure that customs measures are not applied in a manner that creates unwarranted procedural obstacles to trade;

(i) existing barriers to trade in services between the United States and the EU that should be addressed in the negotiations;

(j) relevant electronic commerce and cross-border data flow issues that should be addressed in the negotiations;

(k) relevant investment issues that should be addressed in the negotiations;

(l) relevant competition-related matters that should be addressed in the negotiations;

(m) relevant government procurement issues, including coverage of any government agencies or state-owned enterprises engaged in procurements of interest, that should be addressed in the negotiations;

(n) relevant environmental issues that should be addressed in the negotiations;

(o) relevant labor issues that should be addressed in the negotiations;

(p) relevant transparency and anticorruption issues that should be addressed in the negotiations; and

(q) relevant trade-related intellectual property rights issues that should be raised with the EU.

In addition to the matters described above, the TPSC invites comments on new principles or disciplines addressing emerging challenges in international trade that should be pursued in the negotiations and that would benefit U.S.-EU trade as well as strengthen the multilateral rules-based trading system and support other trade-related priorities, including, for example, with respect to state-owned enterprises, "localization" barriers to trade, and other developments on which the United States and the EU may share similar concerns.

At a later date, USTR, through the TPSC, will publish notice of reviews regarding (a) the possible environmental effects of the proposed agreement and the scope of the U.S. environmental review of the proposed agreement, and (b) the impact of the proposed agreement on U.S. employment and labor markets.

Oral Testimony: A hearing will be held on May 29 and May 30 in the Main Hearing Room at the U.S. International Trade Commission, 500 E St. SW., Washington, DC 20436. Persons wishing to testify at the hearing must provide written notification of their intention by May 10, 2013. The intent to testify notification must be made in the "Type Comment" field under docket number USTR-2013-0019 on the www.regulations.gov Web site and should include the name, address and telephone number of the person presenting the testimony. A summary of the testimony must accompany the notification. Remarks at the hearing should be limited to no more than five minutes to allow for possible questions from the TPSC.

3. Requirements for Submissions

Persons submitting comments must do so in English and must identify (on the first page of the submission) the "Transatlantic Trade and Investment Partnership." In order to be assured of consideration, comments should be submitted by May 10, 2013.

In order to ensure the timely receipt and consideration of comments, USTR strongly encourages commenters to make on-line submissions, using the www.regulations.gov Web site. To submit comments via www.regulations.gov, enter docket number USTR-2013-0019 on the home page and click "search." The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice and click on the link entitled "Comment Now!" (For further information on using the www.regulations.gov Web site, please consult the resources provided on the Web site by clicking on "How to Use This Site" on the left side of the home page).

The www.regulations.gov Web site allows users to provide comments by filling in a "Type Comment" field, or by attaching a document using an "Upload File" field. USTR prefers that comments be provided in an attached document. If a document is attached, it is sufficient to type "See attached" in the "Type Comment" field. USTR prefers submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf). If the submission is in an application other than those

two, please indicate the name of the application in the "Type Comment" field.

For any comments submitted electronically containing business confidential information, the file name of the business confidential version should begin with the characters "BC". Any page containing business confidential information must be clearly marked "BUSINESS CONFIDENTIAL" on the top of that page. Filers of submissions containing business confidential information must also submit a public version of their comments. The file name of the public version should begin with the character "P". The "BC" and "P" should be followed by the name of the person or entity submitting the comments or reply comments. Filers submitting comments containing no business confidential information should name their file using the name of the person or entity submitting the comments.

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

As noted, USTR strongly urges submitters to file comments through www.regulations.gov, if at all possible. Any alternative arrangements must be made with Ms. Jamison in advance of transmitting a comment. Ms. Jamison should be contacted at (202) 395-3475. General information concerning USTR is available at www.ustr.gov.

4. Public Inspection of Submissions

Comments will be placed in the docket and open to public inspection, except business confidential information. Comments may be viewed on the <http://www.regulations.gov> Web site by entering the relevant docket number in the search field on the home page.

Douglas Bell,

Chair, Trade Policy Staff Committee.

[FR Doc. 2013-07430 Filed 3-29-13; 8:45 am]

BILLING CODE 3290-F3-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2013-0087]

Limited Service Exclusion for Household Goods Motor Carriers and Related Registration Requirements for Brokers

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice; request for public comment.

SUMMARY: FMCSA provides notice and requests comments on the Agency's process for determining the appropriate use of the Limited Service Exclusion (LSE), a statutory exception to the definition of Household Goods (HHG) motor carrier provided at 49 U.S.C. 13102(12)(C). In addition, this notice explains the registration requirements of brokers that arrange for the transportation of shipments that are eligible for the LSE.

DATES: You must submit comments on or before May 1, 2013.

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA-2013-0087 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Fax:* 1-202-493-2251.
- *Mail:* Docket Management Facility, (M-30), U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., West Building Ground Floor, Room 12-140, Washington, DC 20590-0001.
- *Hand Delivery:* Same as mail address above, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. All submissions must include the Agency name and docket number for this notice. See the "Public Participation" heading below for instructions on submitting comments and additional information.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Rodgers, Commercial Enforcement and Investigations Division, U.S. Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590-0001. Telephone (202)366-3031 or CIE_mailbox@dot.gov. Office hours are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal and/or copyrighted information you provide.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA-2013-0087), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov> and insert "FMCSA-2013-0087" in the "Search" box, and then click the "Search" button to the right of the white box. Click on the top "Comment Now" box which appears next to the notice. Fill in your contact information, as desired and your comment, uploading documents if appropriate. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period and may change this enforcement policy based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this notice as being available in the docket, go to <http://www.regulations.gov> and insert "FMCSA-2013-0087" in the "Search" box and then click on "Search." Click on the "Open Docket Folder" link and all the information for the notice, and the list of comments will appear with a link to each one. Click on the comment you would like to read. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of



STATE OF MAINE
HOUSE OF REPRESENTATIVES
126th LEGISLATURE

May 10, 2010

Office of the United States Trade Representative
600 17th Street NW
Washington, DC 20508

**Comments on the Trans-Atlantic Trade and Investment Partnership (TTIP):
Concerns of State and Local Governments
Provided by Maine Representative Sharon Anglin Treat
Federal Register Docket Number USTR-2013-0019
<https://federalregister.gov/a/2013-07430>**

Thank you for the opportunity to provide written comments on the proposed Transatlantic Trade and Investment Partnership (TTIP). I am a legislator serving my 11th term in the Maine Legislature, currently in the Maine House of Representatives, having also served in the Maine Senate. I co-chair the Maine Citizen Trade Policy Commission, and am House Chair of the Legislature's Joint Standing Committee on Insurance & Financial Services Committee. I am also a cleared advisor representing Maine on the Intergovernmental Policy Advisory Committee to the U.S. Trade Representative.

While these written comments are provided in my individual capacity, the positions taken herein reflect policy that has been previously adopted by the Maine Citizen Trade Advisory Council (CTPC) and communicated to the USTR as well as our Congressional delegation. These comments on the TTIP draw extensively from the position papers and letters of the CTPC, as well as Joint Resolutions adopted by the Maine Legislature, which are posted on our website, addressing issues including procurement, tobacco regulation, pharmaceutical reimbursement and pricing, investment policies and dispute resolution, as well as insurance, consumer and environmental regulation, and trade promotion authority.

I intend to present oral testimony at the hearing scheduled for May 29-30, and at that time may be presenting on behalf of the Maine Citizen Trade Policy Commission, following consultation with the full Commission at its regularly scheduled meeting later this month.

Background. The Citizen Trade Policy Commission (CTPC) provides an ongoing state-level mechanism to assess the impact of international trade policies and agreements on Maine's state and local laws, business environment and working conditions. It was established in 2003 by PL

2003, Chapter 699. The 22 member Commission includes six legislators, an Attorney General designee, five non-voting agency officials representing the Department of Labor, the Department of Health and Human Services, the Department of Environmental Protection, The Maine International Trade Center, the Department of Agriculture, Food and Rural Resources, and 10 public members representing business, labor, health, farming, government and environmental interests.

The CTPC's statutory mandate was amended by PL 2007, Chapter 266 to require that the Commission hold regular meetings, gather information from the public through hearings, submit an annual report on its activities, and conduct a biennial assessment on the impacts of international trade agreements on Maine. All of the CTPC's annual assessments, reports, letters, press releases and meeting agendas, as well as related legislation, are posted on its website, and may be accessed here: <http://www.maine.gov/legis/opla/citpolassessments.htm>.

Comments on specific issues or potential chapters of the TTIP:

PROCUREMENT

The Maine CTPC has consistently endorsed the position that coverage of U.S. states as sub-central entities should be *explicitly excluded* from any procurement provisions in trade agreements. The CTPC was established by statute as a direct consequence of legislation addressing state procurement of "sweat free" products and concern about labor standards in our trading partners. Maine has comprehensive rules governing its own procurement policies, including recycled content standards for various products to promote reuse and recycling, and the state has adopted a Purchasing Code of Conduct requiring certification of "sweat free" labor practices for suppliers of apparel, textiles and footwear, pursuant to 5 MRSA Section 1825-O.

In order to assure that these Maine-specific rules are in fact complied with, the State has also enacted a law governing the authority and procedure that must be followed in order to bind the State of Maine to any procurement rules adopted in any trade agreement. Since 2009, the Governor may not unilaterally bind the state to any trade agreement, but must consult with the CTPC and the Maine International Trade Center, and the Legislature must pass a law authorizing the Governor to enter into the trade agreement, see Public Law, Chapter 385 H.P. 876 - L.D. 1257, "An Act To Require Legislative Consultation and Approval Prior to Committing the State to Binding International Trade Agreements" which reads as follows:

"Sec. 1. 10 MRSA §13 is enacted to read:

§ 13. Legislative approval of trade agreements

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Commission" means the Citizen Trade Policy Commission established in Title 5, section 12004- I, subsection 79-A.

B. "Trade agreement" means an agreement reached between the United States Government and any other country, countries or other international political entity or entities that proposes to regulate trade, procurement, services or investment among the parties to the agreement. "Trade agreement" includes, but is not limited to, any agreements under the auspices of the World Trade Organization, all regional free trade agreements, including the North American Free Trade Agreement and the Central America Free Trade Agreement and all bilateral agreements entered into by the United States, as well as requests for binding agreement received from the United States Trade Representative.

2. State official prohibited from binding the State. If the United States Government provides the State with the opportunity to consent to or reject binding the State to a trade agreement, or a provision within a trade agreement, then an official of the State, including but not limited to the Governor, may not bind the State or give consent to the United States Government to bind the State in those circumstances, except as provided in this section.

3. Receipt of request for trade agreement. When a communication from the United States Trade Representative concerning a trade agreement provision is received by the State, the Governor shall submit a copy of the communication and the proposed trade agreement, or relevant provisions of the trade agreement, to the chairs of the commission, the President of the Senate, the Speaker of the House of Representatives, the Maine International Trade Center and the joint standing committees of the Legislature having jurisdiction over state and local government matters and business, research and economic development matters.

4. Review by commission. The commission, in consultation with the Maine International Trade Center, shall review and analyze the trade agreement and issue a report on the potential impact on the State of agreeing to be bound by the trade agreement, including any necessary implementing legislation, to the Legislature and the Governor.

5. Legislative approval of trade agreement required. Unless the Legislature by proper enactment of a law authorizes the Governor or another official of the State to enter into the specific proposed trade agreement, the State may not be bound by that trade agreement."

By letter to USTR dated August 1, 2012, the Maine CTPC has also stated support for permitting "Buy America" provisions in state and federal laws and regulations (see letter posted here: <http://www.maine.gov/legis/opla/CTPCprocurementtradeletter.pdf>). The letter states in pertinent part that the CTPC and State of Maine favor a policy that leaves to the U.S. states the decision whether and to what extent to be subject to the procurement provisions of trade agreements. Maine also commissioned a study of potential procurement impacts on the State from trade agreements broadly and the TPP specifically (see pages 27-34 of the CTPC's 2012 Trade Assessment, posted at: <http://www.maine.gov/legis/opla/CTPC2012finalassessment.pdf>).

Procurement provisions in any trade agreement, including the proposed TTIP, must not bind states without their explicit approval (opt-in) so that state "Buy American," "sweat free" and other procurement rules continue to be enforceable.

INVESTMENT

An investment chapter in the TTIP would provide both substantive investor protections and a process for investor-state dispute settlement. EU countries have entered into about 1,200 investment treaties, and the United States about 60 (counting treaties and investment chapters of FTAs). Most of these are with developing countries; they give a legal advantage to the EU or U.S. investor to challenge laws in a developing country. That one-sided advantage disappears in an investment agreement between the EU and the United States. In virtually all sectors, corporations are invested in subsidiaries on both sides of the Atlantic (valued at \$US 3.7 trillion). Thus, if TTIP includes an investment chapter, corporations would have standing to challenge whichever side of the Atlantic is more progressive (less favorable to investors).

The goal set by the TTIP High-Level Working Group is to harmonize differences between U.S. and EU investor protections in favor of the most investor-friendly side of the Atlantic. This

would have the effect of canceling a decade of incremental reform in U.S. trade and investment agreements, for which the Maine CTPC has been a consistent advocate. These reforms include:

- **Expropriation** – an annex to clarify that except in rare circumstances, regulations that serve a public welfare objective do not constitute an indirect expropriation.
- **Fair and equitable treatment** – a clarification that FET is limited to the standard of treatment that is required by Customary International Law (CIL), which means that governments must only compensate investors when there is a state practice of doing so out of a sense of legal obligation.

Even with these reforms, the investor rights are unnecessarily vague. Yet the EU's investment treaties are worse; they give more power to arbitrators to ignore state practice and compensate investors based on doctrines developed by arbitrators. By favoring the most investor-friendly version, the goals of TTIP flatly ignore the limited progress that the United States has made to clarify the scope of foreign investor rights.

Investment rules and the investor-state dispute resolution system have been justified on the grounds that they protect foreign investors from the discriminatory or capricious actions of the host government, or protect investors from poorly performing or inefficient domestic courts. Independent, capable, and fair judicial systems are well-established in the both the U.S. and the EU. There is simply no reasonable justification for including an investment chapter in the TTIP.

Considering that the rule of law and judicial systems are well-developed on both sides of TTIP negotiations, there is no place for an investment chapter in the TTIP.

SERVICES AND REGULATORY COHERENCE

On a number of occasions, the Maine CTPC has commended USTR for paying close attention to WTO negotiations on services and for opposing proposals from other countries that would limit the regulatory authority of state and local governments. This is especially important with respect to essential services that are regulated by states and provided by local governments (e.g., insurance, health care facilities, licensing of professionals, waste management, distribution of energy, etc.). In the Trans-Pacific negotiations, some of the WTO proposals have resurfaced in a new chapter on "regulatory coherence." For example, the chapter promotes use of regulatory impact assessments that apply cost-benefit analysis in ways that are not consistent with state-level regulation of public utilities and other service providers.

The chapters on services and regulatory coherence are highly sensitive in light of our federal system and principles of dual sovereignty. U.S. negotiators risk ruining years of good will if they proceed to negotiate these chapters in the TTIP with the lack of transparency demonstrated in the Trans-Pacific process.

INSURANCE

Particularly with respect to regulation of services relating to insurance, the State of Maine has taken a strong position that trade and investment agreements must not limit state authority. Insurance regulation is primarily, and almost exclusively, a state-level activity. Maine has a strong interest in preserving its role as the primary regulator of the insurance industry providing services in the states, and in maintaining authority to set reserve standards to assure solvency of the industry and consumer protections, to perform market conduct exams, to require disclosure

of insurance policy terms, to seek redress through enforcement actions, and to exclude insurance policies and insurers from the market that do not meet these state standards.

The Maine Citizen Trade Policy Commission opposed the creation of a federal insurance office with powers to declare state insurance laws preempted by trade agreements, both pending and ratified (see letter of April 16, 2010 to Senator Christopher Dodd, posted here: <http://www.maine.gov/legis/opla/citpoltradedocs.htm>). Maine's Insurance Superintendent testified before Congress on these issues, and our Attorney General wrote to oppose the provisions. States throughout the country opposed these federal trade preemption provisions through the testimony of the National Association of Insurance Commissioners. That proposal was defeated, and the Federal Insurance Office that was established in the Dodd-Frank Act is purely advisory. TTIP should not include any provisions that subvert this state-federal regulatory balance.

The USTR should not include in any trade agreement, including the proposed TTIP, any provisions that limit or remove from U.S. state regulation insurance and other financial products and services currently regulated by the states.

TOBACCO CONTROL

Maine has some of the strongest tobacco control laws in the country, including tobacco taxes intended to reduce tobacco use and encourage and assist cessation. Maine was one of the 46 states and 5 territories that sued the tobacco industry and entered into a global settlement with the defendants. That settlement not only provides ongoing funding to the state's tobacco cessation and prevention efforts, it also established the regulatory framework codified in federal law. Since 1997 to 2005, rates for adults who smoke decreased from 30% to 21%, and the rate among high school students plunged nearly 60%. Maine has received national recognition for its impressive outcomes in tobacco prevention in schools, workplaces, communities and retail stores.

The continued success of these efforts is incredibly important to Maine policymakers, the medical and public health community and the parents of our youth. It is vital that tobacco be treated as a special case by our trade rules, and that the proposed TTIP include tobacco exception language that is clear, broad in scope, and effective. It must not preclude new policies in response to changes in our understanding of not only the science of addiction and health impacts, but also of marketing and psychology. It must be able to respond to the ever-evolving strategies and products of the tobacco industry as that global industry adapts to changing regulations and understanding.

For these reasons, and the actions of Philip Morris International (PMI) challenging tobacco regulations adopted in Uruguay and Australia using investor-state arbitration provisions, the Maine Citizen Trade Policy Commission wrote to the U.S. Trade Representative in a letter dated November 19, 2010 calling "for tobacco be carved out of TPP and any future trade agreement."

Unless there is a clear carve-out, a TTIP investment chapter would give PMI standing to challenge tobacco-control measures in the EU, as it would give British American Tobacco (BAT) standing to challenge measures in the United States.

One goal of TTIP is to eliminate tariffs, including tariffs on tobacco products. U.S. tariffs on cigarettes are 41.7 cents/kg + 0.9% (bound and applied rates); EU tariffs are 10% ad valorem (bound and applied rates). (WTO, Tariff Analysis Online)

U.S. trade negotiators have a history of negotiating tariff reductions in order to promote market access on behalf of tobacco companies. For many years, the U.S. Congress has adopted the Durbin and Doggett Amendments to appropriations acts; they prohibit federal agencies from promoting “the sale or export of tobacco or tobacco products” or seeking “the reduction or removal by any foreign country of restrictions on the marketing of tobacco or tobacco products, except for restrictions which are not applied equally to all tobacco or tobacco products of the same type.” President Clinton issued Executive Order 13193 in 2001 to make clear that the prohibition applies to all executive agencies and “the implementation of international trade policy.”

It is hard to avoid the conclusion that the purpose of eliminating tobacco tariffs is to promote tobacco trade or to provide tobacco companies with a windfall. For U.S. negotiators to do so in the TTIP would violate the Doggett Amendment and the Clinton Executive Order. Eliminating tariffs will also reduce the cost of tobacco products generally and undermine the efforts of Maine and other states to reduce tobacco use through steep taxes, a policy with proven effectiveness, particularly in reducing youth smoking.

USTR has vetted (but not yet proposed) an exception in the Trans-Pacific negotiations for regulations that restrict tobacco trade. The exception would apply only to regulations issued by health authorities, not to legislation; it would not apply to regulations adopted by tax, custom, or licensing authorities such as those at the state level. In short, the U.S. proposal is so narrow it would protect only the U.S. Food and Drug Administration, but not the states; and it would require a scientific burden of proof that exceeds the burden in the WTO health exception under GATT and GATS.

The Maine Citizen Trade Policy Commission has taken the position that it is more effective to simply exclude tobacco-control measures from all future trade agreements, including the TTIP. Whereas an exception requires extensive litigation to work as a defense, an exclusion (also called a carve-out) limits litigation to the preliminary question of whether a measure is covered.

ENVIRONMENTAL PROTECTIONS

To the extent the TTIP seeks to harmonize regulations, it is essential that regulations are harmonized upward. Further, governments – including U.S. state governments that in our federalist system share environmental regulatory authority with the federal government – must have the flexibility to develop more ambitious environmental policies in the future.

Of great concern with respect to the TTIP is the fact that the inclusion of so-called “national treatment for trade in gas” would remove the ability of the U.S. Department of Energy to review, condition, or deny exports of US liquid natural gas (LNG) to EU countries. Automatic exports of U.S. LNG to the EU, a significant importer of natural gas, would likely expand hydraulic fracturing (fracking), across the country and lead to higher domestic electricity prices, affecting consumers, U.S. manufacturing, and U.S. jobs.

The potential for “investor-state” provisions in the TTP raises particular concerns for the ability of states to protect the environment and natural resources. We know from the implementation of the North American Free Trade Agreement (NAFTA), and its investor-state dispute provisions, that corporate challenges under the investment chapter are frequently focused on environmental regulations and policies. Past and current WTO and NAFTA cases against Canadian provinces and U.S. states have included challenges to fracking moratoria, zoning and regulation of mining, renewable energy policy including local content requirements, regulating toxics in groundwater, and water pollution permitting – all subjects over which state governments have jurisdiction.

The current trade negotiation process is neither transparent nor inclusive, with negotiations taking place behind closed doors and confidential texts shared with very few state policymakers or advocates for public health and the environment. Currently, state and local officials have limited access to vital information about trade policy decisions, and no meaningful role in forming U.S. positions for trade negotiations - even though they are required to conform their democratically-enacted domestic policies to the constraints and priorities set in trade and investment pacts such as the TTIP.

The CTPC, a state government authority, has experienced over many years great difficulty even in scheduling timely briefings on USTR policies and activities, and there are limited opportunities for the Commission to influence the U.S. trade agenda and specific negotiations.

The TTIP should not override state authority to regulate environmental concerns when those state policies meet the legal standards in the U.S. Constitution.

ACCESS TO HEALTHCARE

State officials, including the Maine CTPC, have repeatedly warned the USTR over the past several years about the harm to U.S. health programs that will follow from the use of trade policy to restrict foreign and domestic medicine pricing programs. These concerns have been raised with respect to the Australia-US FTA, the Korea-US FTA and the Trans-Pacific Partnership Agreement.¹

The Maine Citizen Trade Policy Commission recently commissioned a statutorily required biennial Assessment of the potential impact of trade policy on Maine’s citizens, economy, laws and policies. The Assessment concluded that the impact of proposed provisions in the TPPA on pharmaceutical pricing in Maine, and on access to healthcare, could be significant. The analysis was based on the leaked June 2011 TPPA healthcare transparency text as well as intellectual property provisions under consideration in the TPPA negotiations.

On August 1, 2012, the Maine CTPC wrote to Ambassador Ron Kirk reiterating its concerns about the healthcare technologies text and referring to the Assessment. The letter is posted online here: <http://www.maine.gov/legis/opla/CTPCpharmaceuticalstradeletter.pdf>. The letter reasserts the Commission’s support for the positions adopted in previous communications on this

¹ See eg, letter from Vermont Governor Peter Shumlin dated June 1, 2011 to U.S. Trade Representative Kirk and

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The current trade negotiation process is neither transparent nor inclusive, with negotiations taking place behind closed doors and confidential texts shared with very few state policymakers or advocates for public health and the environment. Currently, state and local officials have limited access to vital information about trade policy decisions, and no meaningful role in forming U.S. positions for trade negotiations - even though they are required to conform their democratically-enacted domestic policies to the constraints and priorities set in trade and investment pacts such as the TTIP.

The CTPC, a state government authority, has experienced over many years great difficulty even in scheduling timely briefings on USTR policies and activities, and there are limited opportunities for the Commission to influence the U.S. trade agenda and specific negotiations.

The TTIP should not override state authority to regulate environmental concerns when those state policies meet the legal standards in the U.S. Constitution.

ACCESS TO HEALTHCARE

State officials, including the Maine CTPC, have repeatedly warned the USTR over the past several years about the harm to U.S. health programs that will follow from the use of trade policy to restrict foreign and domestic medicine pricing programs. These concerns have been raised with respect to the Australia-US FTA, the Korea-US FTA and the Trans-Pacific Partnership Agreement.¹

The Maine Citizen Trade Policy Commission recently commissioned a statutorily required biennial Assessment of the potential impact of trade policy on Maine’s citizens, economy, laws and policies. The Assessment concluded that the impact of proposed provisions in the TPPA on pharmaceutical pricing in Maine, and on access to healthcare, could be significant. The analysis was based on the leaked June 2011 TPPA healthcare transparency text as well as intellectual property provisions under consideration in the TPPA negotiations.

On August 1, 2012, the Maine CTPC wrote to Ambassador Ron Kirk reiterating its concerns about the healthcare technologies text and referring to the Assessment. The letter is posted online here: <http://www.maine.gov/legis/opla/CTPCpharmaceuticalstradeletter.pdf>. The letter reasserts the Commission’s support for the positions adopted in previous communications on this

¹ See eg, letter from Vermont Governor Peter Shumlin dated June 1, 2011 to U.S. Trade Representative Kirk and

issue, in particular its February 12, 2010 letter to USTR. The Commission particularly noted the following:

- Its **support** for evidence-based reimbursement policies to restrain pharmaceutical prices;
- Its **endorsement** of the continued use of preferred drug lists to reduce pharmaceutical prices;
- Its **opposition** to “any promotion of international restrictions on domestic pharmaceutical prices”; and
- Its **support** for “the inclusion of a footnote in the TPPA and other trade agreements which “carves out” federal reimbursement programs such as Medicaid, 340 B and Medicare Part B”.

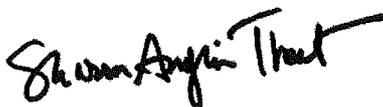
The Maine Citizen Trade Policy Commission has taken a strong position against inclusion of restrictive healthcare pricing and intellectual property provisions in any future trade agreement, including the TTIP. The Commission adopted the following strong statement on its position opposing the restrictive pricing language such as that proposed in leaked TPPA healthcare technologies text: ***“The CTPC voted unanimously to support provisions in the TPPA and other international trade agreements which emphasize, allow for and encourage the overall affordability of pharmaceuticals in each affected country.”***

SUMMARY

The State of Maine has expressed many concerns about past U.S. trade and investment agreements, as well as the process used to negotiate and approve of these treaties. Through the Maine Citizen Trade Policy Commission, the state has conducted a thorough review of the impacts of these treaties on the state’s sovereignty and its authority to protect the public health, safety and welfare.

As the USTR enters into negotiations for a Transatlantic Trade and Investment Partnership, it is imperative that the resultant treaty respects the sovereignty of U.S. states under the federalism provisions of the U.S. Constitution, and that negotiators consult in a meaningful way with state policymakers so that the TTIP does not undermine environmental and public health protections, access to healthcare, procurement standards, and regulation of services such as insurance, which have been reserved to the states. Thank you for your consideration.

Respectfully submitted,



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Article notes: 5/24/13 CTPC agenda

HHS Official Highlights Role in Formulating Tobacco, IPR Aspects of Trade Policy

- Contrary to past practice, the U.S. Department of Health and Human Services (HHS) is playing a much more significant role in the formulation of U.S. trade policy on health related issues for international trade treaties such as the TPPA;
- Previously, the HHS role was limited to consulting on the more technical aspect of health related trade issues ;
- Apparently, HHS has been influential in helping to develop the tobacco "carve out" proposal which may become part of the TPPA; the tobacco "carve out" proposal would allow nations to "adopt regulations that impose origin-neutral, science based restrictions on specific tobacco products or classes in order to safeguard public health"; and
- HHS also appears to be playing a significant role in a proposal for the TPPA which would increase access to pharmaceuticals by allowing pharmaceutical companies to be rewarded with stronger patent protections if they move quickly to gain marketing approval for distribution in other countries.

Cuba challenges Australian Tobacco Rules

- Under the WTO, Cuba is challenging Australian tobacco laws by alleging that these laws are creating "technical barriers" to trade and that these laws violate intellectual property rights;
- The Australian law in question is considered to be one of the most stringent tobacco labeling laws and currently prohibits " the use of logos, brand imagery, and promotional text.

Coup d'Etat to Trade Seen in Billionaire Toxic Lead Fight

- Using the investor-state arbitration process afforded by international trade agreements, Renco, a U.S. owned mining company, is seeking \$800 million in damages from the nation of Peru for costs incurred by the company to comply with a mandated clean-up of toxic lead spills; and
- The nonprofit Global Trade Watch organization alleges that the investor-trade arbitration process is used frequently to as an effort to try "to limit the governance authority of nation states.

Medical, Health Leaders: TPP Must Reduce Epidemic of Tobacco Use

- Leading medical and health professionals in the U.S. have issued a statement entitled "Strategies for Creating a 21st Century Trade Agreement" which advocates for a the U.S. to champion an agenda for the TPPA which:
 - Safeguards public health;
 - Advances tobacco control measures at local, state and national levels; and
 - Prevents incursions by the tobacco industry against these measures.

No Decision Yet on Japan Participation at Next TPP Round, Official Says

- Although Japan has been formally accepted into the TPPA, it has not yet been resolved whether Japan will participate in the next round of TPPA negotiations which are scheduled to start on July 15th; and
- Technically, Japan is not allowed to participate in the negotiations until they are formally a part of the TPPA on July 23rd.

State Lawmakers Make Demands on LNG, Environment Investment in TPP

- More than 50 legislators (including Representative Sharon A. Treat) from 24 states have asked the USTR to include in the TPPA provisions which would allow the Department of Energy to retain control over liquefied natural gas (LNG) exports; and
- These same legislators are also asking the USTR to oppose inclusion of an investor-state dispute settlement mechanism in the TPPA.

U.S. Tables SPS Text; Other Countries Float Pharmaceutical IP Ideas

- The USTR has formally proposed inclusion of language in the TPPA which would establish a consultative mechanism for resolving sanitary and phytosanitary (SPS) disputes; many U.S. agricultural and food groups are opposed to this approach, favoring instead a provision which provide for fully enforceable SPS obligations; and
- Other TPPA member countries have developed proposals regarding the topic of pharmaceutical intellectual (IP) protections which would run counter to the current U.S. proposal to increase access to pharmaceuticals by allowing pharmaceutical companies to be rewarded with stronger patent protections if they move quickly to gain marketing approval for distribution in other countries.

2013 Report on Technical Barriers to Trade; USTR

- Foreign trade barriers exist in the form of product standards, technical regulations and testing, certification and other procedures used to determine whether particular products conform to certain standards;
- These factors commonly referred to as standards based trade measures can have both a positive and negative effect on the flow of international trade;
- In WTO parlance, these standards are referred to as "technical barriers to trade" (TBT);
- When TBTs are non-transparent, discriminatory or unwarranted, they can have the effect of significantly reducing trade for the U.S.; and
- The report goes on to indentify significantly deleterious TBTs and the various strategies that the USTR is employing to deal with them.

Live from the Trans Pacific Partnership: IP Chapter Shows No Sign of Resolution, End of Negotiation in 2013 Highly Unlikely

- Current TPPA negotiations are stalled around disagreements on intellectual property and pharmaceutical topics;
- Several of the TPPA nation participants have significant objections to the current copyright laws in the U.S which protect copyrights for a length of 70 years;
- The current disagreements have certainly rendered the anticipated finalization of the TPPA in October, 2013 as impossible to achieve and probably makes completion by the end of 2103 very unlikely as well.

HHS Official Highlights Role In Formulating Tobacco, IPR Aspects Of Trade Policy

Inside US Trade

Posted: April 22, 2013

A senior official in the Department of Health and Human Services (HHS) today (April 22) said that the department is playing a larger role than ever before in the development of U.S. trade policy, including on sensitive issues in the Trans-Pacific Partnership (TPP) negotiations like a draft proposal for a tobacco-specific "safe harbor" and the U.S. stance on issues related to intellectual property protections for pharmaceuticals.

In an interview with *Inside U.S. Trade*, HHS Assistant Secretary for Global Affairs Nils Daulaire said that, historically, the department's role in formulating trade policy has been more marginal. "HHS' seat at the table in the trade discussions has largely been occupied by the Food and Drug Administration, because the focus really has been on what does this mean for our regulatory regime when we have food and drugs imported into the U.S.," he said.

But Daulaire, who joined HHS in 2010, said he did not believe that this type of engagement on a "technical level" was sufficient, especially because trade issues often intersect with health concerns. For that reason, he said he has put more emphasis on substantive engagement "upstream," meaning while initial trade policies are still in the early phases of being formulated within the Obama administration.

"I came to the conclusion that unless we took a proactive role, and an upstream role, in discussions on trade issues with the USTR, we were going to be left in a position ... of either signing off on things or raising technical concerns," he said. Daulaire said that in the past, HHS had waited to be "the last on the clearance list" in the interagency process, and made clear in the interview that he wanted HHS to play a much larger role on health-related trade issues.

Daulaire heads up the department's Office of Global Affairs, which is part of the Office of the Secretary. His office is focused on global health policy and has a broader perspective than the FDA, which is also part of HHS.

In the interview, Daulaire acknowledged that the department does not have as much influence when it comes to trade-related matters as other parts of the administration for which trade is the central focus, such as the Office of the U.S. Trade Representative or the Commerce Department.

"We are the new kids on the block," he said. "I don't think there is any question that we are starting from a fairly low base and having to demonstrate both our value and our thoughtfulness in the process." At this point, "I would in no way consider us to be full equal players, but we are clearly actors in this dialogue," and that in and of itself is an important development, Daulaire said.

He made a similar point when participating in an April 5 panel on global health issues at the Center for Strategic and International Studies (CSIS). "We don't make the final decisions as to what USTR does; that is for the White House to decide," he said at that event. "But we want to

make sure, and I think it is really for the very first time, that this [health] perspective has been strongly introduced, and our secretary is deeply committed to this."

At that event, Daulaire also highlighted tobacco and issues related to pharmaceuticals as two issues on which HHS plays a role when helping to develop U.S. trade policy.

On tobacco, HHS has played a role in developing the "safe harbor" from tobacco-related litigation that the Obama administration has publicly described, but not yet tabled, in the TPP negotiations. Outside observers say HHS officials were the ones that initially suggested negotiating tobacco-specific provisions in TPP, while USTR was initially hesitant to endorse special provisions for tobacco.

"We consider this to be hugely important from the standpoint of global public health," Daulaire said, in reference to the draft proposal. Tobacco control "is unquestionably at the very top of our policy agenda in terms of domestic health, in terms of global health, and in terms of the interface with the trade environment," especially in light of estimates that one billion people could die of tobacco-related diseases in the twenty-first century, he said.

When asked directly if HHS was responsible for originally proposing tobacco-specific measures in TPP, the HHS official declined to answer. "All I can tell you is that there had not been this level of engagement and attention previously, and now there is, and we are very glad for all the engagement of many different parties," he said, adding that the fact that the U.S. draft proposal certainly reflects the increased engagement from HHS on trade policy.

The fact that the Obama administration has still has not tabled the proposal has some anti-smoking advocates nervous, although Daulaire appeared to downplay those fears. "We understand that this is moving forward," he said. "I can't go beyond what we can talk about publicly in terms of international trade negotiations, but let me just say that I do not feel discouraged."

The "safe harbor" proposal would clarify that, notwithstanding other rules contained in the final TPP deal, national health authorities may adopt regulations that impose origin-neutral, science-based restrictions on specific tobacco products or classes in order to safeguard public health. U.S. business and agricultural groups strongly oppose the proposal, saying there is no need to treat tobacco products differently from other products in trade deals.

Anti-smoking advocates, on the other hand, argue that the proposal does not go far enough, and that tobacco products should be completely "carved out" from the TPP talks. In their view, tobacco products should not even be subject to tariff cuts. However, the U.S. has thus far not adopted this complete carveout approach and is currently negotiating tariff phaseouts on tobacco products in TPP.

When asked about his views on a complete carveout, Daulaire signaled his possible support, although he stressed that he had not yet made up his mind on the issue.

"I think that is something that we are talking about at this point," he said. "I'm not a trade specialist, and the issue of carveouts is pretty complex," he explained. While his "knee-jerk" reaction would have been to support a complete carveout, his current response is "maybe,"

especially in light of his desire to learn more about the "nuance and the consequence" of including such a carveout in a trade deal, he said.

"As we move forward on this, we'll see where this goes, but it is certainly not something that I would unequivocally say is a bad idea," Daulaire explained. "The public health side is very clear and straightforward on this: tobacco is bad and anything we can do to reduce its use and its promotion is good for public health." At the same time, the administration as a whole must consider a range of issues when formulating policy, he said.

Daulaire declined to respond directly when asked whether special provisions for tobacco should be considered for other new trade agreements, including the planned U.S.-European Union trade talks, but he again signaled his possible support for the idea. "I don't see anything with TPP that makes it unique in terms of this," he said.

While each trade negotiation is different, he also noted that TPP is the first time that the U.S. has negotiated an agreement since passing a landmark 2009 tobacco bill.

That bill -- the Family Smoking Prevention and Tobacco Control Act -- was signed into law in June 2009 and gave the Food and Drug Administration (FDA) the authority to regulate the manufacture, distribution, and marketing of tobacco products. The U.S. "safe harbor" draft proposal in TPP is essentially meant to ensure that FDA implementation of its new mandate under the 2009 law would be effectively shielded from legal challenge under a TPP agreement.

"This is also the first time that we've gone into a treaty negotiation since the FDA was given tobacco authority, so the ground has changed from earlier negotiations," Daulaire maintained. U.S. tobacco control advocates are already gearing up to engage with administration officials in the EU context, and are hoping that the administration will look to table special provisions on tobacco in that context as well (*Inside U.S. Trade*, April 12).

HHS is also playing a role in developing U.S. trade policy when it comes to access to medicines in the TPP, although here the department's role was initially more limited, according to Daulaire.

The Obama administration originally unveiled a proposal in this area based on an "access window" concept in the fall of 2011. The basic concept is that pharmaceutical companies would be rewarded with stronger patent protections under a TPP deal if they seek to gain marketing approval swiftly in other TPP countries. The proposal has faced skepticism from U.S. stakeholders and intense resistance from TPP partners (*Inside U.S. Trade*, March 15).

"We were not involved in the early stages of the policy that was put forward as the U.S. negotiating position," Daulaire explained, largely because "nobody thought to ask us." While FDA was asked to sign off on an initial version of that proposal, the concern of FDA is more limited to questions like "does this create problems in terms of the application of existing law and regulation," he explained.

The HHS official stressed that his office is focused on the broader interest of promoting global public health. "Our concern is a broader one ... and frankly, it was early in the administration, we hadn't gotten our ducks lined up yet, and it took us a while to recognize that this was an issue" and that HHS officials should substantively engage, he said.

In light of the resistance from other TPP partners to the original proposal, however, the administration is once again engaged in an interagency process to determine whether or not it should be modified, and HHS is involved in this new round of consultations, Daulaire said. "We have been welcomed to the table in terms of internal discussions within the administration to see whether a modified U.S. position would be warranted," he said.

While unable to speak to the precise nature of the deliberations within the administration, Daulaire said that HHS officials "are now very much engaged in this and in these conversations and are looking for ways to make sure that public health is well protected in this process." He said there is an "open consideration of what we can do to move things forward that is going to work both in terms of the negotiations and in terms of public health."

New York Times

May 6, 2013

Cuba Challenges Australian Tobacco Rules

By DAVID JOLLY

PARIS — Cuba is seeking to overturn Australia's tough tobacco-labeling rules at the World Trade Organization, the trade body said Monday, the first time that Havana has used the forum to directly confront another nation over its commercial laws.

Cuba, the world's dominant producer of fine cigars, has filed a "request for consultations" with Australia, Keith Rockwell, a spokesman for the W.T.O., said from Geneva, where the organization is based.

The two nations now have 60 days to reach an agreement, he said; if they fail to resolve their differences in that time, the next step would be for Cuba to begin a formal challenge with the establishment of a dispute resolution panel.

The request was filed on Friday but made public on Monday, Mr. Rockwell said.

Cuba is joining Ukraine, Honduras and the Dominican Republic in challenging Australia's tobacco-labeling laws at the W.T.O. All four nations argue that provisions of a 2011 Australian law, the Tobacco Plain Packaging Act, have created "technical barriers" to trade and violate intellectual property rights.

If Australia is ultimately found to have broken W.T.O. rules, it must either bring its laws into conformity or face retaliation in the form of increased duties on Australian goods.

As part of a national anti-smoking drive, Australia has passed some of the world's toughest laws on the labeling of cigars, cigarettes and other tobacco products, prohibiting "the use of logos, brand imagery, and promotional text" and strictly regulating the use of brand names. Tobacco products in Australia are sold in standard dark green boxes with gruesome images of people with diseases caused by smoking.

Australian and Cuban officials could not immediately be reached on Monday for comment.

Cuba, seeking to reinvigorate a stagnant economy, has in recent years allowed more free-market activity. It joined the World Trade Organization in 1995, soon after the group's founding, but has never before brought a formal challenge. It has been involved in cases brought by others, including a dispute between the spirits makers Pernod Ricard and Bacardi over U.S. rights to the Havana Club rum brand.

Cuba exported \$215 million in cigars in 2011, the latest year for which figures are available, according to the National Statistics Agency. Cigar sales are handled by Habanos, a 50-50 joint venture between the Cuban state tobacco company and Altadis, a unit of Imperial Tobacco.

Habanos said exports of Cuban cigars rose in 2012 despite the economic slump in Spain and France, its top two markets, as sales to China, its No. 3 market, rose 6 percent. A U.S. embargo imposed in 1962 prohibits the import of Cuban cigars into the United States.

Emily Morris, an expert on the Cuban economy at University College London, said that overseas cigar sales make up only about 1.3 percent of Cuba's total exports and that Australia was just a small part of that. "They're keen on trademark protection for their premium cigars," Ms. Morris said. "A lot of the buying of cigars is based on the wonderful packaging."

Cuba's willingness to bring a W.T.O. case shows that "it has got a lot at stake in intellectual property now," she said, including in the pharmaceutical sector, where it earns more than \$500 million a year.

The case puts Cuba in curious company in seeking to overturn a democratic country's health laws in the interest of its tobacco exports. The global tobacco industry spent millions of dollars in an unsuccessful campaign against the Australian law, and continues to resist efforts by others, including the European Union, to adopt similar laws.

Nevertheless, New Zealand officials have said they are planning to follow Australia's packaging example by sometime next year.

Victoria Burnett contributed reporting from Havana.

Bloomberg

Coup d'Etat to Trade Seen in Billionaire Toxic Lead Fight

(Corrects the timing of treaty terminations by South Africa in the 22nd paragraph and the law challenged by Australia in the 24th paragraph.)

Across the river from Belinda Elida Barja's two-room apartment, the lead and zinc smelters of Doe Run Peru spread smoke and dust in the mountain town of La Oroya.

Her 9-year-old son Kenyi has headaches, memory loss, stomach ailments and difficulty concentrating, Barja said. The lead in his blood measured 41 micrograms per deciliter in a 2007 test -- eight times the level the U.S. government considers a cause for action. Barja blames Doe Run Peru.

"They just think about making money," she said.

Most of La Oroya's children suffer elevated lead levels, according to the Peruvian government. Parents say some have symptoms -- consistent with lead poisoning -- that include anemia, convulsions, stunted growth, mental retardation and the ills Barja said her son suffers.

The question of responsibility is at the center of a high-stakes clash between Peru and U.S. billionaire Ira Rennert, who owned Doe Run Peru for more than a decade through Renco Group Inc. Far from defensive, Renco is demanding \$800 million from Peru because it ordered a costly pollution clean-up that the company says forced Doe Run Peru into bankruptcy in 2010. Renco has said it's not responsible for the children's ailments.

Its demand was made under an arcane, often secretive investor-state arbitration system that is growing rapidly in size and scope, roiling global trade and angering countries from Australia to South Africa over the perceived trampling of their sovereign rights.

'Last Resort'

"It's like a quiet, slow-moving coup d'état," said Lori Wallach, director of the Global Trade Watch division of Public Citizen, a nonprofit that opposes many aspects of trade pacts. Investors and corporations are "using this regime to have another front at trying to limit the governance authority of nation states."

Arbitration clauses were originally included in treaties to deal with the nationalization or a company's

assets. Now arbitrators hear claims for lost business or costs stemming from public-health laws and environmental regulation and financial policies, with billions of dollars at stake.

In some instances, investors are even demanding that national laws or court judgments be overturned.

Once a “shield of last resort,” arbitration has become a “sword of first resort,” according to a paper by Howard Mann, a senior law adviser at the International Institute for Sustainable Development, a Winnipeg-based nonprofit. “They were never meant to be the first recourse of a foreign investor to create or settle a dispute,” Mann said in an interview.

Shrimp Farm

A record 62 treaty-based arbitration cases were filed last year, bringing the total to 480 since 2000, according to the United Nations Commission on Trade and Development. Before then, there were fewer than three a year dating to 1987, when a Hong Kong company brought the first known case over Sri Lanka’s destruction of a shrimp farm in a military operation against Tamil separatists.

Driving the growth are arbitration clauses enshrined in the “vast majority” of the world’s 3,000-plus international investment agreements, according to the UN. Only 134 such pacts existed in 1980.

Many give the investor the right to choose from a set of procedural rules, usually from the World Bank or UN. Each side gets to pick one arbitrator apiece, usually lawyers, academics and former government officials, with the third selected by mutual agreement or an independent third party.

The scale has grown well beyond shrimp ponds. Last year’s decisions included a \$1.77 billion judgment against Ecuador in an Occidental Petroleum Corp. (OXY) case brought over a terminated oil concession. Ecuador is seeking an annulment of the decision through the World Bank’s arbitration forum, and hasn’t yet paid.

Battling Russia

In the largest unresolved case, former offshore shareholders of Yukos Oil Co. are seeking \$114 billion from Russia over allegedly illegitimate criminal investigations, tax demands and arrests of Yukos officials, which culminated in the state acquiring most of the company’s assets. It’s one of 19 cases in which investors are demanding more than \$1 billion, according to the UN.

The Russian government has argued that the dispute should be resolved in Russian courts, according to a summary of the country’s position by the arbitrators.

The system provides protections for companies seeking to invest abroad where the legitimacy of local laws and domestic courts may be uncertain, according to the Obama administration and other supporters.

Investors prevailed in 70 percent of cases decided last year.

More Power

Renco, a New York-based metals, mining and industrial conglomerate that owned the La Oroya plant through a subsidiary, contends the pollution-curbing demands Peru made were onerous and unfair, and kept escalating. The government says it was only trying to hold Renco to the terms of the agreement under which it bought Doe Run Peru in 1997.

In addition to \$800 million, closely-held Renco wants arbitrators to compel Peru to pay for any damages that may arise from a pending lawsuit filed in federal court in St. Louis, Missouri, on behalf of more than 700 La Oroya children.

“This clause gives more power to foreign investors than the people of Peru,” said Conrado Olivera Alcocer, executive director of Joining Hands Network Peru, a group of charities that focuses on the environment and individual rights. A Peruvian has no right to file a claim in an international forum the way Doe Run does, Alcocer said.

While Peru says it still believes in investor-state arbitration, other nations aren't so sure. Since 2007, Bolivia, Venezuela and Ecuador have withdrawn from the World Bank's arbitration forum, which they said favored corporations over sovereign nations.

Apartheid Legacy

Within the last year, India froze negotiations on investment treaties and said it wouldn't agree to future pacts with arbitration clauses that can trump its courts. South Africa, which was challenged in an arbitration case over a law requiring mining companies to sell shares to citizens harmed under Apartheid, decided to terminate investment treaties after deciding the risks outweighed the benefits.

In 2011, Australia vowed that it would no longer include an arbitration clause in trade agreements, a potential complication in negotiations for the Trans Pacific Partnership, a proposed trade pact among 11 countries. The Australian position is at odds with the U.S. stance favoring the process.

Australia is facing an arbitration case filed by Philip Morris International challenging a law that requires cigarettes to be sold in plain packages. The U.S. cigarette maker is asking arbitrators to overturn the law, which was upheld by Australia's highest court, or award damages for lost business.

Italianate Xanadu

The man fighting Peru, Ira Rennert, is a Brooklyn native who used more than \$1 billion in junk bonds to a business empire under Renco that includes a magnesium company, jewelry stores, auto-parts suppliers

and a defense contractor that introduced the world to the Hummer. Rennert, 78, is worth \$5 billion, according to the [Bloomberg Billionaires Index](#). He and Renco officials declined to comment for this story.

Rennert may be best known for his own Italianate version of Xanadu on the eastern tip of Long Island. Called Fair Field, the 43,000-square-foot mansion was built on 65 oceanfront acres, has 21 bedrooms, 14 full baths, three pools, two tennis courts and an assessed value of \$248 million, tax records show.

The billionaire has often clashed with bondholders, regulators, business partners and neighbors, many of whom have spent years waging legal battles with him. In January, the Pension Benefit Guaranty Corp. sued Renco for allegedly trying to skirt \$97.2 million in pension obligations at its bankrupt RG Steel LLC unit. Renco has denied the allegation.

Barren Crossroads

Renco's Salt Lake City-based subsidiary, U.S. Magnesium LLC, was sued by the Environmental Protection Agency in 2001 for alleged toxic waste violations; the case is in settlement talks, court filings say. Another Renco unit owns a lead smelter and refinery in Missouri that has been cited by regulators, and sued by neighbors who say they were harmed by emissions. The plant is scheduled to close at the end of the year.

The Renco company that operates the Missouri smelter said it is committed to meeting its environmental obligations, and declined to comment on the lawsuits.

La Oroya was an "[uninhabited crossroads](#)" in 1922 when an American company called Cerro de Pasco Copper Corp. built the smelter and refineries. They started producing copper, and now make lead, zinc, gold, silver and lesser known-metals like bismuth and antimony. Renco acquired the facility in 1997 for \$248 million and named it Doe Run Peru. The seller was the Peruvian government, which had nationalized it 23 years earlier.

Miners' Hostels

A signpost in the oldest part of town declares it the capital of the metallurgical industry in Peru and [South America](#). About 180 kilometers east of [Lima](#), it's a four-hour drive of switchbacks, rockslides and steep drop-offs that top out at about 4,800 meters.

La Oroya is at 3,700 meters, a scruffy collection of bodegas, cafes and hostels, many filled with miners. Trucks rumble up and down the main road, and freight trains grind along nearby tracks. Doe Run Peru's piles of lead concentrate, roaring furnaces, brawny molds and waste treatment plants dominate the banks of the Mantaro River as it winds through La Oroya. One locked room holds \$18 million in newly smelted silver bars.

Dust is overwhelming in some parts of the plant, especially near the furnaces, and most workers wear air-

filtering masks. Waste is carted by buckets to a black slag heap nearly as high as the surrounding mountains.

Directly across from it, a company sign on the riverbank says, "Doe Run Peru Does Not Contaminate the Mantaro River."

Dust Reduction

Under the terms of Renco's purchase, Doe Run Peru agreed to a 10-year pollution reduction plan that was estimated to cost \$107 million, Renco said in its arbitration notice. The Peruvian government agreed to clean up soil around La Oroya that had been contaminated by decades of pollution under previous owners, including a state-owned company.

Neither side complied with the accord, each says.

Doe Run Peru has said it completed many projects, and plant employees showed off equipment that they said reduces dust and particle emissions, treats sewage and industrial wastewater and captures sulfur dioxide before it goes out the smokestack.

The company said it spent more than \$300 million, about triple the original estimate. It acknowledges that it didn't complete a copper-plant upgrade that would have cost more than \$100 million and was part of the clean-up plan, according to the arbitration notice.

In 2009, it received a 30-month extension, its second allowance of more time. The Peruvian government passed new regulations "so onerous" that Doe Run couldn't take advantage of the extension, the notice says.

Clean Hands

Unable to obtain financing, Renco closed the plant in 2009 and notified Peru the following year that it intended to file an arbitration case. Most of Doe Run Peru has reopened and is now being run by a management company hired by creditors.

Jose M. Reyes, Doe Run Peru's vice president of operations, said his former boss got a raw deal. A 43-year veteran of the plant, Reyes said the waste dumped into the Mantaro or going up the smokestack declined after Rennert bought the plant.

Reyes provided charts of company-funded research showing lead emissions declined 50 percent and pollution flows into the river were nearly eliminated between 1997 and 2008.

The state didn't fulfill its promise to clean up La Oroya's contaminated soil, he said. "There was unjust treatment on behalf of the Peruvian government."

Falling Ash

The government's soil cleanup is now under way, said Carlos Jose Valderrama, the Peruvian official responsible for investor-state arbitrations. It didn't make sense to undertake the project while the pollution continued during Renco's ownership of the plant, Valderrama said in an e-mail.

"The bottom line is that when Doe Run stopped operating and polluting, the contamination levels dropped," he said.

Valderrama said Peru supports the arbitration system, but disagrees with Renco's allegations. While it gave Doe Run extra time to finish the projects, the company failed to do so, Valderrama said.

"Peru has the necessary expectation that investors maintain clean hands, protect the environment and in short follow the rules," said Jonathan Hamilton, an attorney for Peru in the arbitration and partner at the law firm White & Case. "Renco and Doe Run did not follow the rules."

In La Oroya, some parents say they believe the plant's toxins stunted their children's bodies and damaged their minds.

Before the plant closed in 2009, Barja said, white flecks of ash would settle in her son's hair. It looked like "dandruff falling from the sky," she said.

'Reckless' Decisions

Oshin Onofre, a 21-year-old in ripped jeans and a baby-blue sweater, said she started having convulsions and headaches 10 years ago. Although pills have controlled the convulsions, Onofre said she still struggles with memory loss, and had to drop out of nursing school last year. She lives with her mother.

Nashira Chavez is 9 but looks years younger. She weighs just 17 kilograms (38 pounds), according to her mother -- a little more than half the average weight of U.S. girls her age. When Nashira was two years old, a government test found 55 micrograms per deciliter of lead in her blood.

"The only possibility is the contamination because I feed them well," said her mother, Leli Ventura Yupanqui. "I have a 3-year-old granddaughter and she already weighs more than her."

Missouri Lawsuit

In the federal lawsuit in Missouri, attorneys for La Oroyan children -- including Kenyi, Oshin and Nashira -- say Renco is to blame for "negligently, carelessly and recklessly" making decisions that caused the release of toxic substances from the smelter. Renco has denied responsibility for the children's ailments.

Several studies have confirmed that La Oroya's children have high levels of lead. Lead poisoning is particularly dangerous for young children because it can interfere with mental and physical development, causing learning and behavioral problems, slowed growth and, in the worst cases, convulsions and death, according to the Mayo Clinic.

In 1999, the Peruvian Ministry of Health tested 346 children from different parts of La Oroya and found an average 33.6 micrograms of lead per deciliter. The highest levels were in Old La Oroya, the part of town nearest the smelter, where the average was 43.5 and the highest reading was 79.9.

Elevated Levels

Another study in 2005, by Saint Louis University with assistance from the CDC, found that more than 80 percent of children tested who were 6 and younger had blood lead levels of 20 micrograms or more per deciliter, and 8 percent of those had levels of 45 or higher. The average in Old La Oroya was 36.1 for children 6 and younger, the study said.

The Saint Louis University study also found elevated levels of arsenic, cadmium and antimony, metals that have been linked by the U.S. EPA to serious illnesses, in some cases cancer.

More recent blood tests, in 2011 at the La Oroya health clinic, found that lead had mostly declined to between 10 and 20 micrograms per deciliter, a drop that a local health official attributed to the plant's temporary closure in 2009 and better health habits by residents.

There has been no long-term study tracking the health impact of the plant's emissions on La Oroya residents.

Irreversible Effects

Prior research has documented irreversible effects of lead poisoning on children, according to Joseph Graziano, professor of environmental health sciences at Columbia University. Children with more than 80 micrograms per deciliter are at risk of seizures and possibly death, Graziano said.

Those whose blood lead levels reach the 30s and 40s "are likely to be experiencing deficits in intelligence, behavior disorders, some loss of motor function, anemia and impaired kidney function" -- and except for anemia, none of these effects are reversed by later reduction in blood-lead, he said.

On a recent afternoon, Giovanna Arroya arrived at the clinic around the corner from the La Oroya smelter with her son Paolo, a chubby 7-month-old in a tiger hat. Ushered into an examination room decorated with cut-out letters and hearts, Arroyo, 40, was peppered with questions as Paolo squirmed.

Does Paolo suck his thumb? Does he eat dirt? How long have they lived in Old La Oroya?

“He’s very high risk,” said Herbert Damian, the clinic doctor, noting Paolo was anemic, stuffed things in his mouth and lived near the plant. “You really need to take care of this.”

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Medical, Public Health Leaders: TPP Must Reduce Epidemic of Tobacco Use

Leading medical and public health groups and individuals have issued Strategies for Creating a 21st Century Trade Agreement, on the eve of TPP negotiations in Peru, calling on the U.S. to advance specific proposals that will safeguard public health, advance tobacco control measures at local, state, and national levels, and prevent incursions by the tobacco industry against those measures.

Tobacco use is the leading preventable cause of death worldwide, causing six million deaths a year, and is a major contributor to the global pandemic of non-communicable diseases, including among children. Tobacco companies have recently accelerated their use of trade rules to attempt to delay and reverse tobacco control measures.

1. Trade agreements must guarantee nations' rights to protect public health from tobacco use.

1a. Incorporate reference to the Framework Convention on Tobacco Control (FCTC) in trade agreements.

1b. Incorporate in the text of each regional and bilateral trade agreement the WTO Doha Declaration on countries' rights to protect public health.

1c. Strengthen the primacy of public health principles.

2. The TPP must not undermine the right and ability of participating countries from exercising their domestic sovereignty in order to adopt or maintain measures to reduce tobacco use and to prevent the harm it causes to public health.

2a. Exclude tobacco control measures from existing and future trade agreements.

2b. Remove investor-state dispute settlement (ISDS) provisions.

3. We must set trade policy through a transparent process that involves the public.

3a. Trade agreements and trade rules which may affect public health should be discussed and debated publicly, and in Congress.

3b. Include effective public health representation in setting trade policies at the national, state, and local levels.

We further propose that advocacy for these goals can be strengthened by identifying and communicating with related constituencies concerned with trade.

Organizational Endorsements:

Action on Smoking and Health, Laurent Huber, MSFD, Director; Chris Bostic, MSFS, JD, Deputy Director for Policy

American Academy of Family Physicians, Julie K. Wood, MD, FAAFP, Vice President, Health of the Public and Interprofessional Activities

American Academy of Pediatrics, Jonathan D. Klein, MD, MPH, FAAP, Associate Executive Director and Director, **Julius B. Richmond Center of Excellence**

American College of Obstetricians and Gynecologists, Barbara Levy, MD, Vice President for Health Policy

American College of Physicians

American Heart Association, American Stroke Association, Terry Sue Mock, Senior Health Systems Policy Director

American Public Health Association, Georges C. Benjamin, MD, FACP, FACEP (E), Executive Director

Center for Policy Analysis on Trade and Health (CPATH): Joe Brenner, MA, Co-Director; Ellen R. Shaffer, PhD MPH, Co-Director; Sohil Sud, MD, MA, Senior Fellow, CPATH, Senior Pediatric Resident, UCSF

San Francisco Medical Society, Steve Heilig, MPH

San Francisco Tobacco Free Coalition

Individual Endorsements: * Organizations listed for identification purposes only

Phillip Gardiner, Dr.PH, Program Officer, Policy and Regulatory Sciences, Tobacco Related Disease Research Program*

Stanton Glantz, PhD, Director, Center for Tobacco Control Research and Education, University of California, San Francisco*

Richard L. Barnes, JD, Health Sciences Clinical Professor; **Eric Crosbie**; **Mariaelena Gonzalez**, PhD; **Heikki Hiilamo**, PhD; **Lauren Lempert**, JD MPH

Holly Jarman, PhD, Research Assistant Professor, Center for Law, Ethics & Health / Department of Health Management & Policy, University of Michigan School of Public Health*

Wendy Max, PhD, Professor of Health Economics, Co-Director, Institute for Health & Aging, University of California, San Francisco*

Michael Ong, MD PhD, Associate Professor-in-Residence of Medicine, University of California, Los Angeles*

Marty Otañez, PhD, Assistant Professor, Anthropology Department, University of Colorado, Denver*

Heather Wipfli, PhD, Associate Director, USC Institute for Global Health, Assistant Professor, Department of Preventive Medicine and School of International Relations*

**Donald Zeigler, PhD, Adjunct Associate Clinical Professor,
University of Illinois at Chicago School of Public Health.
Retired Director of Prevention and Healthy Lifestyles, American
Medical Association***

Inside U.S. Trade

Daily News

No Decision Yet On Japan Participation At Next TPP Round, Official Says

Posted: May 20, 2013

LIMA – In an interview here with *Inside U.S. Trade*, a U.S. trade official said there is still no decision on whether Japan will participate in the next round of Trans-Pacific Partnership (TPP) negotiations, which is widely expected to be held in late July in Malaysia. The official said TPP countries would likely discuss the issue here as well as in their capitals.

Earlier this month, a senior Japanese official said TPP members are planning to hold the next round July 15-25 and that Japan wanted to participate in at least the last few days. Tokyo cannot participate in the talks – or even review the official TPP texts – until July 23, when a 90-day consultative period in the U.S. expires and Japan official joins, he said (*Inside U.S. Trade*, May 3).

The fact that Japan, if it does participate in the July round, will not review the legal texts until July 23 means that it cannot substantively negotiate in Malaysia. Still, Japan wants to be seen at the table in July, partly for political reasons; for instance, one observer said Japanese officials are eager to demonstrate that they are helping to craft TPP rules as early on in the process as possible.

This observer speculated that TPP negotiators could agree to reserve the last day or two of the Malaysia round to walk Japanese officials through the various TPP chapters.

Once Japan joins, Assistant U.S. Trade Representative for Japan, Korea and APEC Affairs Wendy Cutler will be working on a lot of aspects of the plurilateral TPP negotiation that involve Japan as well as on the bilateral negotiations that will occur in parallel, the U.S. trade official said.

The U.S. has established two separate bilateral tracks with Japan on autos and non-tariff measures, and is also expected to negotiate bilaterally with Japan on goods market access.

The U.S. has also begun negotiating goods market access with Canada, although detailed bilateral discussions on goods are not slated to take place here, the official said. U.S. and Canadian officials exchanged market access offers in between the Peru and Singapore rounds and held an initial meeting in Washington intersessionally, according to the official.

Inside U.S. Trade

Daily News

State Lawmakers Make Demands On LNG, Environment, Investment In TPP

Posted: May 20, 2013

A group of more than 50 state legislators from 24 states today (May 20) sent a letter to Acting U.S. Trade Representative Demetrios Marantis urging him to negotiate provisions in the Trans-Pacific Partnership (TPP) that would allow the Department of Energy (DOE) to maintain control over liquefied natural gas (LNG) exports and would subject environmental obligations in TPP to binding dispute settlement procedures.

When it comes to LNG, current U.S. law requires DOE to accept applications to export natural gas unless such exports are determined not to be in the public interest, which is considered on a case-by-case basis. However, if the export destination is a country with which the United States has already implemented a free trade agreement, current U.S. law stipulates that exporting LNG is automatically deemed to be in the public interest, an exemption that environmental groups say is worrisome.

"We do not believe that the United States should forever cede its ability to manage natural gas resources – particularly when the potential impacts to communities and the environment are so high," the lawmakers wrote in their letter. If a final TPP agreement similarly exempts exports of LNG to TPP members from review, that could have major implications because Japan – which will join TPP talks in July -- is a primary export destination for LNG.

In their letter, the state legislators demand that TPP be drafted in a way that allows DOE to continue to oversee LNG exports to TPP countries and press USTR for information on whether they intend to pursue this goal in the talks.

Maine Representative Sharon Treat, who helped organize the letter, told *Inside U.S. Trade* today that giving DOE the ability to retain this authority when it comes to TPP partners may very well require a change to U.S. law, something that could be controversial if done in the context of a trade deal. However, she stressed that this issue is important for state lawmakers that have to deal with the regulatory and environmental impact of natural gas extraction.

In a related development, DOE on Friday issued its second-ever approval of an application to export LNG to a non-FTA country from a state other than Alaska. It was the first such acceptance since DOE launched a months-long review of its process for determining when exports to non-FTA countries should be deemed in the public interest.

DOE's authorization makes clear that LNG exports to non-FTA countries will continue to be considered on a case-by-case basis, stating the department will "take a measured approach" in reviewing the other 19 pending applications. The approval is conditional, subject to environmental review, as well as final regulatory approval.

Concerning environmental protections, the state legislators listed a series of demands that largely support the current U.S. negotiating position. For instance, they called for a legally binding ban on trade of illegally harvested timber, an enforceable ban on trade in illegally taken wildlife, and binding provisions on sustainable fisheries management. The U.S. is facing resistance on these issues from other TPP partners that do not want them to be enforceable.

In the interview, Treat said she hoped that the letter could bolster the ability of U.S. negotiators to persuade their counterparts in other TPP countries that full enforceability for environmental provisions is an important issue for U.S. officials at both the federal and state levels. She also said it is important to show support for these issues so that USTR does not give in to demands by other TPP partners, especially as the U.S. is aspiring to conclude an agreement by the end of the year.

The state legislators also call on USTR to oppose inclusion of an investor-state dispute settlement mechanism in TPP. However, the U.S. is pushing hard to include such a mechanism in a final TPP agreement, although Australia continues to demand that it should not be subject to it.

Finally, the lawmakers urged USTR to draft TPP investment provisions in a way that does not undermine their ability "to enact and enforce fair, nondiscriminatory rules that protect communities, workers, and the environment." The letter was sent in the middle of the 17th round of TPP talks taking place in Lima, Peru.

Inside U.S. Trade

Daily News

U.S. Tables SPS Text; Other Countries Float Pharmaceutical IP Ideas

Posted: May 20, 2013

LIMA -- The United States has tabled legal text here that would establish a consultative mechanism for resolving sanitary and phytosanitary (SPS) disputes in a Trans-Pacific Partnership (TPP) agreement, while other TPP countries have informally floated new ideas for how to move forward in the controversial area of pharmaceutical intellectual property (IP) protections, according to a U.S. trade official.

In an interview midway through the Lima round, the official said the U.S. tabled its SPS disputes proposal last week and that the text follows the consultative mechanism approach laid out in the non-paper the U.S. floated at the March round of negotiations in Singapore. The SPS discussions took place here May 15-16

The official declined to characterize how other countries responded to the U.S. proposal, stressing that this was the first time they saw it and that they need time to review it.

But two informed sources said that one or several TPP countries during this round tabled a counterproposal that goes beyond the U.S. proposal by providing full dispute settlement procedures for SPS obligations. These sources pointed out that New Zealand, Peru and Chile are all likely in favor of full dispute settlement for SPS obligations because they are significant food exporters.

That would put them in line U.S. agriculture and food groups, which have quietly opposed the U.S. consultative mechanism approach while continuing to press the Obama administration to include fully enforceable SPS obligations in TPP.

On pharmaceutical IP, the U.S. trade official said that while there are no text-based negotiations taking place at this round, "various countries are coming to the table with various ideas of how to move the process forward."

According to informed sources, a group of TPP countries that includes Chile and New Zealand but not the U.S. has developed a discussion paper that lays out some common principles for protecting pharmaceutical IP, and one source said this paper was discussed here in Peru.

This source said the paper covers areas such as data exclusivity, patent linkage, and patent term extensions, using language from the World Trade Organization's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) as a starting point.

Another source said the countries involved in this effort see this discussion paper as a starting point for developing future legal text in case the U.S. further delays coming out with a revised proposal of its own on pharmaceutical IP.

The initial U.S. proposal, which focused on the idea of an "access window," met with criticism from other TPP countries as well as U.S. industry and civil society. The U.S. is currently exploring whether and how to revise it, but did not introduce any revised text here.

The U.S. trade official said the Obama administration has not yet completed this internal review process, which was the same message conveyed by U.S. chief negotiator Barbara Weisel during a briefing for stakeholders in Lima yesterday (May 19), according to informed sources.

The U.S. access window proposal would give brand-name drug companies access to stronger IP protections if they sought marketing approval for a drug in another TPP country within a certain period of time after first obtaining marketing approval in an initial TPP country. But the U.S. never defined the length of the access window.

On the controversial issue of textiles and apparel, the official said the U.S. has provided TPP countries with its short-supply list of items that would be subject to a more flexible rule of origin, ahead of group discussions on this topic that were slated to begin yesterday.

One informed source said the U.S. list contains 168 items, and the U.S. trade official said that was "more or less" an accurate number. Textile industry sources said the key question is to see how Vietnam responds to the U.S. proposal, although one source said Mexico has already conveyed concerns about the U.S. list.

This source said TPP countries will likely not be ready to take a formal position on the U.S. short supply proposals at this round, as they will need to vet them with capital-level officials and their domestic industries.

Yarns and fabrics on the short supply list would be exempted from the strict yarn-forward rule of origin the U.S. has tabled in the TPP, meaning they could be imported from non-TPP countries and still be used to make apparel that would be eligible for tariff cuts under a final deal. Under yarn-forward, every component of an apparel item, starting with the yarn, has to be made in the TPP region in order to qualify for tariff benefits.

2013 REPORT ON TECHNICAL BARRIERS TO TRADE



UNITED STATES TRADE REPRESENTATIVE

I. Foreword

This year the Office of the United States Trade Representative (USTR) publishes its fourth annual Report on Technical Barriers to Trade (TBT Report). This report was created to respond to the concerns of U.S. companies, farmers, ranchers, and manufacturers, which increasingly encounter non-tariff trade barriers in the form of product standards, testing requirements, and other technical requirements as they seek to sell products and services around the world. As tariff barriers to industrial and agricultural trade have fallen, standards-related measures of this kind have emerged as a key concern.

Governments, market participants, and other entities can use standards-related measures as an effective and efficient means of achieving legitimate commercial and policy objectives. But when standards-related measures are outdated, overly burdensome, discriminatory, or otherwise inappropriate, these measures can reduce competition, stifle innovation, and create unnecessary technical barriers to trade. These kinds of measures can pose a particular problem for small- and medium-sized enterprises (SMEs), which often do not have the resources to address these problems on their own. USTR is committed to identifying and combating unwarranted technical barriers to U.S. exports, many of which are detailed in this report. USTR's efforts to prevent and remove foreign technical barriers serve the President's goal of doubling U.S. exports by the end of 2014 through the National Export Initiative.

Since the last TBT Report was released, the United States has significantly advanced its efforts to resolve concerns with standards-related measures that act as unjustifiable barriers to trade and to prevent their emergence. USTR will continue its work to resolve and prevent trade concerns arising from standards-related measures *inter alia* through new and existing cooperative initiatives regarding standards-related issues in the World Trade Organization (WTO), Asia-Pacific Economic Cooperation Forum (APEC), U.S. free trade agreements (FTAs), and other bilateral fora, as well as progress on the negotiation of a modernized Technical Barriers to Trade (TBT) chapter in the Trans-Pacific Partnership (TPP) that will build on and strengthen TBT disciplines contained in the WTO Agreement on Technical Barriers to Trade (TBT Agreement). In addition, on February 13, 2013, President Obama and EU leaders announced that they would initiate the internal procedures necessary to launch negotiations on a comprehensive trade and investment agreement, the Transatlantic Trade and Investment Partnership. As conveyed in the February 2013 U.S.-EU High Level Working Group on Jobs and Growth (HLWG) Final Report, the United States and the EU are committed to working together to open markets in goods, services and investment, reduce non-tariff barriers, and address global trade issues of common concern. Both parties seek to build on the horizontal disciplines of the WTO TBT Agreement, establish ongoing mechanisms for improved dialogue and cooperation for addressing bilateral TBT issues, and pursue opportunities for greater regulatory compatibility with the objective of reducing costs stemming from regulatory differences in specific sectors.

Again in 2013, USTR will engage vigorously with other agencies of the U.S. Government, as well as interested stakeholders, to press for tangible progress by U.S. trading partners in removing unwarranted or overly burdensome technical barriers. We will fully utilize our toolkit of bilateral, regional and multilateral agreements and mechanisms in order to dismantle unjustifiable barriers to safe, high-quality U.S. industrial, consumer, and agricultural exports and strengthen the rules-based trading system. Recognizing that U.S. economic and employment

recovery and growth continue to rely importantly on the strength of U.S. exports of goods, services, and agricultural products, we will be redoubling our efforts to ensure that the technical barriers that inhibit those exports are steadily diminished.

Ambassador Demetrios Marantis
Acting U.S. Trade Representative
April 2013

II. Executive Summary

The *2013 Report on Technical Barriers to Trade (TBT Report)* is a specialized report focused on significant foreign trade barriers in the form of product standards, technical regulations and testing, certification, and other procedures involved in determining whether products conform to standards and technical regulations and actions the United States is taking to address these barriers. These standards-related trade measures, which in World Trade Organization (WTO) terminology are known as “technical barriers to trade” (TBT) when they act as barriers to trade, play a critical role in shaping the flow of global trade.

Standards-related measures serve an important function in facilitating international trade, including by enabling small and medium-sized enterprises (SMEs) to obtain greater access to foreign markets. Standards-related measures also enable governments to pursue legitimate objectives such as protecting human health and the environment and preventing deceptive practices. But standards-related measures that are non-transparent, discriminatory, or otherwise unwarranted can act as significant barriers to U.S. trade. Such measures can pose a particular problem for SMEs, which often do not have the resources to address these problems on their own.

This report describes and advances U.S. efforts to identify and eliminate standards-related measures that act as significant barrier to U.S. trade. The report consists of following key components:

- An introduction to standards-related measures, including the genesis of this report and the growing importance of standards-related measures in international trade (Section III);¹
- An overview of standards-related trade obligations, in particular rules governing standards-related measures under the WTO Agreement on Technical Barriers to Trade (TBT Agreement) and U.S. free trade agreements (Section IV);
- A description of the U.S. legal framework for implementing its standards-related trade obligations (Section V);
- A discussion of standards, including the role of international standards in facilitating trade and fulfilling legitimate public policy objectives and federal agencies’ participation in standards development (Section VI);

¹ For readers seeking a deeper understanding of the specific topics covered in this report, references and hyperlinks to additional information are provided throughout the report. To access official documents of the WTO (such as those identified by the document symbol “G/TBT/...”) click on “simple search” and enter the document symbol at the WTO’s document retrieval website: http://docsonline.wto.org/gen_search.asp?searchmode=simple.

- An elaboration on conformity assessment procedures, including federal agencies' use of conformity assessment and the possibility for international systems of conformity assessment to facilitate trade (Section VII);
- A description of how the U.S. Government identifies technical barriers to trade and the process of interagency and stakeholder consultation it employs to determine how to address them (Section VIII);
- An explanation of how the United States engages with its trading partners to address standards-related measures that act as barriers and prevent creation of new barriers through multilateral, regional, and bilateral channels, including the WTO's Committee on Technical Barriers to Trade (TBT Committee) and cooperative activities under the APEC Subcommittee on Standards and Conformance, among others (Section IX);
- A summary of current trends regarding standards-related measures trends relating to standards-related measures (Section X); and
- An identification and description of significant standards-related trade barriers currently facing U.S. exporters, along with U.S. government initiatives to eliminate or reduce the impact of these barriers (Section XI) in 17 countries – Argentina, Brazil, China, Chile, Colombia, India, Indonesia, Japan, Kenya, Korea, Malaysia, Mexico, Russia, South Africa, Taiwan, Turkey, and Vietnam – as well as the European Union (EU).

Live from the Trans Pacific Partnership: IP Chapter Shows No Sign of Resolution, End of Negotiation in 2013 Highly Unlikely

<http://infojustice.org/archives/29657>

May 21, 2013

LIMA - There is a strong sense in the halls of the current TPP negotiation that the end is not in sight. And one of the primary reasons for the blocked progress is a lack of consensus on intellectual property and pharmaceuticals issues.



Officially, the Chief Negotiators have backed off the prior commitment to end the TPP negotiation by October, but are still clinging to a goal to end the negotiation by the "end of the year." But it is increasingly clear that even that goal is not achievable. The issues still under contention are massive.

The intellectual property chapter is rumored to be over 80 pages of text - including all the bracketed suggestions and alternatives. Some describe it as the longest text currently under negotiation.

Many of the issues are completely blocked. It does not appear that there has been any new negotiation text offered on the most controversial pharmaceutical provisions since the Melbourne round over a year ago. Nor does it appear that many countries have a mandate to negotiate (they only "consult" and "discuss") the pharmaceutical reimbursement chapter. Barbara Weisel described the pharmaceutical issues as being in a "period of reflection," and had no comment on when that period might end.

The internet issues are almost completely bracketed, with no consensus from the countries without FTAs with the United States that TRIPS plus issues on anti-circumvention liability and other hot button issues should be included at all, much less how they should be worded.

The recent spate of proposals for policy changes for US copyright law have caused a stir. The US is being asked by stakeholders how it can hold on to demands for parallel importation restrictions after the *Kirtsaeng* ruling, 70 year copyright terms after the Copyright Office proposed shifting them back to 50 years with formalities required for extensions, and strict restrictions on anti-circumvention liability exceptions when the Obama Administration and the Library of Congress have endorsed reforms that would violate the US proposal. In response to some of these questions, Barbara Weisel stated that USTR is "doing what we can to work with Congress" to make sure that the TPP will not restrict policy options.

And there is no plan to release any text to the public. This is stark contrast to the last to plurilateral agreements including countries in the region. The Free Trade Area for the Americas and the Anti-Counterfeiting Trade Agreement both released full texts of the negotiating document with brackets indicating text under consideration before the finalization of the texts. For ACTA, there were four publicly released texts between April 2010 and May 2011. For the TPP - none yet, despite the Chief Negotiators' pronouncement of end of year finalization plans.