

Sen. Amy Volk, Chair
Sen. Rodney L. Whittemore
Sen. John L. Patrick
Rep. Robert Saucier, Chair
Rep. Craig Hickman
Rep. Stacey Guerin

Christy Daggett
James Detert
Sharon A. Treat
Dr. Joel Kase



John Palmer
Linda Pistner
Harry Ricker
Jay Wadleigh

Ex-Officio
Mike Karagiannes
Wade Merritt
Pamela Megathlin

Staff:
Lock Kiermaier

STATE OF MAINE

Citizen Trade Policy Commission

DRAFT AGENDA

Thursday, May 28, 2015 at 8:30 A.M.
Room 208, Burton M. Cross State Office Building
Augusta, Maine

8:30 AM Meeting called to order

- I. Welcome and introductions
- II. Review letters to Maine's Congressional delegation
- III. Update from CTPC member Sharon Treat on recent activities of USTR
- IV. Update on Fast Track legislation in Congress
- V. Discussion of possible commission actions including Joint Resolution(s) and Congressional Letter(s)
- VI. Articles of interest (Lock Kiermaier, Staff)
- VII. Discuss future speakers and topics
- VIII. Discussion of next meeting date
- IX. Adjourn

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STATE OF MAINE

Citizen Trade Policy Commission

May 19, 2015

The Honorable Susan Collins
United States Senate
68 Sewall Street, Room 507
Augusta, ME 04330
Re: Invitation to speak before the Maine Citizen Trade Policy Commission

Dear Senator Collins:

As you know, the Maine Citizen Trade Policy Commission was established in 2003 by the Maine State Legislature to, *“to assess and monitor the legal and economic impacts of trade agreements on state and local laws, working conditions and the business environment; to provide a mechanism for citizens and Legislators to voice their concerns and recommendations; and to make policy recommendations designed to protect Maine's jobs, business environment and laws from any negative impact of trade agreements.”* [10 MRSA §11 (3)].

To accomplish its statutory responsibilities, the CTPC has met regularly in the intervening years to study and review the various Free Trade Agreements that have been negotiated or are in the process of being negotiated. To that end, we have taken an active role in communicating our concerns and viewpoints with you and other members of Maine's congressional delegation, the Governor, the Legislature and the United States Trade Representative.

As a part of our effort to become more knowledgeable about the process by which Free Trade Agreements are negotiated and what the current issues in free trade are, we have frequently invited different individuals to appear before the commission to discuss particular issues and points of view. Currently and in recent years, the CTPC has spent a great deal of attention learning about and understanding the current FTAs which are negotiation including the TransPacific Partnership (TPP), the TransAtlantic Trade and Investment Partnership (TTIP) and the Trade In Services Agreement (TISA). Our review of these FTAs and their possible effects on Maine has necessarily included in-depth studies of the Trade Promotion Authority proposal which is currently before Congress and the Investor-State Dispute Settlement (ISDS) mechanism which is likely to be included in each of the aforementioned FTAs.

To add to our understanding of these various topics, we would like to invite you (or members of your staff) to appear before the commission. Our next meeting is scheduled for Thursday, May

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

28, 2015 from 8:30 AM to 10:30 AM at Room 208 of the Cross Office Building in Augusta. We also anticipate scheduling other meetings to take place over the course of the summer and fall.

We look forward to your participation and welcome any comments or questions that you may have regarding a future opportunity to meet with the CTPC. Please feel free to contact either of us or CTPC staff person Lock Kiermaier (phone: 207 446 0651) to arrange such a meeting.

Sincerely,

Senator Amy Volk, Chair

Representative Robert Saucier, Chair

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STATE OF MAINE

Citizen Trade Policy Commission

May 19, 2015

The Honorable Angus King
United States Senate
4 Gabriel Dr Suite 3
Augusta, ME 04330

Re: Invitation to speak before the Maine Citizen Trade Policy Commission

Dear Senator King:

As you know, the Maine Citizen Trade Policy Commission was established in 2003 by the Maine State Legislature to, *“to assess and monitor the legal and economic impacts of trade agreements on state and local laws, working conditions and the business environment; to provide a mechanism for citizens and Legislators to voice their concerns and recommendations; and to make policy recommendations designed to protect Maine's jobs, business environment and laws from any negative impact of trade agreements.”* [10 MRSA §11 (3)].

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We appreciate the time you spent meeting with the CTPC Chairs on November 15, 2013. To add to our understanding of these various topics, we would like to again invite you (or members of your staff) to appear before the commission. Our next meeting is scheduled for Thursday, May 28, 2015 from 8:30 AM to 10:30 AM at Room 208 of the Cross Office Building in Augusta. We also anticipate scheduling other meetings to take place over the course of the summer and fall.

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STATE OF MAINE

Citizen Trade Policy Commission

May 19, 2015

The Honorable Chellie Pingree
United States House of Representatives
2 Portland Fish Pier, Suite 304
Portland, ME 04101
Re: Invitation to speak before the Maine Citizen Trade Policy Commission

Dear Representative Pingree:

As you know, the Maine Citizen Trade Policy Commission was established in 2003 by the Maine State Legislature to, *“to assess and monitor the legal and economic impacts of trade agreements on state and local laws, working conditions and the business environment; to provide a mechanism for citizens and Legislators to voice their concerns and recommendations; and to make policy recommendations designed to protect Maine's jobs, business environment and laws from any negative impact of trade agreements.”* [10 MRSA §11 (3)].

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STATE OF MAINE

Citizen Trade Policy Commission

May 19, 2015

The Honorable Bruce Poliquin
United States House of Representatives
6 State Street
Suite 101
Bangor, ME 04401

Re: Invitation to speak before the Maine Citizen Trade Policy Commission

Dear Representative Poliquin:

As you know, the Maine Citizen Trade Policy Commission was established in 2003 by the Maine State Legislature to, *"to assess and monitor the legal and economic impacts of trade agreements on state and local laws, working conditions and the business environment; to provide a mechanism for citizens and Legislators to voice their concerns and recommendations; and to make policy recommendations designed to protect Maine's jobs, business environment and laws from any negative impact of trade agreements."* [10 MRSA §11 (3)].

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Senator Amy Volk, Chair

Representative Robert Saucier, Chair

May 28, 2015

Discussion: Possible Joint Resolution(s) and Congressional Letters

Introduction: Over the course of its existence, the CTPC has sponsored a number of Joint Resolutions on various free trade topics. These Joint Resolutions have typically been addressed to the President and members of Congress and have been unanimously approved by the Maine State Legislature. Most recently, in 2013, the 126th Legislature approved LR 2148 titled, JOINT RESOLUTION MEMORIALIZING THE PRESIDENT OF THE UNITED STATES, THE UNITED STATES CONGRESS AND THE UNITED STATES TRADE REPRESENTATIVE REGARDING THE USE OF TRADE PROMOTION AUTHORITY IN INTERNATIONAL TRADE POLICY. This resolution (see copy) urged that the President, USTR and Congress adopt an approach to TPA which incorporated meaningful cooperation with the states, public participation and increased transparency.

Background: As discussed in several articles provided for this meeting, the TPA has been passed for by the Senate and is headed for the House of Representatives for an anticipated vote in early to mid-June. In the Senate, both Maine Senators, Susan Collins and Angus King, voted against TPA (see copies of their statements). To date, Maine Representative Chellie Pingree has publically announced her intention to vote against TPA and Maine Representative Bruce Poliquin does not appear to have announced his position on the TPA.

Possible Actions: If the CTPC is interested in initiating a public stance on any of the free trade issues that are currently under intense public discussion, there are a number of avenues that the commission could consider for possible action. These possibilities are not mutually exclusive and include, but are not limited to, the following:

- Legislative Resolution regarding TPA; pro or con;
- Legislative Resolution regarding TPP; pro or con;
- Legislative Resolution regarding ISDS; pro or con;
- Letter(s) to Maine's Congressional Delegation on any of the above

At the request of CTPC Co-Chair Representative Robert Saucier, a draft resolution regarding opposition to the TPP and ISDS has been prepared for the commission's review:

WE, your Memorialists, the Members of the One Hundred and Twenty-seventh Legislature of the State of Maine now assembled in the First Regular Session, most respectfully present and petition the President of the United States, the United States Congress and the United States Trade Representative as follows:

WHEREAS, the latest provisions of the Trans-Pacific Partnership's Investor-State Dispute Settlement System aggressively expand the powers of multinational corporations, giving them the ability to undermine democracy by challenging our federal, state and local laws and programs that could diminish any of their future expected profits in international tribunals; and

WHEREAS, the TPP will spur another exodus of American jobs in the service, public and manufacturing sectors, as it includes rules that will make it even easier for corporate America to outsource call centers, programming, engineering, and manufacturing jobs, putting Americans out of work; and

WHEREAS, such unfettered power would result in an erosion of collective bargaining rights and a rollback of labor, health, consumer safety, and environmental regulations, and spurring a race to the bottom and an increase in wealth and income inequality;

RESOLVED, that We, your Memorialists, respectfully urge and request the rejection of the "fast tracking" of the Trans-Pacific Partnership, the rejection of any elements in that free trade agreement which result in the massive expansion of corporate power and the weakening of democratic rule and worker's rights, and request for the full and timely disclosure of all the details of the agreement; and

RESOLVED: That suitable copies of this resolution, duly authenticated by the Secretary of State, be transmitted to the Honorable Barack H. Obama, President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, to the United States Trade Representative and to each Member of the Maine Congressional Delegation.

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND AND THIRTEEN
—

**JOINT RESOLUTION MEMORIALIZING THE PRESIDENT OF
THE UNITED STATES, THE UNITED STATES CONGRESS AND
THE UNITED STATES TRADE REPRESENTATIVE REGARDING
THE USE OF TRADE PROMOTION AUTHORITY IN
INTERNATIONAL TRADE POLICY**

WE, your Memorialists, the Members of the One Hundred and Twenty-sixth Legislature of the State of Maine now assembled in the First Regular Session, most respectfully present and petition the President of the United States, the United States Congress and the United States Trade Representative as follows:

WHEREAS, the State strongly supports international trade when fair rules of trade are in place and seeks to be an active participant in the global economy, and the State seeks to maximize the benefits and minimize any negative effects of international trade; and

WHEREAS, existing trade agreements have effects that extend significantly beyond the bounds of traditional trade matters, such as tariffs and quotas, and can undermine Maine's constitutionally guaranteed authority to protect the public health, safety and welfare and its regulatory authority; and

WHEREAS, a succession of federal trade negotiators from both political parties over the years have failed to operate in a transparent manner and have failed to meaningfully consult with the State on the far-reaching effect of trade agreements on state and local laws, even when obligating the State to comply with the terms of these agreements; and

WHEREAS, Article II, Section 2 of the United States Constitution empowers the President of the United States "...by and with the advice and consent of the Senate, to make treaties, provided two thirds of Senators present concur..."; and

WHEREAS, the trade promotion authority implemented by the United States Congress and the President of the United States with regard to international trade and investment treaties and agreements entered into over the past several years, commonly known as fast-track negotiating authority, does not adequately provide for the constitutionally required review and approval of treaties; and

WHEREAS, the United States Trade Representative, at the direction of the President of the United States, is currently negotiating or planning to enter into negotiations for several multilateral trade and investment treaties, including the Trans-Pacific Partnership Agreement and the Trans-Atlantic Trade and Investment Partnership; and

WHEREAS, proposals are under consideration to review these and future trade and investment agreements pursuant to a fast-track model; and

WHEREAS, the current process of consultation with states by the Federal Government on trade policy fails to provide a way for states to meaningfully participate in the development of trade policy, despite the fact that trade rules could undermine state sovereignty; and

WHEREAS, under current trade rules, states have not had channels for meaningful communication with the United States Trade Representative, as both the Intergovernmental Policy Advisory Committee on Trade and the state point of contact system have proven insufficient to allow input from states, and states do not always seem to be considered as a partner in government; and

WHEREAS, the President of the United States, the United States Trade Representative and the Maine Congressional Delegation will have a role in shaping future trade policy legislation; now, therefore, be it

RESOLVED: That We, your Memorialists, respectfully urge and request that future trade policy include reforms to improve the process of consultation both between the Executive Branch and Congress and between the Federal Government and the states; and be it further

RESOLVED: That We, your Memorialists, respectfully urge and request that the fast-track model of consultation and approval of international treaties and agreements be rejected with respect to pending agreements and agreements not yet under negotiation; and be it further

RESOLVED: That We, your Memorialists, respectfully urge and request that the President of the United States, the United States Congress and the United States Trade Representative seek to develop a new middle ground approach to consultation that meets the constitutional requirements for treaty review and approval while at the same time allowing the United States Trade Representative adequate flexibility to negotiate the increasingly complicated provisions of international trade treaties; and be it further

RESOLVED: That We, your Memorialists, respectfully urge and request that the President of the United States, the United States Congress and the United States Trade Representative seek a meaningful consultation system that increases transparency, promotes information sharing, allows for timely and frequent consultations, provides state-level trade data analysis, provides legal analysis for states on the effect of trade on state laws, increases public participation and acknowledges and respects each state's sovereignty; and be it further

RESOLVED: That We, your Memorialists, respectfully urge and request that each instance in which trade promotion authority is authorized by the United States Congress be limited to a specific trade agreement to help ensure the adequate review and approval of each international trade treaty; and be it further

RESOLVED: That suitable copies of this resolution, duly authenticated by the Secretary of State, be transmitted to the Honorable Barack H. Obama, President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, to the United States Trade Representative and to each Member of the Maine Congressional Delegation.

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<http://blogs.rollcall.com/wgdb/senate-passes-trade-promotion-authority/?pos=adpb>

Senate Passes Trade Promotion Authority (Updated)

CQ-Roll Call

By [Steven Dennis](#) Posted at 9:29 p.m. on May 22, 2015

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Updated 10:20 p.m. | The Senate passed President Barack Obama's Trade Promotion Authority package Friday, sending the precursor to major trade deals with Asia and Europe to the House.

The package survived a near-death experience Thursday, with the Senate voting narrowly to cut off a filibuster in an extended vote, and again Friday, when the [Senate narrowly rejected a bipartisan currency enforcement amendment that had drawn a veto threat](#).

Obama cheered the passage in a statement.

The legislation "includes strong standards that will advance workers' rights, protect the environment, promote a free and open Internet, and it supports new robust measures to address unfair currency practices," Obama said.

"I want to thank Senators of both parties for sticking up for American workers by supporting smart trade and strong enforcement, and I encourage the House of Representatives to follow suit by passing TPA and TAA as soon as possible."

Speaker [John A. Boehner](#), R-Ohio, called the bill a "no-brainer" and said he would try and pass it in the House.

"The House will take up this measure, and Republicans will do our part, but ultimately success will require Democrats putting politics aside and doing what's best for the country," Boehner said. "Let's seize this opportunity to open new doors for the things Americans make and the people who make them."

A deal to vote in June on extending the charter of the Export-Import Bank helped pave the way for passage of the measure, as well as a months-long, intensive effort by the president on what has been his top economic priority and one of the last big legacy items of his presidency and one that exposed a deep rift within his party.

Final passage ultimately came with less drama on a 62-37 vote.

In theory, the trade bill should have sailed through. Trade Promotion Authority, which allows presidents the ability to get up-or-down votes in Congress on trade deals without amendments, had the support of the Republican majority, the Democratic president of the United States and ultimately 14 pro-trade Democrats.

An extension to a program called Trade Adjustment Assistance that provides income support and training to workers displaced by international trade was added to the trade package as a sweetener for Democrats, but that was not enough for most of them. Led by Sen. Elizabeth Warren, D-Mass., Minority Leader Harry Reid, D-Nev., and Sen. Sherrod Brown, D-Ohio, among others, most Democrats argued the trade deals would hurt American workers.

“This agreement, like bad trade deals before it, would force American workers to compete with desperate workers around the world – including workers in Vietnam where the minimum wage is 56-cents an hour,” said Sen. Bernard Sanders, I-Vt., who is running for president and had called out Hillary Rodham Clinton for keeping her distance from the issue.

The 14 Democrats who backed the president included Michael Bennet of Colorado, Maria Cantwell of Washington, Benjamin L. Cardin of Maryland, Thomas R. Carper of Delaware, Chris Coons of Delaware, Dianne Feinstein of California, Heidi Heitkamp of North Dakota, Tim Kaine of Virginia, Claire McCaskill of Missouri, Patty Murray of Washington, Bill Nelson of Florida, Jeanne Shaheen of New Hampshire, Mark Warner of Virginia and Ron Wyden of Oregon.

Cardin had voted to filibuster the package earlier after being upset he did not get his amendments but had been a supporter of the package in committee.

Five Republicans voted no: Susan Collins of Maine, Mike Lee of Utah, Rand Paul of Kentucky, Jeff Sessions of Alabama and Richard C. Shelby of Alabama.

One Republican senator did not vote: Michael B. Enzi of Wyoming.

The Hill's Whip List

By [Vicki Needham](#) - 05/05/15 04:37 PM EDT

The fight over fast-track trade legislation is shifting to the House, where supporters face a tougher fight than in the Senate.

Senators approved legislation to boost President Obama's trade powers just ahead of the Memorial Day recess in a 62-37 vote.

But the White House and GOP House leaders have their work cut out for them, with strong opposition from progressives worried about trade's effect on American jobs and from conservatives balking at handing Obama more power.

Seventy-seven House Democrats are lined up against fast-track. Twenty-three House Dems, many of whom previously signaled support, aren't saying whether they will vote for fast-track.

That opposition could grow as trade critics launch a full-court press. Labor groups are vowing to fight hard to block the measure and Sens. Elizabeth Warren (D-Mass.) and Sherrod Brown (D-Ohio), who led the opposition in the upper chamber can be expected to lobby House Democrats.

Republican leaders will need to keep GOP defections to a minimum. Ways and Means Chairman Paul Ryan (R-Wis.) has been meeting with conservative lawmakers to sell them on the trade bill.

The Hill will continue to update this list. Please send updates to vneedham@thehill.com.

Lucy Feickert, Kelly Kaler, Mike Lillis, Marianna Sotomayor and Scott Wong contributed.

HOUSE

REPUBLICANS - YES (68)

REPUBLICANS - NO (7)

REPUBLICANS - UNDECIDED (12)

Note: Congressman Bruce Poliquin (Maine) has not yet appeared to take a public position on TPA

DEMOCRATS - YES (13)

DEMOCRATS - NO (77)

Rep. Chellie Pingree (Maine)

DEMOCRATS - UNDECIDED (23)

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Recent Press Releases

May 22 2015

Senator Collins Votes to Protect Maine Workforce and Keep Jobs in America

Washington, D.C. – U.S. Senator Susan Collins released the following statement after voting in opposition to the trade bill considered today by the United States Senate:

“Workers across Maine have a hard-earned reputation as some of the most industrious and dedicated employees in the world. Today, I voted against the Trade Promotion Authority (TPA) legislation to protect Mainers from the disadvantages and unfair competition this legislation could impose on our workforce. TPA would pave the way for the Trans Pacific Partnership, which could jeopardize many American jobs.

“I am especially concerned about Maine’s manufacturing and shoemaking jobs, some of which stand to be directly threatened by TPP. New Balance, for example, employs nearly 900 workers at three Maine factories. I am concerned that TPP would penalize companies like New Balance that have remained committed to American manufacturing, rather than moving all of their production jobs overseas.”

Senator Angus King

King Opposes Trade Promotion Authority

Friday, May 22, 2015

WASHINGTON, D.C. – U.S. Senator Angus King (I-Maine) released the following statement after voting against legislation that would grant Trade Promotion Authority to the President:

“I can’t justify supporting a process that, in effect, would approve a major trade deal that has substantial stakes for Maine when we haven't even seen it,” **Senator King said.** “And I have serious concerns that the Trans Pacific Partnership will put Maine companies – and their workers – at a significant competitive disadvantage. I just don't know how to explain to Maine people that that they have to compete straight up with countries with little or no labor protections, weak environmental standards, and wages below a dollar an hour. This is one more blow to American manufacturing, and the country will come to regret the Senate's action today, probably sooner rather than later.”

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Article notes
Citizen Trade Policy Commission

Articles from May 2015

EU Text for TTIP- Initial provisions for CHAPTER II- Regulatory Cooperation; (EU, 5/4/15)

This document represents the EU draft for the chapter on Regulatory Cooperation for inclusion in the TTIP. This proposed chapter was the subject of a May 5, 2015 memo from CTPC member Sharon A. Treat; that memo describes this proposed chapter thusly:

Regulatory Cooperation. In Europe, this topic is becoming as controversial as ISDS, and has the potential to be equally controversial here. It was the subject of negotiations in both the February and April rounds. The EU has offered a text on “horizontal regulatory cooperation,” with new provisions aimed at legislators and regulators on the EU member state and U.S. state level. A leaked draft of the sub-central regulatory cooperation proposal would require designated officials at the central level of government — the U.S. federal government or the European Commission — to pass on requests from each side to engage with their respective sub-central regulators.¹ In the U.S this would likely be OMB’s Office of Information and Regulatory Affairs (OIRA), which currently reviews federal regulations.

The purpose of the chapter as a whole would be to require trade impact assessments of legislation and regulations before they are enacted or adopted, and further to promote a convergence or equivalence of regulations in both the EU and U.S. This raises a number of concerns at the U.S. state level. Obviously, if laws and regulations are harmonized at the federal U.S. and EU level but state laws remain different, it begs the question as to how those laws will fare if challenged in an ISDS proceeding as overly burdensome or “more trade restrictive than necessary.” Even without directly reaching into the state legislative process, state laws could be vulnerable to additional challenges stemming from this chapter.

However, the EU regulatory cooperation chapter does, in fact, reach down to the state level. It would require a federal agency to share information and engage in consultations about proposed state laws and regulations if requested by a new ongoing international “Regulatory Cooperation Body” made up of U.S. and EU trade and federal agency bureaucrats. It is really unclear how this would work but at the very least, it could have a chilling effect on new proposals subjected to trade impact assessments and international consultations, and the EU proposal would also subject existing laws and regulations to trade impact review.

Although toned down from earlier EU proposals, which required state legislators and governors to send an annual advance list of laws and regulations to be introduced, it still raises concerns about state sovereignty and potential federal and international

interference with the legislative process and state government in general. We also need to consider whether we really want significant taxpayer dollars going to hire additional staff at OMB to monitor state legislatures and governors, and a multitude of state agencies ranging from the Maine Seed Potato Board to the Maine Milk Board, and share that information with U.S. and EU trade regulators.

TPA Backers, Opponents Scramble to Lock In Votes Ahead of Senate Action; (Inside US Trade, 5/1/15) This article discusses the efforts made to secure votes in the Senate for the President's Trade Promotion Authority (aka "Fast Track") legislation. As of early May, it was anticipated that votes from 10 Democratic Senators (including Senator Angus King, I-ME) would be needed to pass this legislation in the Senate.

Digby Neck Quarry Bilcon Case, Tribunal Decision and Dissent; (Janet M. Eaton PhD; 5/11/15) This scholarly paper reexamines the decision of an ISDS arbitration panel which overturned the ruling of a Canadian joint federal-provincial panel which disallowed an application by a US company for an environmental permit to complete a mega-quarry in Nova Scotia. The author argues that the arbitration decision to overturn the governmental panel's environmental decision was unwarranted and consequently has provoked mounting criticism of the ISDS mechanism- especially in light of the upcoming TPP and TTIP trade agreements.

Trade and Trust; (New York Times opinion piece; 5/22/15) This opinion piece, authored by NY Times columnist Paul Krugman, maintains that the arguments offered by the Obama administration in favor of the TPP are lacking in intellectual honesty. Mr. Krugman suggests that the alleged benefits of free trade such as the lowering of trade tariffs and trade barriers have already been largely achieved over the past 70 years. Instead, the main purpose of the TPP is to strengthen intellectual property rights and to change the way that trade disputes are resolved and he argues that these changes may not be advantageous for the US. Mr. Krugman alleges that a breach in trust has occurred when the USTR claims that these changes may be good for the US economy; the real truth is that these changes are good for large international corporations.

Dairy Groups Praise Senate Passage of TPA, Call for Quick House Action; (AgWeb; 5/23/15) This joint press release from the National Milk Producers Federation and the U.S. Dairy Export Council applauds the recent vote in the US Senate to approve TPA (Fast Track Authority) and urges the US House of Representatives to also quickly approve the TPA legislation. These two groups maintain that the TPA helps to ensure appropriate congressional influence over trade agreements like the TPP and is necessary to encourage other trading partners to make their best negotiating offers. Ultimately, these dairy groups favor the TPP as a reflection of the fact that the US now exports 1/7th of its total milk production.

Trade is about consumers buying things they desire; (Boston Globe opinion piece; 5/25/15) This opinion piece, authored by Boston Globe columnist John E. Sununu, points out that ultimately, consumers in the US and elsewhere, will buy whatever goods they truly desire- with or without a trade agreement such as the TPP. He also maintains that sooner or later, trade provides the opportunity for cheaper goods and a more efficient process. He suggests that TPA merely provides additional leverage for the President to obtain a favorable trade agreement and that contrary to the assertion of some, that domestic competition has been more responsible for

the loss of jobs than international competition. He concludes by noting the curious alliance of many Republican lawmakers and the President with a few Democratic supporters that have banded together to work for passage of TPA and the TPP.

New Balance's voice heard on tariffs; (Boston Globe; 5/27/15) This article reports on the likelihood that the TPP will include a phased-out approach to footwear tariffs. Achieving a phase-out of tariffs is regarded as a victory of sorts for New Balance which is the only remaining domestic athletic footwear manufacturer in the US. Conversely, the decision to include a phased-out approach of unspecified length is considered to be somewhat of a setback for Nike which is a leading athletic footwear manufacturer that depends solely on footwear manufactured outside of the US; Nike had lobbied strongly for an immediate end to footwear tariffs. New Balance has footwear manufacturing plants that are located in Maine and Massachusetts with a total of nearly 1,400 jobs. The article prominently mentions the efforts of Maine Senators Susan Collins and Angus King in helping to ensure a phased-out approach to footwear tariffs.

A realistic debate about free trade; (Boston Globe opinion piece; 5/27/15) This opinion piece, authored by Boston Globe columnist Scott Lehigh, addresses the question of whether the TPP will positively affect the current level of income inequality in the US. Mr. Lehigh suggests that based on previous FTAs and current projections, any loss in domestic manufacturing jobs will be more than offset by gains of jobs in the services sector. However, one particular study predicts that the median wage in the US will decrease by 0.6 percent. Mr. Lehigh appears to conclude that the losses resulting from the TPP will more than outweigh any gains for most American workers but cautions that free trade is an extremely complicated topic that defies easy and obvious conclusions.

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TTIP – Initial Provisions for CHAPTER [] - Regulatory Cooperation

General notes:

- 1. The present document represents an initial draft which will need to be completed and refined by more detailed proposals in a number of areas.*
- 2. Furthermore, as TTIP negotiations progress, the provisions in this Chapter may be reviewed in the light of developments in other Chapters, and vice versa, with a view to resolving possible duplications, overlaps or inconsistencies. In particular, there is a need to consider the relationship with the TBT and SPS chapters as well as with specific or sectoral provisions, including those on Financial Services. Specific or sectoral provisions are intended to respond to the specific needs of a sector. It will be important to strive as far as possible for coherence and consistency between the approaches and solutions embodied in the specific or sectoral provisions, on the one hand, and those in other parts of TTIP (including this Chapter), on the other hand. In case of overlap or doubt, the specific or sectoral provisions shall prevail, and it remains open at this stage whether in some sectors, such as for example chemicals, such specific or sectoral provisions might have a comprehensive character.*
- 3. The institutional and decision-making modalities in the horizontal chapter regarding the update, modification or addition of specific or sectoral provisions will need to be discussed as negotiations on the regulatory cluster and the general institutional provisions of TTIP proceed.*
- 4. Given that the provisions of this Chapter concern predominantly procedures for cooperation, they may not lend themselves to the application of dispute settlement rules. Alternative mechanisms for ensuring proper application could be explored, such as regular monitoring and reporting, including to the political level (Joint Ministerial Body). As regards the specific or sectoral provisions of the TTIP regulatory cluster, further reflection will be required as regards the most appropriate mechanisms of ensuring proper application. In respect of cooperation on financial services, the EU has expressed the view that provisions should not be subject to dispute settlement.*
- 5. The scope of this Chapter is determined by the definition of "regulatory acts" and by the provisions of Article 3. Only those regulatory acts that fulfill the criteria in Article 3.1 (i.e. subject-matter of regulatory acts) are covered. Accordingly, this chapter does not cover legislation at central or non-central level which establishes the framework or principles*

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applicable on a cross-sectoral basis to achieve public policy objectives, such as acts determining the principles of, inter alia, competition, company law, consumer protection, IPR protection, the protection of personal data or the protection of the environment.

Preamble¹ to the TTIP: The Parties, having regard to:

- the importance of regulation to achieve public policy objectives, and their right to regulate and adopt measures to ensure that these objectives are protected at the level that each Party considers appropriate, in line with its respective principles;

Section I: Objectives, definitions and scope

Article 1 - General Objectives and Principles

1. The general objectives of this Chapter² are:
 - a) To reinforce regulatory cooperation thereby facilitating trade and investment in a way that supports the Parties' efforts to stimulate growth and jobs, while pursuing a high level of protection of *inter alia*: the environment; consumers; public health, working conditions; social protection and social security; human, animal and plant life; animal welfare; health and safety; personal data; cybersecurity; cultural diversity; and preserving financial stability;
 - b) To reduce unnecessarily burdensome, duplicative or divergent regulatory requirements affecting trade or investment, particularly given their impact on small and medium sized enterprises, by promoting the compatibility of envisaged and existing EU and US regulatory acts;
 - c) To promote an effective regulatory environment, which is transparent and predictable for citizens and economic operators;

¹ NB: These considerations are of a broader nature and would fit best in the preamble to the TTIP Agreement.

² NB: The provisions as set forth in this Chapter cannot be interpreted or applied as to oblige either Party to change its fundamental principles governing regulation in its jurisdiction, for example in the areas of risk assessment and risk management.

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- d) To further the development, adoption and strengthening of international instruments, and their timely implementation and application, as a means to work together more effectively with each other and with third countries to strive toward consistent regulatory outcomes.
2. This Chapter provides a framework for cooperation among regulators and encourages the application of good regulatory practices. It will help identify and make use of possibilities for cooperation in areas or sectors of common interest. Its provisions do not entail any obligation to achieve any particular regulatory outcome.
3. The provisions of this Chapter do not restrict the right of each Party to maintain, adopt and apply timely measures to achieve legitimate public policy objectives, such as those mentioned in paragraph 1, at the level of protection that it considers appropriate, in accordance with its regulatory framework and principles. Nothing in this Chapter shall affect or limit the ability of governments to provide or support services of general interest.
4. The Parties reaffirm their shared commitment to good regulatory principles and practices, as laid down in the OECD Recommendation of 22 March 2012 on Regulatory Policy and Governance.

Article 2- Definitions

For the purposes of this Chapter the following definitions shall apply:

a) "regulatory acts at central level" means:

for the EU:

Regulations and Directives within the meaning of Article 288 of the Treaty on the Functioning of the European Union, including:

- i. Regulations and Directives adopted under a legislative procedure in accordance with that Treaty;
- ii. Delegated and Implementing acts adopted pursuant to Articles 290 and 291 of that Treaty.

for the US:

- i. Federal Statutes;

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ii. (A) Rules as defined in 5 USC § 551 (4); (B) Orders, as defined in 5 USC § 551 (6); and (C) Guidance documents, as defined in Executive Order 12,866 § 3(g) issued by any federal agency, government corporation, government controlled corporation or other establishment in the executive branch of government covered by 5 USC § 552 (f) (1) of the Administrative Procedures Act, as amended;

iii Executive Orders and [other executive documents that lay down general rules or mandate conduct by government bodies].

"Regulatory acts at central level" do not include acts addressed to individual natural or legal persons.

b) "regulators and competent authorities at central level" means:

i. for the EU, the European Commission;

ii. for the US, US Federal agencies [defined by the Administrative Procedures Act (APA); 5 U.S.C. § 552 (f)].

c) "regulatory acts at non-central level" means:

for the EU:

- laws and regulations adopted by the central national authorities of an EU Member State, except those that transpose into domestic law European Union acts.

for the US:

- laws and regulations adopted by the central authorities of a US State.

"Regulatory acts at non-central level" do not include acts addressed to individual natural or legal persons.

d) "regulators and competent authorities at non-central level" means:

i. For the EU, the central government authorities of an EU Member State;

ii. For the US, the central government authorities of a US State.

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e) "international instruments"³ means documents adopted by international bodies or fora in which both Parties' regulators and competent authorities at central level participate, including as observers, and which provide requirements or related procedures, recommendations or guidelines on the supply or use of a service, such as for example authorization, licensing, qualification or on characteristics or related production methods, presentation or use of a product.

Article 3 – Scope

[The scope of this chapter will need to be further reviewed at a later stage in the negotiations]

1. The provisions of Section II apply to regulatory acts at central level⁴ in areas not excluded from the scope of TTIP provisions, which:
 - a) determine requirements or related procedures for the supply or use of a service⁵ in the territory of a Party, such as for example authorization, licensing, or qualification; or
 - b) determine requirements or related procedures applying to goods marketed in the territory of a Party concerning their characteristics or related production methods, their presentation or their use.
2. The provisions of Section III apply to regulatory acts at central and non-central level in areas not excluded from the scope of TTIP provisions, which fulfil the criteria in paragraph 1 and that have or are likely to have a significant impact⁶ on trade or

³ NB: This definition captures documents produced by international bodies in which both the Commission and US federal government or one or more of its agencies participate, including for example bodies like the UNECE, OECD, IMDRF, the ICH or the World Health Organisation; but the definition excludes bodies such as IEC, ISO, the ESOs, or US private standardisation bodies. The TBT Chapter is expected to cover cooperation in the area of product standards, generally; sectoral provisions in TTIP may also cover cooperation on standards.

⁴ NB: Further reflection will be required regarding regulatory acts at non-central level.

⁵ This Chapter shall not apply to regulatory acts concerning those services to which Section 1 of Chapter II [Liberalisation of investment] and Chapter III [Cross border supply of services] of Title [Services & Investment] do not apply.

⁶ NB: The regulators and competent authorities at central level of each Party will identify regulatory acts at central level that may have a significant impact on EU-US trade (see also Article 9 par. 1). Further discussion will be needed on how to identify these acts at the non-central level.

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investment between the Parties. Regulatory acts at central or non-central level concerning the matters covered by [specific or sectoral provisions concerning goods and services, to be identified] fall in any event within the scope of this Chapter.

Article 4 – Relationship with specific or sectoral provisions

1. In case of any inconsistency between the provisions of this Chapter and the provisions laid down in [specific or sectoral provisions concerning goods and services, to be identified], the latter shall prevail.⁷
2. Regulatory cooperation in financial services shall follow specific provisions set out in [to be identified – *FS chapter/section....*].

[Placeholder for Article on: (a) exchange of confidential information between regulators and competent authorities; (b) information exchanged pursuant to this Chapter to promote regulatory cooperation may not be used for other purposes without the agreement of the Party which provided it]

Section II: Good Regulatory Practices

Sub-section II.1. Transparency

Article 5 – Early information on planned acts

1. Each Party shall make publicly available at least once a year a list of planned regulatory acts at central level⁸, providing information on their respective scope and objectives.⁹

⁷ NB: The relationship of specific and sectoral provisions in TTIP and the Horizontal Chapter will need to be kept under review as both sets of provisions are taking shape.

⁸ NB: Draft regulatory acts proposed by the US Administration to Congress are considered as "planned" acts, as are bills introduced by Congressmen.

⁹ NB: Parties can in practice comply with this provision by publishing a more comprehensive list of regulatory acts.

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2. For planned regulatory acts at central level undergoing impact assessment each Party shall make publicly available, as early as possible, information on planning and timing leading to their adoption, including on planned stakeholder consultations and potential for significant impacts on trade or investment.
3. *[Placeholder – a provision on the publication and entry into force of adopted regulatory acts may be envisaged in this Chapter, taking into account whether a horizontal provision is included elsewhere in the TTIP text]*

Article 6– Stakeholder Consultations

When preparing regulatory acts at central level undergoing impact assessment, the regulating Party shall offer a reasonable opportunity for any interested natural or legal person, on a non-discriminatory basis, to provide input through a public consultation process, and shall take into account¹⁰ the contributions received. The regulating Party should make use of electronic means of communication and seek to use dedicated single access webportals, where possible.

Sub-section II.2 Regulatory Policy Instruments

Article 7- Analytical Tools

1. The Parties affirm their intention to carry out, in accordance with their respective rules and procedures, an impact assessment for planned regulatory acts at central level.
2. Whenever carrying out impact assessments on regulatory acts at central level, the regulating Party shall, among other aspects, including non-economic impacts that the Parties examine if provided for by their respective procedures, assess how the options under consideration:
 - a) relate to relevant international instruments;

¹⁰ NB: This is an obligation for regulators to examine comments on their merits, but not to take on board suggestions put forward by stakeholders. The language used ("take into account") is standard in international agreements dealing with regulatory matters and consultation: for instance, see Article 2.9.4 of the TBT Agreement.

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- b) take account of the regulatory approaches of the other Party, when the other Party has adopted or is planning to adopt regulatory acts on the same matter;
 - c) impact on international trade or investment¹¹.
3. With regard to regulatory acts at central level:
- a) The findings of impact assessments shall be published no later than the proposed or final regulatory acts;
 - b) The Parties shall promote the exchange of information on available relevant evidence and data, on their practice to assess impacts on international trade or investment, as well as on the methodology and economic assumptions applied in regulatory policy analysis¹²;
 - c) the Parties shall promote the exchange of experience and share information on planned ex-post evaluations and retrospective reviews.

Section III: Regulatory Cooperation¹³

[NB: See general note on the relationship of this Chapter with other TTIP Chapters]

Article 8– Bilateral cooperation mechanism

1. The Parties hereby establish a bilateral mechanism to support regulatory cooperation between their regulators and competent authorities to foster information exchange and to seek increased compatibility between their respective regulatory frameworks, where appropriate.

¹¹ NB: In this context, this will include EU-US trade and investment, which is understood to include the interests of investors of the other Party.

¹² NB: Any exchange of information needs to respect the rules to be agreed on the exchange of confidential information, see placeholder in Article 9, and needs to be consistent with each Party's legal framework as to information protected by intellectual property rights.

¹³ NB: Except where indicated otherwise Articles in this section apply to both regulatory acts at central and non-central level (notably Articles 12-16).

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2. The mechanism would further aim at identifying priority areas for regulatory cooperation to be reflected in the Annual Regulatory Cooperation Programme referred to paragraph 2(a) of Article 14.
3. Each Party shall designate an office to act as a Focal Point responsible for exchanging information about envisaged and existing regulatory acts. Those exchanges include submissions concerning acts that are being prepared or reviewed by each Party's legislative authorities.

[Placeholder for further details on the Focal Points at the non-central level.]

Article 9- Information and Regulatory Exchanges on regulatory acts at central level¹⁴

1. When a Party publishes a list of planned regulatory acts at central level referred to in Article 5.1¹⁵, it shall identify those acts that are likely to have a significant impact on international trade or investment, including trade or investment between the Parties, and it shall inform the other Party through their respective Focal Points.
2. A Party shall also regularly inform the other Party about proposed regulatory acts at central level that are likely to have a significant impact on international trade or investment, including trade or investment between the Parties, where those proposed acts do not originate from the executive branch and were not included in the most recent list published pursuant to Article 5.1.
3. Upon the request of a Party made via the respective Focal Points, the Parties shall enter into an exchange on planned or existing regulatory acts at central level.
4. Regulatory exchanges shall be led by the regulators and competent authorities at central level responsible for or following the regulatory acts concerned.
5. The Parties shall participate constructively in regulatory exchanges. In addition to the information made available in accordance with Article 5 a Party shall provide to the

¹⁴ NB: The mechanism established under Article 9 does not preclude the existence of regular direct contacts between the regulators and competent regulatory authorities at central or non-central level, as the case may be, while keeping the Focal Points duly informed about these.

¹⁵ NB: This obligation on the US side also covers US Federal Statutes.

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other Party, if the other Party so requests, complementary available information related to the planned regulatory acts under discussion.

6. The cooperation may take the form of meetings, written exchanges or any other appropriate means of direct communication. Each point of substance raised by one Party shall be addressed and answered by the other Party.
7. Each Party shall communicate without delay to its legislative authorities and via its Focal point specific written comments or statements received from the other Party concerning regulatory acts at central level which are being prepared or reviewed by those bodies. Legislative bodies shall not be obliged to respond to comments put forward by the other Party.

Article 10– Promoting regulatory compatibility at central level

1. This Article shall apply to areas of regulation where mutual benefits can be realised without compromising the achievement of legitimate public policy objectives such as those covered in Article 1.
2. When a regulatory exchange has been initiated pursuant to Article 9 with regard to a planned or existing regulatory act at central level, a Party may propose to the other Party a joint examination of possible means to promote regulatory compatibility, including through the following methods:
 - a) Mutual recognition of equivalence of regulatory acts, in full or in part, based on evidence that the relevant regulatory acts achieve equivalent outcomes as regards the fulfilment of the public policy goals pursued by both Parties;
 - b) Harmonisation of regulatory acts, or of their essential elements, through:
 - i. Application of existing international instruments or, if relevant instruments do not exist, cooperation between the Parties to promote the development of a new international instrument;
 - ii. Approximation of rules and procedures on a bilateral basis or
 - c) Simplification of regulatory acts in line with shared legal or administrative principles and guidelines.
3. A proposal under paragraph 1 shall be duly substantiated, including as regards the choice of the method. The Party receiving a proposal for a joint examination shall respond to the requesting Party without undue delay informing the latter of its decision. Every response should be substantiated.

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4. In addition to regulatory exchanges pursuant to Article 9, the Parties agree to cooperate, in areas of common interest, with respect to pre-normative research, and to exchange scientific and technical information relevant for this purpose.¹⁶

Article 11 – Information and Regulatory Exchanges on regulatory acts at non-central level

1. The Parties encourage regulatory exchanges on regulatory acts at non-central level in areas or sectors where there may be common interest.
2. Regulators and competent authorities of one Party will, upon request of another Party, provide information through its Focal Point on specific planned regulatory acts or planned changes to existing regulatory acts at non-central level, in order to allow identification of areas of common interest.
3. If one Party makes a request to engage in a regulatory exchange on specific planned or existing regulatory acts at non-central level, the requested Party will take steps to accommodate such a regulatory exchange.¹⁷ The regulators and competent authorities at non-central level concerned will determine their interest in entering into a regulatory exchange.
4. These exchanges will be led by the regulators and competent authorities responsible for the regulatory acts. The regulators and competent authorities at central level of both Parties will facilitate the exchanges.
5. Paragraphs 1 to 4 shall be without prejudice to more detailed provisions on regulatory cooperation concerning regulatory acts at the non-central level in [specific or sectoral provisions¹⁸ – *to be identified*] of this Agreement.

¹⁶ NB: See Footnote 12.

¹⁷ The US Party, upon receipt of a request, shall solicit the responsible regulators and competent authorities at non-central level to engage in regulatory exchanges.

¹⁸ NB: This will include for instance any provisions regarding mutual recognition of professional qualifications.

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Article 12– Timing of Regulatory Exchanges

1. When a regulatory exchange on a planned or existing regulatory act is requested under Article 9 paragraph 3 or Article 11 paragraph 3, it shall start promptly.
2. With regard to planned regulatory acts at central level, regulatory exchanges may take place at any stage of their preparation¹⁹. Exchanges may continue until the adoption of the regulatory act.
3. Regulatory exchanges shall not prejudice the right to regulate in a timely manner, particularly in cases of urgency or in accordance with deadlines under domestic law. Nothing in this Chapter obliges a Party to suspend or delay steps foreseen under its domestic regulatory procedure.

Article 13– Promoting International Regulatory Cooperation

1. The Parties agree to co-operate between themselves, and with third countries, with a view to strengthening, developing and promoting the implementation of international instruments *inter alia* by presenting joint initiatives, proposals and approaches in international bodies or fora, especially in areas where regulatory exchanges have been initiated or concluded pursuant to this Chapter and in areas covered by [specific or sectoral provisions – to be identified] of this Agreement.
2. The Parties reaffirm their intention to implement within their respective domestic systems those international instruments they have contributed to, as provided for in those international instruments.

Article 14- Establishment of the Regulatory Cooperation Body

1. The Parties hereby establish a Regulatory Cooperation Body (hereafter "RCB") in order to monitor and facilitate the implementation of the provisions set out in this Chapter for both regulatory acts at central and non-central level and of the [specific or

¹⁹ For greater certainty, a dialogue may take place after the regulating Party has announced, through the publication of the list envisaged in Article 5.1, its intention to regulate, and: (a) in the case of the US, before the publication of a draft for consultation or (b) in the case of the EU, before the adoption of a Commission proposal. This note is not applicable to the proposed regulatory acts referred to in Article 9.2.

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sectoral provisions concerning goods and services – to be identified] of this Agreement.

2. The RCB's functions shall be:

- a) The preparation and publication of an Annual Regulatory Co-operation Programme reflecting common priorities of the Parties and the outcomes of past or ongoing regulatory cooperation initiatives under section III of this Chapter, including information on the follow-up, the steps envisaged and timeframes proposed in relation to these identified common priorities;
- b) The monitoring of the implementation of the provisions of this Chapter, including the [specific or sectoral provisions concerning goods and services] of this Agreement, and reporting to the Joint Ministerial Body on the progress in achieving agreed co-operation programmes;
- c) *[Placeholder on technical preparation of proposals for the update, modification or addition of specific or sectoral provisions. Such updates, modifications or additions will be adopted in accordance with the internal procedures of each Party. The RCB will not have the power to adopt legal acts];*
- d) The consideration of new initiatives for regulatory co-operation, on the basis of input from either Party or its stakeholders, as the case may be, including of proposals for increased regulatory compatibility in accordance with Article 11;
- e) The preparation of joint initiatives or proposals for international regulatory instruments in line with Article 13, paragraph 1;
- f) Ensuring transparency in regulatory cooperation between the Parties;
- g) The examination of any other issue concerning the application of this Chapter or of [specific or sectoral provisions concerning goods and services] raised by a Party.

3. In the domain of financial services the functions as set out under in paragraph 2 shall be performed by the [Joint EU/US Financial Regulatory Forum (FRF), which shall ensure appropriate information to the RCB. Any decisions concerning financial services should be taken by the competent authorities acting within the framework of the FRF.

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4. The RCB may create sectoral working groups [as defined in annex x²⁰] and delegate certain tasks to them or to such other working groups that may be set up by the Joint Ministerial body.
5. The agenda and the minutes of the meetings of the RCB shall be made public.

[6. Placeholder – provisions on the interaction of the RCB with legislative bodies]

Article 15- Participation of stakeholders

1. The RCB shall hold, at least once a year, a meeting open to the participation of stakeholders to exchange views on the Annual Regulatory Co-operation Programme.
2. The annual meeting shall be prepared jointly by the co-chairs of the RCB with the involvement *[NB: depending on whether these groups are established]* of the co-chairs of the Civil Society Contact Groups, ensuring a balanced representation of business, consumers, public health, trade unions, environmental groups and other relevant public interest associations *[to be agreed in more detail in the Rules of Procedures of the RCB, see Article 15 par. 2]*. Participation of stakeholders shall not be conditional on them being directly affected by the items on the agenda of each meeting.
3. Each Party shall provide for means to allow stakeholders to submit their general views and observations or to present to the RCB concrete suggestions for further regulatory co-operation between the Parties. Any concrete suggestion received from stakeholders by one Party shall be referred to the other Party and shall be given careful consideration by the relevant sectoral working group that shall present recommendations to the RCB. If a relevant sectoral working group does not exist, the suggestion shall be discussed directly by the RCB. On proposals that have been considered by the RCB a written reply shall be provided by the latter to stakeholders without undue delay. These written replies shall also be published as part of the Annual Regulatory Co-operation Programme referred to in Article 14 paragraph 2 lit. a).
4. Procedures shall be developed for any sectoral working groups to allow stakeholders to consult with Civil Society representatives covering the different interests mentioned in Article 15.

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Article 16 –Composition and Rules of Procedure

1. The RCB shall be composed of representatives of the Parties, including at the non-central level. It shall include senior representatives of regulators and competent authorities, as well representatives responsible for regulatory coordination activities and international trade matters at the central level. In addition, whenever the RCB considers cooperation in relation to specific regulatory acts at central or non-central level, the relevant regulators and competent authorities responsible for those acts shall be invited to participate in RCB meetings.
2. Each Party shall nominate their representatives in the RCB by (date) and provide relevant information and contact details. The Parties shall identify a first set of areas of possible future cooperation by (date).
3. *[Placeholder for more detailed provisions on the composition, chairmanship and Rules of Procedure of the RCB].*

20 The sectoral working groups may also consider specific cooperation initiatives related to regulatory acts at non- central level in areas of common interest for the relevant regulators and competent authorities.

TPA Backers, Opponents Scramble To Lock In Votes Ahead Of Senate Action

INSIDE U.S. TRADE - www.INSIDETrade.com - May 1, 2015

With the full Senate poised to take up a pending Trade Promotion Authority (TPA) bill as early as next week after voting on legislation dealing with Iran's nuclear program, supporters and opponents of TPA are targeting a key group of 10 Democrats that are seen as undecided in the hope of locking in their votes.

They are Sens. Patty Murray (D-WA), Cory Booker (D-NJ), Ben Cardin (D-MD), Chris Coons (D-DE), Kirsten Gillibrand (D-NY), Tim Kaine (D-VA), Angus King (I-ME), Claire McCaskill (D-MO), Jeanne Shaheen (D-NH) and Heidi Heitkamp (D-ND), according to sources on both sides of the debate.

Cardin voted for fast track in the committee but reserved his right to change his vote on the floor if the bill to renew the Trade Adjustment Assistance (TAA) program does not move in parallel.

In all, at least 12 Democratic votes would be needed to block a filibuster of the TPA bill, given that six out of the Senate's 54 Republicans are seen as likely to vote against the legislation. They are Sens. Richard Shelby (R-AL), Jeff Sessions (R-AL), Steve Daines (R-MT), Lindsey Graham (R-SC), Richard Burr (R-NC) and Shelley Moore Capito (R-WV), sources said.

Six Senate Democrats are seen as likely to support TPA on the floor because they already voted for it in the Senate Finance Committee along with Cardin. Two pro-TPA lobbyists said Sen. Dianne Feinstein (D-CA) is also likely to vote in favor of TPA.

Blocking a filibuster would therefore require five additional votes out of a pool of 10 Democrats identified as undecided. One TPA supporter said this task seemed doable, but should not be taken for granted.

Sessions told *Inside U.S. Trade* on April 28 that, although he has not yet announced his position on the TPA bill, he is worried that future trade agreements could be used as a backdoor to change U.S. immigration policy.

He said he has raised these worries with other members of the Senate Republican caucus. "I haven't pushed it hard but I've discussed it a little bit," he said after a weekly caucus meeting.

Senate Finance Committee Chairman Orrin Hatch (R-UT) this week said one of his main worries regarding consideration of a pending TPA bill on the Senate floor is ensuring that there are the 60 votes required to overcome a filibuster on the legislation.

"You know, what I'm worried about is getting 60 votes for passage, and we're working with everybody to see what we can do," Hatch told reporters after participating at a trade event organized by *Politico*. He was responding to a question on whether there were sufficient votes to defeat a currency amendment slated to be offered to the TPA bill on the floor by Sen. Rob Portman (R-OH).

Hatch said he hoped the currency amendment could be defeated, but then signaled that securing 60 votes to overcome a filibuster on the underlying bill was his immediate priority.

Hatch also said he has talked to President Obama and urged him in that conversation to weigh in with his fellow Democrats, arguing they are the ones "making it more difficult to pass this." At the same time, Hatch added that there are a "significant number of Democrats" who are supporting TPA, noting that the Finance Committee passed the bill 20-6.

The Senate GOP leadership has already begun counting votes on TPA and TAA bills, according to Sen. John Thune (R-SD). “I don’t know that we’re whipping it yet, but I think we’re starting the initial stages of trying to get a sense of where people are, probably both on TPA and TAA,” he said on April 28.

Thune added that he expected a strong vote in the Senate in light of the 20-6 vote in the Finance Committee. “I hope in the end that it’s going to be a 65-vote majority at least coming out in favor of TPA,” he said.

Republican whip efforts also seem aimed at ensuring that a TPA bill gains the support of Tea Party favorites like Sens. Rand Paul (R-KY) and Mike Lee (R-UT). This is intended to provide political cover for conservative House Republicans to vote for the bill.

The Republican leadership also appears to be counting votes on a currency amendment to the fast-track bill that would require enforceable disciplines on currency manipulation in future trade agreements. This amendment is slated to be offered by Portman, who said he would do so after the amendment failed in the Finance markup on a vote of 15-11.

Thune said he thought there could be a “close vote” on this amendment but that it would ultimately be defeated, as it was in committee. He indicated that the Portman amendment could derail the Trans-Pacific Partnership (TPP) negotiations.

“My guess is based upon the vote coming out of the committee that there [will] be bipartisan support in recognition of the consequence of having certain amendments put on this bill and what that might mean for a future trade agreement,” he said.

Sen. Debbie Stabenow (D-MI), who supports the Portman amendment but opposes the TPA bill, told reporters that she was working with her colleagues to round up votes against the legislation. “I’m certainly part of folks encouraging a no vote” on TPA, she said.

Separately, Sen. Sherrod Brown (D-OH) predicted that there would be “dozens and dozens” of amendments on the floor, offered by 10-15 senators, and that consideration of the bill could take two to three weeks. Thune said the TPA bill would be subject to an open amendment process on the floor, in keeping with the approach McConnell has taken for considering legislation.

Thune also said he expects the TPA bill to go to conference, but Hatch indicated that he wants to avoid that scenario. He said he plans to try to fight off amendments on the Senate floor and keep the bill clean, since the pending TPA legislation is “basically” acceptable to other countries and the House. — *Matthew Schewel*

Digby Neck Quarry Bilcon Case, Tribunal Decision and Dissent

By Janet M Eaton, PhD. * May 11, 2015

Introduction

The announcement that a NAFTA Investor State Tribunal had overturned the decision of a Canadian Federal Provincial Environmental Joint Review Panel (JRP) decision to reject a US mega-quarry proposed by Bilcon of Delaware Inc. for Whites Point, Digby Neck, Nova Scotia, sent shock waves across the province causing indignation amongst the many Nova Scotians who had been involved in the lengthy and hard fought struggle to preserve the small scale scenic, rural fishing community and economy on the ecologically sensitive and unique Bay of Fundy with its endangered right whales.

At the same time the Bilcon decision has been making waves internationally, sparking a new level of long standing debate about the failures of NAFTA Chapter 11 to safeguard laws put in place by democratic nations. In this regard it has been providing ammunition for the tireless crusade of activist lawyers, researchers and NGOs fighting to have this mechanism removed from the upcoming mega-trade agreements under negotiation: the Trans-Pacific Trade and Investment Agreement (TPPA), the Transatlantic Trade and Investment Partnership and the Canada- EU Comprehensive and Economic Trade Agreement (CETA).

Panel implementation and actions

The Bilcon case goes back to 2004 when a Joint Review Panel (JRP) was appointed by two levels of the Canadian government to review the Bilcon proposal in order to determine the potential effects of this project on the environment and the community before recommending whether the government should approve the project. After three years of extensive community consultation, hearings, and review of documentation the Panel experts recommended against approval, which was followed by a similar decision by the Provincial and Federal governments.

The Review Panel, admitting to a somewhat unconventional approach, evaluated the proponent's project proposal and potential environmental impacts employing an 'adequacy analysis' framework using two lenses i) five key principles: public involvement, traditional community knowledge, ecosystem approach, sustainable development, and the precautionary principle and ii) by scanning through various policy and planning documents including the local level *Multi-year Community Action Plan* as well as many pieces of federal and provincial legislation for further guidance regarding the values and principles that should inform decisions about development project .

One of many environmental issues of particular concern was the potential impact on the endangered North Atlantic Right Whale which the Panel ruled could be threatened from increased blasting from the quarry and the increased shipping to and from the proposed site which would increase the chances of fatal collisions with the whales.

The Panel based its final decision on the assessment of a range of adverse environmental impacts in particular "core values of the community" which in their view were regarded as a "valued environmental component." This reasoning led to the following Panel conclusion:

The implementation of the proposed White's Point Quarry on Digby Neck and marine terminal complex would introduce a significant and dramatic change to Digby Neck and Islands, resulting in sufficiently important changes to the community's core values that warrant the Panel describing them collectively as a significant adverse effect that cannot be mitigated.

Bilcon's Challenge under NAFTA Ch 11 [Investor-State Dispute Settlement]

Bilcon's lawyers, Appleton and Associates, argued that the quarry decision had breached international law by treating Bilcon in a discriminatory, arbitrary and unfair manner under NAFTA article 1105 (minimum standard of treatment) and that they had also been treated differently than local companies under Article 1102 (National Treatment). Bilcon presented a number of claims against the JRP process including that they had been encouraged by the Nova Scotia government to invest in the quarry only to be subjected to a lengthy process which became entangled in a local web of politics. They also argued that the Panel review had been a rare, costly and cumbersome obstacle that should never have been allowed to go ahead and among other things that the Panel was biased. However, Bilcon's core complaint was that the Panel's decision to reject the quarry had been made based on the concept of "Community Core Values" which they argued was not part of the relevant legal and regulatory framework and of which they had no advance notice. They further contested the legitimacy of the concept suggesting that the notion of community core values had no place in the Constitution of Canada, the administrative law framework, the environmental legislation or any other relevant law. Bilcon also argued that in considering the notion of community core values, the environmental review had relied upon arbitrary, biased, capricious, and irrelevant considerations that amounted to a violation of rules in NAFTA including the guarantee of a "minimum standard of treatment" for foreign investors.

Finally Bilcon argued that because it had been unjustly "forced into a most expansive, expensive and time-consuming environmental assessment, it would sue Canada for \$188,000 as compensation.

The Tribunal's Decision:

The majority tribunal of Bruno Simma, chair, and Bryan Schwartz, investor's nominee, held Canada in breach of Chapter 11 of the North American Free Trade Agreement (NAFTA) finding Canada liable for unfair regulatory treatment and in breach of the minimum standard of treatment (article 1105), as well as national treatment (article 1102), to the U.S. claimants. The proponent's lawyers, Appleton and Associates, stated in a summary of the detailed 229 page Arbitration that the Tribunal reviewed the facts and found the JRP process fundamentally flawed under international law because the review panel failed to follow the stated rules and criteria, instead substituting unannounced criteria to reject the quarry. According to Appleton the Tribunal ruling also took into account the fact that the JRP failed to allow Bilcon to take any steps to address any adverse environmental effects through the adoption of mitigation measures.

The Majority Tribunal determined that the environmental impact assessment violated Canada's NAFTA obligation to afford Bilcon a "minimum standard of treatment" on the basis that this approach was "arbitrary", as per the interpretation of standards in the Waste Management II case, and that this arbitrary action had frustrated Bilcon's expectations about how the approval decision would be made.

The majority Tribunal also sided with the claimants in what they perceived as encouragement by enthusiastic local officials to pursue their investment only to find themselves in a regulatory review process that was expensive and "in retrospect unwinnable from the outset".

The Tribunal decision also ruled the JRP had violated Article 1102, National Treatment by not treating Bilcon as well as other Canadian proponents who were in similar circumstances.

The third lawyer on the Tribunal, Professor Donald McRae from the University of Ottawa, who was the Canadian government's nominee, delivered a strong dissent contending that the majority had turned what was nothing more than a possible breach of domestic law into an international wrong which should have been resolved in a Canadian federal court

Dissent: McRae's and other criticism of the Tribunal's findings.

Tribunalist Donald McRae's Dissent

In his formal 20 page Dissenting Opinion Donald McRae said the Panel was entitled to make its assessment on the basis of 'community core values' and that it was clearly within their mandate to do so. In this respect he stated that the term 'community core values' used by the JRP was merely a restatement encapsulating the various human environmental effects the project can have, which is something confirmed by Professor Meinhard Doelle referred to below. McRae also disagreed with the Majority Tribunal argument that the JRPs actions met the Waste Management II (referring to an earlier NAFTA tribunal case) standard of 'arbitrary', and found their reasoning somewhat circular and leading to a possible interpretation that any breach of Canadian law could be defined as arbitrary. He also noted that beyond the assertion of 'arbitrary', the Majority Tribunal made no attempt to show how the actions of the JRP were arbitrary. McRae believed the Panel thought what it was doing was justifiable and in regard to the charge of failure to mitigate he felt the Panel took the view that the project's problems as such could not be mitigated and hence the Panel did not need to provide a list of mitigations. McRae concluded that the most the Majority had shown was that there was a possibility that the JRP's analysis did not conform to requirements of Canadian Law and that this could have been clarified if the case had first been taken through a judicial review by a Canadian federal court which, unfortunately no Party determined to initiate. As such he felt that the NAFTA Tribunal decision did not meet the threshold in the Waste Management II case and that action of the JRP was not 'arbitrary' nor had the Majority shown any other standards of the Waste Management II case relevant, (i.e. that the minimum standard of treatment of fair and equitable treatment is infringed by conduct harmful to the State if conduct is arbitrary, grossly unfair, unjust, idiosyncratic, discriminatory and exposes claimant to sectional or racial prejudice or involves a lack of due process leading to an outcome which offends judicial propriety.) McRae makes another insightful criticism based on failure to litigate this issue in a Canadian court- which is that Canadian law does not provide a damages claim whereas NAFTA does. He also concludes that NAFTA was not intended to litigate domestic law and therefore you can't get a remedy under NAFTA Ch 11 for a breach of Canadian law. You can only get a remedy for a breach of NAFTA.

Donald McRae concludes his Dissent with three pages of implications of the Majority Tribunal's decision relating to the future ability of a nation state to apply their own environmental laws and conduct proper environmental assessment reviews. After ascertaining that the Majority's case was not appropriate to be reviewed under NAFTA he cited potential negative consequences of the NAFTA Tribunal decision as follows i) that this decision is a "significant intrusion into domestic jurisdiction" ii) that if the majority view in this case is to be accepted, then the proper application of Canadian law by an environmental review panel will be in the hands of a NAFTA Chapter 11 tribunal, importing a damages remedy that is not available under Canadian law. iii) that of even greater concern, would be the inability of states to apply their environmental laws, because the majority decision effectively subjugates 'human environment' concerns to the scientific and technical feasibility of a project. iv) that a chill would be imposed on environmental review panels which would then be concerned not to give too much weight to socio-economic considerations or other considerations of the human environment in case the result is a claim for damages. Finally, given all these considerations, he concludes that the decision of the majority will be seen as "a remarkable step backwards in environmental protection."

As Sierra Club US says in regard to the implications of the Bilcon Case decision:

In other words, the tribunal's ruling suggests not only that governments can run afoul of trade rules if they take community rights and values into account in environmental impact assessments, but also that foreign corporations should have the right to bypass domestic courts and sue governments for millions or even billions of dollars before extrajudicial tribunals if they don't agree with how governments are interpreting their own laws.

McRae substantiated by other legal experts vis a vis use of 'community core values'

Other experts have also defended the Panel's decision vis a vis the use of 'Community core values.

Dalhousie University Professor and Director of Dalhousie University's Marine & Environmental Law Institute, Meinhard Doelle shortly after the Tribunal's decision was announced, provided an in-depth interpretation of federal and Nova Scotia's environmental assessment law exposing where the Tribunal went wrong.

As he explained, the Whites Point Panel focussed its reasons for rejecting the project on its conclusion that the proposed project was inconsistent with "core community values". and once it concluded that the project would result in significant adverse environmental effects that could not be justified, did not suggest measures to mitigate adverse. Doelle states:

On both issues, the majority reached its conclusion in large part based on "expert legal advice" filed on behalf of the proponent, advice which seems to have offered a one-sided interpretation of the federal EA process, and no meaningful legal interpretation of the provincial EA process. Perhaps more importantly, it seems clear that the "expert legal advice" was completely misunderstood and misapplied by the majority of the NAFTA tribunal.

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In short Doelle says, the Whites Point Panel did exactly what it was asked to do and because of the broad definition of environmental effect (that includes all socio-economic effects), and the broad discretion left to the provincial Minister to decide whether to approve a project, there is no question that the provincial Minister acted within his legal authority when he followed the recommendation of the Whites Point Panel to reject the project. Where there was question was in regard to the authority of the federal officials to reject. He says the proponent had every opportunity to challenge the federal decision through a judicial review application before the Federal Court but didn't, unfortunately, because it would have been an opportunity to clarify a number of issues that practicing lawyers and legal academics have been debating for 20 years. Also he notes that none of this rich literature, much of it peer reviewed and supporting what the Whites Point Panel and the federal Minister did in this case, was referenced in the NAFTA ruling. Doelle concludes that the failure of the proponent to pursue any of the legal remedies available to it in Canada should have resulted in the dismissal of this case, as it leaves too much legal uncertainty for the NAFTA tribunal to deal with. In this case it appears that the failure to explore readily available domestic remedies put the NAFTA tribunal in an impossible situation.

Another Dalhousie Environmental Law Professor, David VanderZwag also explained how Nova Scotia law would allow the panel to interpret community core values as part of Environmental impact:

The Nova Scotia Environmental Assessment Regulations have defined an 'environmental effect' as including, 'any effect on socio-economic conditions, on environmental health, physical and cultural heritage or on any structure, site or thing including those of historical, archaeological, paleontological or architectural significance'. This wording provides a firm basis in law to justify the inclusion of social, economic, and community-based concerns within the assessment of the Whites Point Quarry proposal.

Gretchen Fitzgerald, Executive Director of Sierra Club Canada Atlantic, also stated in an op-ed submitted to the Chronicle Herald that:

The company was told clearly and in many ways that the environmental assessment would include an evaluation of how the project would impact local communities. This should come as no surprise: as every Grade 8 student learns, sustainability is the confluence of environmental, economic, and social factors. Our laws are written to reflect the fact that we are part of the fabric of life; environmental damage damages our communities in big and small ways.

Legal expert on investment agreements and head of the Green Party of Canada, Elizabeth May, also defended the Panel's conclusions noting that language used in the Tribunal's decision confirms that the international trade lawyers involved in the decision did not have even the most rudimentary understanding of the environmental assessment process.

Professor Doelle echoed Ms May:

I have found a NAFTA Tribunal that lacked, with the exception of the dissenting member, even a basic understanding of the legal context within which the decisions it was asked to rule on were made. It also lacked any real appreciation for the factual context within which the decisions being challenged were made...

Professor Nigel Barnes, Law Professor, University of Alberta commenting on the case in a recent University of Calgary Faculty of Law Blog on Developments in Alberta (ABlawg) referred to Donald McRae's strong dissent, adding that he had nothing to add to Mr. McRae's excellent critique while also referring his readers to Meinhard Doelle's post on the decision.

As noted in the introductory statements above, the Bilcon case has become a lightning rod for those law professors, lawyers, NGOs, researchers and activists who are producing statements, press releases, and news articles with the aim of trying to stop the inclusion of ISDS in the mega- trade agreements. In these writings they are pointing to the risks as spelled out in the Bilcon dissent should governments ratify TPP, TTIP, and CETA with ISDS still intact. US activists are also citing Bilcon in their attempts to stop a Fast Track vote in Congress. As recently noted in a paper published on the University of Oslo PluriCourts Blog on the Legitimacy of the International Judiciary:

For those opposing the inclusion of ISDS provisions in these agreements, the Bilcon decision is ammunition for the argument that investment treaty arbitration improperly bypasses potential domestic remedies, and that it interferes with a sovereign's ability to regulate in the public interest, protect the environment, or protect human health.

Among these recent writings referencing Bilcon, another pertinent critique comes from Lisa Sachs and Lise Johnson, director of the Columbia Center on Sustainable Investment, and Head of Investment Law and Policy at the Columbia Center respectively, who after describing the Majority Tribunal's reasoning for overturning the Panel's decision to reject Bilcon's proposal stated:

In fact, the arbitrators got the international law standard wrong. The parties to the NAFTA—the United States, Canada and Mexico—have all repeatedly clarified that ISDS is not meant to be a court of appeals sitting in judgment of domestic administrative or judicial decisions. Yet in Bilcon, the majority of the arbitrators gave only lip service to the NAFTA states' positions.

In other words the Majority Tribunal lawyer's ignored the clear intent of NAFTA's provisions and provided a judgement dismissive of domestic law.

And unfortunately for Canada it cannot even appeal this major misinterpretation because under ISDS, governments cannot overturn arbitral decisions for getting the law or facts wrong and Governments and their taxpayers remain responsible for paying out wrongfully decided ISDS awards.

Implications:

Shortly after the release of the Tribunal's decision, Lawrence Herman, international trade lawyer, reported in *Canada Loses Another Investment Dispute Under NAFTA*, that the Tribunal results were likely to stir up considerable controversy, because of Donald McRae's strong dissent, and statement that the NAFTA Tribunal went far beyond its jurisdiction under the treaty in questioning the reasoning of the federal-provincial environmental panel. As can be inferred from the degree of dissent articulated above, Herman's predictions were insightful and prophetic.

The implications of the Bilcon case include not only the threats to environmental law and assessment as outlined by Professor McRae. The Bilcon case when dissected also exposes many inherent flaws of NAFTA Ch 11, designed as it was from a business perspective to ensure protection for foreign investors with far less regard for the public welfare role of government. These insights are particularly relevant given the high level of debate in the EU Parliament around ISDS in TTIP and subsequently CETA as well as concerns that abound in regard to TPPA and ISDS.

These implications will be assessed in a forthcoming paper to follow on the heels of this one entitled: *Digby Neck Bilcon Tribunal Decision Sparks International Debate over Flaws and Failures of ISDS*

** Janet M Eaton, PhD [Marine Biology] Dalhousie University, is an independent researcher, and part-time academic who has taught courses in *Critical perspectives on Globalization, Community Political Power and Environment and Sustainable Society*. She has been a volunteer with Sierra Club Canada for over a decade, was one of four SCC researchers who contributed to the Terms of Reference for the proponent's Environmental Impact Statement [EIS] and to Sierra Club Canada's lengthy response to Bilcon's EIS. She also testified twice before the Joint Review Panel. Since then Janet has been an international trade representative for SCC on the national Trade Justice Network, was a SCC International Representative for Corporate Accountability, and maintained a blog site on international trade for SCC. In latter years she has followed closely the emergence of the international debate to reject or radically reform ISDS in free trade and investment agreements. See:

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What Do International Trade Agreements Have to Do With Dinner?

By Elizabeth Grossman, [Civil Eats](#) May. 20, 2015

International trade agreements may seem like a long way from what you're making for dinner. But the two agreements on the table this spring — the [Trans-Pacific Partnership](#) (TPP) and the [Transatlantic Trade and Investment Partnership](#) (TTIP) — could have a profound impact on the food we eat.

The agreements have been negotiated [behind closed doors](#) and could be submitted to Congress soon. In the case of the TPP, it could even happen this week. If Congress approves what's called "[fast-track](#)" authority, the agreements would have to be voted on as is — without any changes. And Monday morning, [Reuters reported](#) that the U.S. lost its appeal to the WTO for repeal of country of origin labeling (COOL) requirements for meat.

Civil Eats spoke to experts to find out what consumers need to know about these agreements.

What products do the TPP and TTIP cover?

"Everything from pork to pomegranates to [prawns]," could be impacted by the deals, says [Food & Water Watch](#) research director and senior policy advocate Patrick Woodall.

All types of food would be included: meat, produce, seafood, and processed food.

What countries are involved?

The TPP would include Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam. Once the agreement is in place, other countries could join. According to Woodall, those that have expressed interest include China, Indonesia, Korea, the Philippines, and Thailand.

The TTIP, on the other hand, would include the 28 countries of the European Union.

The U.S. already has free trade agreements with many of these countries. But the new agreements would supplement those currently in place and it's expected that TPP and TTIP rules would prevail.

How do these agreements work?

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The goal of the TPP — like other such free trade deals — is to make it easier for countries to export their products to others in the agreements. It does so by removing “barriers to trade,” like import taxes and other regulations that can make it difficult to export or import certain products.

Center for Food Safety’s international director, Debbie Barker, says it’s important to remember that the TPP and TTIP, “like other modern day trade agreements, have gone beyond the historical role of dealing with tariffs and quotas.” This means softening or even doing away with regulations in order to facilitate trade.

When it comes to food, this could mean relaxing rules that limit pesticide residue on produce, restrict antibiotic, pharmaceutical or other chemical use in aquaculture and livestock production or additives, including nanomaterials in food processing. It could also interfere with labeling requirements.

For example, the TTIP could potentially lead to reducing EU requirements for labeling food containing genetically engineered ingredients and nanomaterials. It could also relax rules for meat produced with certain antibiotics and hormones, poultry raised on feed additives that contain arsenic, and meat produced with a growth-promoting drug called ractopamine.

These agreements could also threaten labeling programs designed to promote locally produced food.

The TPP and TTIP also include provisions that allow countries and businesses to challenge new regulations considered obstacles to trade that would adversely affect anticipated profits.

How do the two agreements differ?

In the U.S., consumer advocates are concerned that the TPP will mean less safe food imported into the U.S. In Europe, there’s concern that the TTIP will relax the EU’s more stringent standards for meat, pesticides, and GMOs.

Overall, the EU’s approach to food safety and chemicals is considered more precautionary than the United States’. But what’s allowed, say, in Asian aquaculture, is considered less stringent than what’s allowed in the U.S. Yet there are also countries in the TPP with policies that could restrict imports of U.S. products — such as Peru, which requires labeling of food containing GMOs and Japan, which has stringent food additive standards.

It’s likely that both agreements will lower the standards for food safety across the board, simply to allow more food to be imported and exported between the partner nations.

Would these trade agreements make our food less safe?

That is the concern of U.S. Representatives Rosa DeLauro (D-Connecticut), Chellie Pingree (D-Maine), and Louise Slaughter (D-New York), who held a press conference last week.

The section of the TPP that covers food safety has these members of Congress — along with many environmental and consumer advocates — worried. “Trade trumps food safety,” DeLauro said of the TPP.

The U.S. Trade Representative — the White House office that negotiates trade agreements — has compiled an enormous list of these “non-tariff” trade barriers. They include treatments required to protect against pathogens, use of specific drugs in livestock, required disease testing methods, regulations restricting biotechnology (including genetic engineering), food additives, and shelf-life standards.

Why is seafood a particular concern?

Because about 90 percent of the seafood Americans consume is imported, especially from countries in the TPP, the agreement could affect the shrimp, tilapia, crab, catfish, tuna, and lots of other types of seafood filling supermarket freezers.

While current U.S. regulations require country of origin labeling for imported meat, fish, and produce, “processed” seafood is exempt from these requirements. That means fish sticks, canned tuna, frozen boiled shrimp or any seafood that’s been cooked or prepared in any way, is exempt from COOL requirements.

In 2012, the U.S. imported about 2 billion pounds of seafood from TPP countries. Shrimp, tuna, and farmed freshwater fish are the leading U.S. seafood imports. Much of this comes from Asia; TPP could mean even more.

While there are rules that essentially say imported meat and eggs have to meet safety standards that are equivalent to those in the U.S., there are no such rules for seafood.

And, as has happened with country of origin requirements for meat, these regulations can be challenged under free trade agreements like the TPP and TTIP.

Why are increased imports a concern?

Under the current volume of food imports, the U.S. Food and Drug Administration (FDA) physically inspects only about 2 percent of imported food. The concern is that if import volumes grow — as they have under other free trade deals, including NAFTA — even less will be inspected.

What happens next?

If “fast-track” authority passes both the House and Senate, the TPP and TTIP could be submitted to Congress for a vote that would have to come within 90 days.

The Obama administration is promoting these agreements as boons to U.S. businesses — including farmers and ranchers — large and small. While many businesses are looking forward

to increasing exports, consumer, environmental, and labor advocates and not a few members of Congress say the trade deals are not such a good deal.

American consumers are now demanding transparency in food sourcing and want more local food, says Representative Chellie Pingree. Flooding the marketplace with “cheap imports” with no ability for consumers to tell the difference is not what they want, she says. “Once the damage is done, it will be very hard to undo.”

About the Writer

Elizabeth Grossman is a Portland, Oregon-based journalist specializing in environmental and science issues. She is the author of *Chasing Molecules*, *High Tech Trash*, *Watershed* and other books. Her work has appeared in a variety of publications, including *Scientific American*, *Environmental Health Perspectives*, *Yale e360*, *Ensisia*, *High Country News*, *The Pump Handle*, *Chemical Watch*, *Washington Post*, *TheAtlantic.com*, *Salon*, *The Nation*, and *Mother Jones*.

<http://www.nytimes.com/2015/05/22/opinion/paul-krugman-trade-and-trust.html?emc=eta1>

[The Opinion Pages](#) | Op-Ed Columnist

Trade and Trust

Paul Krugman

MAY 22, 2015

One of the Obama administration's underrated virtues is its intellectual honesty. Yes, Republicans see deception and sinister ulterior motives everywhere, but they're just projecting. The truth is that, in the policy areas I follow, this White House has been remarkably clear and straightforward about what it's doing and why.

Every area, that is, except one: international trade and investment.

I don't know why the president has chosen to make the proposed Trans-Pacific Partnership such a policy priority. Still, there is an argument to be made for such a deal, and some reasonable, well-intentioned people are supporting the initiative.

But other reasonable, well-intentioned people have serious questions about what's going on. And I would have expected a good-faith effort to answer those questions. Unfortunately, that's not at all what has been happening. Instead, the selling of the 12-nation Pacific Rim pact has the feel of a snow job. Officials have evaded the main concerns about the content of a potential deal; they've belittled and dismissed the critics; and they've made blithe assurances that turn out not to be true.

The administration's main analytical defense of the trade deal came earlier this month, [in a report from the Council of Economic Advisers](#). Strangely, however, the report didn't actually analyze the Pacific trade pact. Instead, it was a paean to the virtues of free trade, which was irrelevant to the question at hand.

First of all, whatever you may say about the benefits of free trade, most of those benefits have already been realized. A series of past trade agreements, going back almost 70 years, has brought tariffs and other barriers to trade very low to the point where any effect they may have on U.S. trade is swamped by other factors, [like changes in currency values](#).

In any case, the Pacific trade deal isn't really about trade. Some already low tariffs would come down, but the main thrust of the proposed deal involves strengthening intellectual property rights — things like drug patents and movie copyrights — and changing the way companies and countries settle disputes. And it's by no means clear that either of those changes is good for America.

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On intellectual property: patents and copyrights are how we reward innovation. But do we need to increase those rewards at consumers' expense? Big Pharma and Hollywood think so, but you can also see why, for example, Doctors Without Borders is worried that the deal would make medicines unaffordable in developing countries. That's a serious concern, and it's one that the pact's supporters haven't addressed in any satisfying way.

On dispute settlement: a leaked draft chapter shows that the deal would create a system under which multinational corporations could sue governments over alleged violations of the agreement, and have the cases judged by partially privatized tribunals. Critics like Senator Elizabeth Warren warn that this could compromise the independence of U.S. domestic policy — that these tribunals could, for example, be used to attack and undermine financial reform.

Not so, says the Obama administration, with the president declaring that Senator Warren is “absolutely wrong.” But she isn't. The Pacific trade pact could force the United States to change policies or face big fines, and financial regulation is one policy that might be in the line of fire. As if to illustrate the point, Canada's finance minister recently declared that the Volcker Rule, a key provision of the 2010 U.S. financial reform, violates the existing North American Free Trade Agreement. Even if he can't make that claim stick, his remarks demonstrate that there's nothing foolish about worrying that trade and investment pacts can threaten bank regulation.

As I see it, the big problem here is one of trust.

International economic agreements are, inevitably, complex, and you don't want to find out at the last minute — just before an up-or-down, all-or-nothing vote — that a lot of bad stuff has been incorporated into the text. So you want reassurance that the people negotiating the deal are listening to valid concerns, that they are serving the national interest rather than the interests of well-connected corporations.

Instead of addressing real concerns, however, the Obama administration has been dismissive, trying to portray skeptics as uninformed hacks who don't understand the virtues of trade. But they're not: the skeptics have on balance been more right than wrong about issues like dispute settlement, and the only really hackish economics I've seen in this debate is coming from supporters of the trade pact.

It's really disappointing and disheartening to see this kind of thing from a White House that has, as I said, been quite forthright on other issues. And the fact that the administration evidently doesn't feel that it can make an honest case for the Trans-Pacific Partnership suggests that this isn't a deal we should support.

<http://www.agweb.com/article/dairy-groups-praise-senate-passage-of-tpa-call-for-quick-house-action--NAA-dairy-today-editors/>

Dairy Groups Praise Senate Passage of TPA, Call for Quick House Action

May 23, 2015 11:56 AM

“Trade promotion authority is crucial to concluding trade agreements that will open foreign markets to more U.S. dairy products.” -- NMPF President and CEO Jim Mulhern.

Source: National Milk Producers Federation/U.S. Dairy Export Council

ARLINGTON, VA – The National Milk Producers Federation and U.S. Dairy Export Council today commended the Senate for approving new Trade Promotion Authority (TPA) legislation. They urged members of the House of Representatives to quickly pass their own TPA legislation.

“Trade promotion authority is crucial to concluding trade agreements that will open foreign markets to more U.S. dairy products,” said NMPF President and CEO Jim Mulhern. “In the Trans-Pacific Partnership negotiations in particular, having TPA in place is essential to increase pressure on Japan and Canada to extend their best offers.”

USDEC President Tom Suber added, “Knowing that a trade agreement will be considered by Congress under Trade Promotion Authority paves the way to press our negotiating partners to make their best offers on the most sensitive issues. Clearly, dairy exports fall into that category, and the U.S. needs all the tools it can muster to get the best possible deal.”

The two organizations said TPA will increase congressional influence over trade negotiations and lead to agreements that are better for both the country and the dairy industry. They urged the House to take up TPA legislation soon after returning from the Memorial Day recess.

TPA, which expired in 2007, is important to the U.S. dairy industry because the United States now exports the equivalent of one-seventh of its milk production.

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http://www.bostonglobe.com/opinion/2015/05/24/trade-about-consumers-buying-things-they-desire/M7iY7suggp0VURHVGLLyRJ/story.html?s_campaign=8315

Trade is about consumers buying things they desire

By [John E. Sununu](#) May 25, 2015

Why do the most rabid protectionists always kick off their tirades by insisting that they really do support trade? Of course, there's always a qualifier. They merely require that any trade deal — insert an appropriately amorphous or unattainable goal here — “is fair,” “guarantees workers rights,” “lowers the trade deficit,” “promotes democracy,” or cures the common cold. Admittedly, neither Alabama Senator Jeff Sessions nor Elizabeth Warren of Massachusetts have yet used that last excuse, but you get the point.

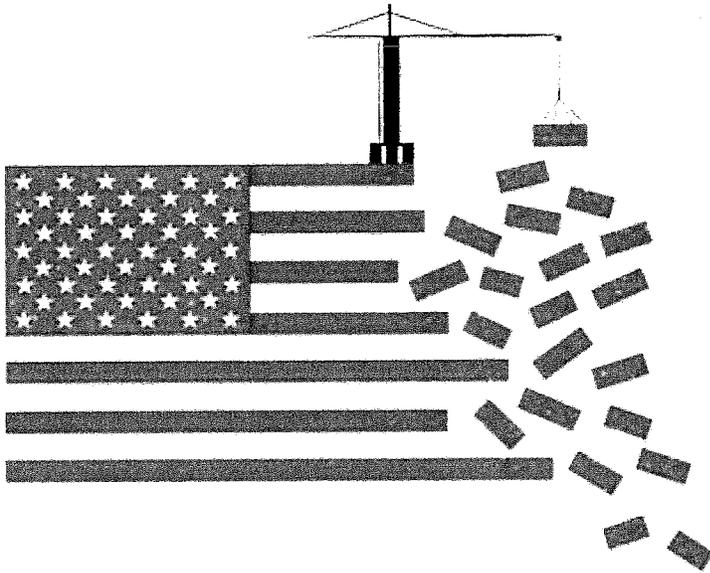
It's not as if resistance to international trade represents some new or progressive concept. The same sentiments fueling opposition to the trade measures before Congress today stoked the fires of opposition to trade with Japan in the 1980s, with Canada and Mexico under NAFTA in the 1990s, and the African Growth and Opportunity Act of 2000. For that matter, debates about import tariffs dominated national politics throughout the 1830s and '40s.

Yet throughout it all, one inevitable, irresistible, economic fact remains: With or without the United States of America, the volume of global trade will continue to increase — steadily and relentlessly — as it has for hundreds of years. For all the talk about tariffs, workers rights, and catfish labeling, at the end of the day trade is about consumers buying things they desire: Japanese buying Kentucky bourbon or Boeing Aircraft, Americans purchasing rugs made in Pakistan, or Italian shoes.

People want what they want, and trade works for them. It works for American consumers by providing access to less expensive goods; it makes the American economy more efficient by attracting capital to our most productive areas; and it gives American companies better access to overseas markets by reducing trade barriers.

Presidential Trade Promotion Authority, passed by the Senate last week and to be taken up by the House in June, is simply about leverage. Ironically, trade opponents reject “fast-track” for the same reason advocates embrace it: TPA will make it easier for the president to negotiate complex trade deals. To be sure, TPA cannot prevent the president from negotiating a bad deal — nothing can. That's why Congress will (and should) always hold the right to reject any proposal.

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[*Barney Frank's open letter to Obama on trade*](#)

One of the effects of the Trans-Pacific Partnership will undeniably be increased inequality.

- [Who is writing the TPP?](#)

Clearly that does not satisfy antitrade activists who have always found it easy to rally isolationist emotions with stories of worker dislocations or objectionable trade barriers. In truth, however, domestic competition displaces far more workers than global competition; and [manufacturing production](#) has more than doubled since 1975. Global trade growth isn't a trend, it's a fact of life. Ignoring this cedes economic leadership and invites the rest of the world to forge agreements that set terms of trade and investment without us.

And as the Democrats' "antitrade left wing" undermines President Obama's agenda, Republicans are left to pick up the pieces. Leaders like Mitch McConnell in the Senate and [Paul Ryan](#) in the House have supported TPA for Democrat and Republican presidents alike. This is particularly instructive for those who have spent the past six years blaming "Republican partisanship" for the gridlock in Washington.

For all the talk about tariffs, workers rights, and catfish labeling, at the end of the day trade is about consumers buying things they desire.

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For his part, Obama hasn't done much to help the cause. His penchant for secrecy only reinforces frustrations with the administration's failure to share details of a Pacific trade agreement in the works. Such specifics are rarely disclosed publicly before deals are finalized, but it creates an easy rallying point for critics. Nor has his rhetoric been well suited to the moment. Obama was right to declare Warren was "wrong on this." But by suggesting opponents were simply driven by politics, he called their motives into question — a cardinal mistake in politics (though, ironically, one that Warren makes all the time).

In the end, Sessions and Warren will vote no, TPA will pass the Senate, and Paul Ryan will save Obama's agenda in the House. What was that saying about strange bedfellows?

John E. Sununu, a former Republican senator from New Hampshire, writes regularly for the Globe.

http://www.bostonglobe.com/news/nation/2015/05/26/new-balance-could-beat-back-nike-for-partial-win-pacific-trade-deal/OECYcqEiHV3rIZcZrCfqZK/story.html?s_campaign=8315

New Balance's voice heard on tariffs

Nike wanted an immediate end to tariffs on sneakers made overseas, but a gradual phaseout favored by New Balance seems likely to prevail

- By Jessica Meyers Globe Staff May 27, 2015

WASHINGTON — If they are still employed in future years, the New Balance factory workers who stitch fabric in Massachusetts and run sewing machines in Maine may owe their jobs to a hard-fought provision in one of the world's biggest trade deals.

The Boston-based maker of athletic shoes appears poised to score a partial victory against American behemoths like Nike that want an immediate end to tariffs on sneakers manufactured overseas. Instead, after a long lobbying battle by New Balance, the trade pact is likely to impose a gradual phaseout of the tariffs.

New Balance says it wants a slower phaseout to help it preserve nearly 1,400 manufacturing jobs in New England.

Negotiators have yet to finish the 12-nation pact, known as the Trans-Pacific Partnership, and have kept most details secret. Although any agreements could still unravel, the latest developments reveal how a privately owned New England company and its well-placed allies in Congress can wield surprising influence in a cutthroat industry dominated by global trade.

"The administration has heard our concerns and appears to be moving forward in a way to give us enough time to react," said Matt LeBretton, vice president of public affairs for Brighton-based New Balance. Although officials have disclosed no timeframe for any elimination of tariffs, "we're hopeful for the longest possible phaseout," he said.

The shoe fight serves as one example of the extensive behind-the-scenes jockeying taking place in Washington as the administration seeks to win over hesitant lawmakers like Senator Angus King, a Maine Independent, and Senator Susan Collins, a Maine Republican. Both have lobbied to keep the protectionist tariffs in place.

It also highlights the intense competition between New Balance and rivals in the athletic footwear industry, where globalization's effects are evident in the dearth of American shoe factories. New Balance, a century-old company owned by a former marathoner and his wife, is the only major athletic footwear business that still produces running shoes in the United States. But only about a quarter of the shoes New Balance sells in the United States come from its five New England factories. The rest are imported from Asian countries such as Vietnam, a member of the proposed Pacific trade accord.

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At the crux of the debate are tariffs on imported shoes that date back to the 1930s, when American footwear companies occupied bustling mill towns. Lawmakers intended to give US businesses a boost, but they turned into an impediment for the waves of shoe manufacturers who found cheaper labor abroad.

Tariff rates can stretch to 67.5 percent on shoes brought into the United States, and even on a cheap pair of \$15 to \$20 shoes can tack on another \$5 or so. The United States imports about 98 percent of its shoes.

“There are practically no jobs in the US where manufacturing is prevalent when it comes to footwear,” said Matt Priest, president of the Footwear Distributors and Retailers of America, a Washington-based trade organization that supports the Pacific deal. “These are just costs baked in that consumers end up paying.”

Priest said the immediate elimination of tariffs would benefit consumers and most American companies, but acknowledged the challenges involved in pushing a deal through Congress. “We don’t want the perfect to be the enemy of good,” he said.

The century-old company owned by a former When trade negotiations started to pick up, New Balance acted as the primary mover for the protections. The company rallied to keep the tariffs, cited the need to preserve domestic production, and drew lawmakers to its side.

King held up the confirmation of US Trade Representative Michael Froman until Froman agreed to visit New Balance’s Maine factories. Collins coordinated meetings between company executives and administration officials. Senator Edward J. Markey, a Massachusetts Democrat, peppered the trade representative with letters. Michael Michaud, a former congressman from Maine, handed the president a pair of New Balance sneakers that were made in the state.

“This is a family-owned company that has made a conscious decision to maintain a substantial amount of manufacturing of athletic shoes in the US,” King said in a recent interview. “We should not whack them. We should reward them.”

But the company has softened its tone in recent months and could still stand to benefit. Tariffs that help its American factories also raise the cost of its numerous shoes made elsewhere.

“It’s a win for them on the imported side, since many of these shoes will be made in Asia,” said Matt Powell, a sports industry analyst at NPD Group, a New York market research company. “And it’s a partial win on the US side in that they will have a little more time to respond to change. What they will do then, I don’t know.”

New Balance, without elaborating on specifics, said a slower phaseout of the tariffs would give the company more time to plan and to adapt its business model.

“Part of that is changing up in the factories what we do, how efficient we can be,” LeBretton said. “We look at what will allow us to make more in the US and not less.”

That is a promise that Nike, which has 12 times as many employees, has also made. The Oregon company vowed to create up to 10,000 American manufacturing and engineering jobs if the trade deal goes through. New Balance's entire staff barely tops 4,000.

Obama recently visited Nike to sell the bill, a controversial move due to its past use of Asian sweatshops. (The company announced the job promise in conjunction with Obama's trip.)

"It would have been nice for the president to come out and actually see people making shoes here and explain why [the deal] would be helpful for them," said New Balance's LeBretton.

Collins called Obama's move "the height of irony, because Nike does not have a single domestic manufacturing job left in the US."

But Obama, framed by a massive Nike logo, sought to emphasize how the country must confront a new set of global challenges and create standards for labor, the environment, and intellectual property before China determines those rules. China is not a member of the Pacific trade pact.

"This deal would strengthen our hand overseas by giving us the tools to open other markets to our goods and services and make sure they play by the fair rules we help write," he said.

Nike staff did not respond to requests for comment.

Trade agency officials say the final deal will ensure that all sides benefit.

"Made-in-America footwear manufacturers will find it easier to export," said Trevor Kincaid, a spokesman for the US trade representative. "American footwear brands will enjoy new efficiencies and lower costs because of TPP."

That is a tough selling point for skeptical lawmakers, many of whom Obama still needs to convince.

The House is expected to take up a bill next month that would grant the president greater authority, called "fast track," to conclude negotiations. The actual trade pact would be brought before Congress later, once the negotiations are complete. Congress would not be permitted to amend the proposal.

When the Senate advanced the "fast track" legislation earlier in May, both King and Collins voted against it, even though the final trade bill may offer these protections.

"These are people's lives in a small town where there are not other signs of economic activity," King said, recollecting the trips he has taken to Maine's bustling factories. "It's the equivalent of General Motors closing in Detroit."

http://www.bostonglobe.com/opinion/2015/05/26/realistic-debate-about-free-trade/oJEDgi5ZjNDDbTRPq9gj9O/story.html?s_campaign=8315#

A realistic debate about free trade

By Scot Lehigh Globe Columnist May 27, 2015

In recent weeks, the news coverage about the Trans-Pacific Partnership has revolved around President Obama's struggle to win fast-track authority from Congress. The broader question, however, should be this: If and when it's finalized and approved, how will the free trade pact affect income inequality in the United States?

The Economics 101 version is that free trade is an unalloyed positive, an economic sorting mechanism that lets each country focus on what it does best, thereby maximizing total economic output across member nations. But the view from 10,000 feet obscures dramatic differences in the economic topography.

It's obviously difficult to predict with any exactitude the effects of an agreement that remains more concept than detail. According to a Congressional Research Service synopsis of the various projections, one study concluded the pact could decrease the median wage by 0.6 percent. A second analysis predicts an overall economic gain for the United States, but says manufacturing will take a hit. That impact, however, will be more than offset by gains in the US services sector, which includes banking and insurance.

That projection underscores this reality: Free trade agreements have different consequences for different parts of the economy. If one's economic perch requires a college degree or is in a cutting-edge industry or with an enterprise that enjoys strong export potential, the likely impact will be positive. That person's firm may well find new business opportunities, while he or she will benefit from less expensive foreign goods. But workers in industries vulnerable to foreign competition may find their jobs at risk. In that case, the prospect of cheaper consumer goods obviously doesn't seem like an attractive trade-off.

Free trade theory addresses those disparate effects by noting that there will be more winners than losers — and that the winners can compensate the losers for the harm they suffer. That way, everyone is still better off.

Hmmm. Although that could happen, it doesn't generally occur in any substantial or sustained way. Yes, the federal government offers some retraining, relocation, and job-search help for workers displaced by trade. Younger workers in retraining can also qualify for a temporary stipend. Some workers over 50 who take a job at lower wages are eligible for income support capped at \$10,000.

That's better than nothing, certainly, but if you face the prospect of being out of work for an extended period or of taking a job that pays much less, it will seem like pretty thin gruel.

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Free trade agreements have different consequences for different parts of the economy.

In a vibrant economy, dislocated workers may find ample opportunities. But in sluggish times, trade-displaced workers will swell the pool of the unemployed, putting downward pressure on wages.

Clever policy makers could find ways to distribute free trade gains in a more equitable way to those who bear the brunt of free trade. But it's hard to imagine that happening in today's Washington. Alternatively, recognizing that free trade heightens economic inequality, the government could spend on policies and programs that promote higher wages and economic mobility. We could, for example, dramatically reduce the cost of a college education.

But at a time when there's no national agreement on a strategy to combat economic inequality, skeptics can't be blamed for fearing the benefits of the TPP will redound mostly to the better-off, while the ill effects will be felt principally by those on the lower rungs of the economic ladder.

Regardless of whether Obama wins fast-track authority, that's a discussion the country needs to have. It's a debate far more complex than the usual easy assurances about the value of free trade.

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