

**CITIZEN TRADE POLICY COMMISSION
DRAFT AGENDA**

Friday, March 22, 2013 at 9:30 A.M.
Room 214, Burton M. Cross State Office Building
Augusta, Maine

9:30 AM Meeting called to order

I. Welcome and introductions

II. Review of CTPC statutes (Lock Kiermaier, Staff)

III. PowerPoint presentation on TransPacific Partnership Agreement (Representative Sharon Treat, CTPC Chair)

IV. Review of current TPPA negotiations and status; "Overview of TransPacific Partnership Negotiations" (Representative Sharon Treat, CTPC Chair)

V. Review of previous CTPC letters (October 2012) to USTR about results of CTPC Assessment regarding Pharmaceuticals, Tobacco and Procurement (Lock Kiermaier, Staff)

VI. Articles of interest (Lock Kiermaier, Staff)

VII. Proposed next meeting date and suggestions for agenda topics

Adjourn

10 §11. MAINE JOBS, TRADE AND DEMOCRACY ACT

10 §11. MAINE JOBS, TRADE AND DEMOCRACY ACT

1. Short title. This section may be known and cited as "the Maine Jobs, Trade and Democracy Act."

[2003, c. 699, §2 (NEW) .]

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

A. "Commission" means the Citizen Trade Policy Commission established in Title 5, section 12004-I, subsection 79-A. [2003, c. 699, §2 (NEW) .]

B. "Trade agreement" means any agreement reached between the United States Government and any other country, countries or other international political entity or entities that proposes to regulate trade among the parties to the agreement. "Trade agreement" includes, but is not limited to, the North American Free Trade Agreement, agreements with the World Trade Organization and the proposed Free Trade Area of the Americas. [2003, c. 699, §2 (NEW) .]

[2003, c. 699, §2 (NEW) .]

3. Purposes. The commission is established 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.

[2003, c. 699, §2 (NEW) .]

4. Membership. The commission consists of the following members:

A. The following 17 voting members:

- (1) Three Senators representing at least 2 political parties, appointed by the President of the Senate;
- (2) Three members of the House of Representatives representing at least 2 political parties, appointed by the Speaker of the House;
- (3) The Attorney General or the Attorney General's designee;
- (4) Four members of the public, appointed by the Governor as follows:
 - (a) A small business person;
 - (b) A small farmer;
 - (c) A representative of a nonprofit organization that promotes fair trade policies; and
 - (d) A representative of a Maine-based corporation that is active in international trade;
- (5) Three members of the public appointed by the President of the Senate as follows:
 - (a) A health care professional;
 - (b) A representative of a Maine-based manufacturing business with 25 or more employees; and
 - (c) A representative of an economic development organization; and
- (6) Three members of the public appointed by the Speaker of the House as follows:
 - (a) A person who is active in the organized labor community;
 - (b) A member of a nonprofit human rights organization; and
 - (c) A member of a nonprofit environmental organization.

In making appointments of members of the public, the appointing authorities shall make every effort to appoint representatives of generally recognized and organized constituencies of the interest groups mentioned in subparagraphs (4), (5) and (6); and [2003, c. 699, §2 (NEW) .]

B. The following 4 commissioners or the commissioners' designees of the following 4 departments and the president or the president's designee of the Maine International Trade Center who serve as ex officio, nonvoting members:

- (1) Department of Labor;
- (3) Department of Environmental Protection;
- (4) Department of Agriculture, Conservation and Forestry; and
- (5) Department of Health and Human Services. [2003, c. 689, Pt. B, §6 (REV); 2007, c. 266, §1 (AMD); 2011, c. 657, Pt. W, §5 (REV) .]

[2003, c. 689, Pt. B, §6 (REV); 2007, c. 266, §1 (AMD); 2011, c. 657, Pt. W, §5 (REV) .]

5. Terms; vacancies; limits. Except for Legislators, commissioners and the Attorney General, who serve terms coincident with their elective or appointed terms, all members are appointed for 3-year terms. A vacancy must be filled by the same appointing authority that made the original appointment. Appointed members may not serve more than 2 terms. Members may continue to serve until their replacements are designated. A member may designate an alternate to serve on a temporary basis.

[2003, c. 699, §2 (NEW) .]

6. Chair; officers; rules. The first-named Senate member and the first-named House of Representatives member are cochair of the commission. The commission shall appoint other officers as necessary and make rules for orderly procedure.

[2003, c. 699, §2 (NEW) .]

7. Compensation. Legislators who are members of the commission are entitled to receive the legislative per diem and expenses as defined in Title 3, section 2 for their attendance to their duties under this chapter. Other members are entitled to receive reimbursement of necessary expenses if they are not otherwise reimbursed by their employers or others whom they represent.

[2003, c. 699, §2 (NEW) .]

8. Staff. The Office of Policy and Legal Analysis shall provide the necessary staff support for the operation of the commission. After one year, the commission shall assess the need for and qualifications of a staff person, for example, an executive director. If the commission determines that it requires such a person, it may request additional funds from the Legislature.

[2003, c. 699, §2 (NEW) .]

9. Powers and duties. The commission:

A. Shall meet at least twice annually; [2003, c. 699, §2 (NEW) .]

B. Shall hear public testimony and recommendations from the people of the State and qualified experts when appropriate at no fewer than 2 locations throughout the State each year on the actual and potential social, environmental, economic and legal impacts of international trade agreements and negotiations on the State; [2003, c. 699, §2 (NEW) .]

C. Shall every 2 years conduct an assessment of the impacts of international trade agreements on Maine's state laws, municipal laws, working conditions and business environment. The assessment must be submitted and made available to the public as provided for in the annual report in paragraph D; [2007, c. 266, §2 (AMD) .]

D. Shall maintain active communications with and submit an annual report to the Governor, the Legislature, the Attorney General, municipalities, Maine's congressional delegation, the Maine International Trade Center, the Maine Municipal Association, the United States Trade Representative's Office, the National Conference of State Legislatures and the National Association of Attorneys General or the successor organization of any of these groups. The commission shall make the report easily accessible to the public by way of a publicly accessible site on the Internet maintained by the State. The report must contain information acquired pursuant to activities under paragraph B and may contain information acquired pursuant to activities under paragraph C; [2007, c. 266, §3 (AMD) .]

E. Shall maintain active communications with any entity the commission determines appropriate regarding ongoing developments in international trade agreements and policy; [2003, c. 699, §2 (NEW) .]

F. May recommend or submit legislation to the Legislature; [2003, c. 699, §2 (NEW) .]

G. May recommend that the State support, or withhold its support from, future trade negotiations or agreements; and [2003, c. 699, §2 (NEW) .]

H. May examine any aspects of international trade, international economic integration and trade agreements that the members of the commission consider appropriate. [2003, c. 699, §2 (NEW) .]

[2007, c. 266, §§2, 3 (AMD) .]

10. Outside funding. The commission may seek and accept outside funding to fulfill commission duties. Prompt notice of solicitation and acceptance of funds must be sent to the Legislative Council. All funds accepted must be forwarded to the Executive Director of the Legislative Council, along with an accounting that includes the amount received, the date that amount was received, from whom that amount was received, the purpose of the donation and any limitation on use of the funds. The executive director administers any funds received.

[2003, c. 699, §2 (NEW) .]

11. Evaluation. By December 31, 2009, the commission shall conduct an evaluation of its activities and recommend to the Legislature whether to continue, alter or cease the commission's activities.

[2003, c. 699, §2 (NEW) .]

SECTION HISTORY

2003, c. 689, Pt. B, §6 (REV). 2003, c. 699, §2 (NEW). 2007, c. 266, §§1-3 (AMD). 2011, c. 657, Pt. W, §5 (REV).

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we require that you include the following disclaimer in your publication:

All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the Second Regular Session of the 125th Maine Legislature, is current through September 1, 2012, and is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

PLEASE NOTE: The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.

OVERVIEW OF TRANS-PACIFIC PARTNERSHIP NEGOTIATIONS

Inside U.S. Trade - 03/15/2013

USTR Highlights Four TPP Areas Where Negotiations Mostly Wrapped Up

Posted: March 14, 2013

SINGAPORE -- According to the Office of the U.S. Trade Representative, Trans-Pacific Partnership (TPP) negotiations are so far advanced in the areas of customs, telecommunications, regulatory coherence, and development that these issues will not be taken up again by technical experts and future rounds and "any remaining work in these areas will be taken up in late-stage rounds as the agreement is finalized."

In a press release issued March 13 upon conclusion of the 16th round of TPP talks, USTR said that shelving technical talks in these advanced areas "will allow the TPP countries to concentrate their efforts on resolving the most challenging issues that remain, including related to intellectual property, competition and environment."

Singapore's Ministry of Trade and Industry (MTI) put forth a similar message in a separate March 13 press release. It said the 11 TPP members made the most progress in those same four areas. TPP negotiations on small and medium-sized businesses (SMEs) is also mostly concluded, sources have said previously.

On regulatory coherence, sources said New Zealand tabled a new proposal in Singapore, although the details remained unclear. The original U.S. proposal on regulatory coherence established an obligation for each TPP party to "endeavor" to set up a regulatory coordination mechanism at the central level of government, and to consider establishing a national coordinating body for this purpose, according to a version of the text leaked in October 2011.

But the New Zealand approach appears to focus more narrowly on the issue of notification requirements. Sources said it was unclear whether, under the New Zealand proposal, notifications would be required only if and when a TPP party establishes a regulatory coordination mechanism, or every time that mechanism reviews a regulation.

Sources also disagreed on whether the New Zealand language would be in lieu of text proposed by the United States, or in addition to it.

In the press release, MTI said other areas of the TPP talks where discussions "continued in earnest" were services, electronic commerce, sanitary and phytosanitary (SPS) measures, technical barriers to trade and government procurement.

In the area of SPS, negotiators here discussed a non-paper floated by USTR that proposes a "consultative mechanism" for resolving SPS disputes. This proposal, which sources said involves the appointment of a neutral facilitator to resolve SPS disputes, falls short of the full dispute settlement for SPS obligations that U.S. agriculture and food groups have demanded.

One informed source said the paper was not received well at the negotiating table by some TPP countries, including New Zealand, that want full dispute settlement for SPS obligations.

The USTR non-paper does not mention a rapid-response mechanism (RRM) for quickly resolving SPS problems for perishable goods that has been proposed by U.S. agriculture groups, according to another informed source.

According to the MTI release, TPP countries recognize that "further deliberation" will be required in the more challenging areas of the negotiations, which include intellectual property, environment, competition and labor.

Labor negotiators at this round continued to discuss an approach to dispute settlement that is favored by Canada and based on the side accord to the North American Free Trade Agreement (NAFTA), although Canada does not appear to have tabled legal text on this issue, according to an informed source. Canada first defended this approach at the December negotiating round in New Zealand (*Inside U.S. Trade*, Dec. 14).

The NAFTA side accord limits enforcement of trade or investment-related labor rights violations to monetary fines. That differs from the U.S. approach in the TPP labor text, which allows for penalties in the form of fines as well as trade sanctions based on the amount of trade affected by a given pattern of labor rights violations.

This reflects provisions in the U.S.-Peru free trade agreement, which applies the same enforcement mechanism to labor and environmental obligations as it does to commercial requirements.

According to MTI, TPP negotiators also continued efforts here to develop market access packages on goods, services, investment and government procurement.

MTI said Singapore, as host of the 16th round, aimed to invigorate the talks, including by exploring "fresh configurations" for the negotiations. "One innovation was for some working groups to break into smaller informal meetings as part of the official negotiation agenda to tease out the more difficult issues with fresh eyes," Singapore chief negotiator Ng Bee Kim said in the release. "We are glad that it worked well and helped move our negotiations along."

A wide range of sources here said chief negotiators during this round ramped up their

engagement with the chapter negotiators, in some cases meeting several times a day to provide further direction.

The MTI press release also noted that the next event on the TPP calendar is a meeting of trade ministers from the 11 participating countries that will occur on the sidelines of an Asia-Pacific Economic Cooperation ministerial meeting slated to take place in Indonesia April 20-21.

Inside U.S. Trade - 03/15/2013, Vol. 31, No. 11

Inside U.S. Trade, Daily News

News Analysis

TPP Talks Make Some Progress, But 2013 Conclusion Still Unlikely

Posted: March 14, 2013

The 16th round of Trans-Pacific Partnership (TPP) talks just wrapped up in Singapore, and although negotiators were able to make progress on some issues, the work on the toughest issues is only just beginning and questions abound as to if and when the 11-party negotiations will really start coming together.

Of course, meetings among TPP officials will continue. TPP trade ministers will meet on the margins of an Asia-Pacific Economic Cooperation (APEC) meeting in mid-April, and negotiators will then get together in Peru in May for the 17th formal round of talks.

Under the current schedule, there will then be one more round in September before a summit of APEC leaders in October, the informal goal for concluding the talks. But TPP countries may try to squeeze in an additional round in July to help achieve more progress before the summit.

As they move forward, negotiators will have to consider how elections in TPP countries could affect the ongoing talks. Elections are scheduled this year in Chile, Malaysia and Australia, although some believe the Australian election could make that country more flexible on the issue of investor-state dispute settlement.

Also complicating matters is the fact that the Office of the U.S. Trade Representative is faced with a restricted budget and the prospect of starting up massive new trade negotiations with the European Union this summer. USTR understands this is a crucial year to push forward on TPP to ensure the talks do not drift endlessly, sources say.

At the same time, few participants and private-sector stakeholders believe the talks are likely to wrap up this year – even if Japan does not join – because of all the unresolved issues. A quick

TPP conclusion is even more elusive if Japan joins, which is increasingly likely with an announcement by Prime Minister Shinzo Abe on Japan's interest in doing so expected tomorrow (March 15).

The Singapore round already highlighted the additional difficulties that can arise when new countries join. Stakeholders in Mexico, for instance, are pushing hard for exemptions from full tariff liberalization for a wide variety of items, including textiles, apparel, footwear and dairy products. While this may help provide cover for other TPP members who also want exemptions, it raises questions about whether the addition of Mexico and Canada will end up slowing down the talks, or lowering the overall level of ambition.

On the positive side, issues like customs, telecommunications, regulatory coherence and development are closed up, except for key political decisions that will be made later. USTR announced this week that negotiators will not return to these areas until "late-stage rounds."

One of the key issues to be resolved arises in the U.S.-Vietnam textile and apparel negotiations, where there were some positive signals in this round. USTR floated the concept of "short supply" deviations from the strict yarn-forward rule of origin that it has proposed, and Vietnam appears open to at least considering this approach. Vietnam made clear at this round that it wants to learn more about how these exceptions would work, and then see if it is a "good way forward."

On the other hand, USTR is still devising the exact parameters of its initial proposed list of short-supply exceptions, and industry sources said the exchanges on this issue in Singapore likely consisted of USTR briefing other countries about its process for doing so.

Some believe that USTR is unlikely to present a complete list of exceptions at the May round; once it does present a list, it will take considerable time for Vietnam to respond and for the two to work out a deal.

On the overall issue of goods market access, the U.S. and Vietnam have still not reached major breakthroughs. In fact, one source said the U.S. "undefined" basket, which covers those items that would have a phase-out period for tariffs of an indeterminate length, still included about 1,000 items going into the Singapore round. If that is true, it is another clear indication of how far off from agreement TPP partners are.

In other difficult areas -- including intellectual property (IP), state-owned enterprises (SOEs), environmental protections and goods market access -- the Singapore round offered somewhat modest results.

On pharmaceutical IP protections, negotiators at least resumed a conversation that has been dormant -- at formal TPP rounds, at least -- since March 2012. But that exchange in Singapore was general and focused on exchanging information to ensure all parties understand the way in which others handle IP issues. That level of generality may reflect the fact that Canada and Mexico were participating in talks on this subject for the first time.

The open question is when the U.S. will actually table a revised proposal and force TPP members to start making tough decisions, since it is already clear that it will not happen at the next round in Peru. Perhaps, as some stakeholders speculate, USTR will ultimately not alter its proposal to make it acceptable to all TPP participants. Alternatively, USTR could ask that its current proposal apply to developed TPP members, while developing TPP members can adhere to a lower standard of IP protection.

Another theory is that USTR prefers to build momentum in less controversial areas of the talks and return to IP later on, when the negotiations are closer to completion.

It may be taking that same strategy with other controversial proposals, including its "safeguard" for tobacco regulations, which it floated in mid-2012 but still has not tabled. USTR is also still hesitant to propose making sanitary and phytosanitary measures fully enforceable, as U.S. businesses want, and has floated a consultation mechanism instead.

On SOEs, negotiations also appear stuck at a pretty basic stage. Singapore, for instance, continues to argue that the very premise behind the U.S. proposal is misguided. Rather than focusing the application of rules on the issue of whether an entity is state-owned, disciplines should focus on anti-competitive behavior and seek to address that kind of behavior where it arises, it argues.

There are also no signs that any TPP countries have come back with textual amendments to the original U.S. proposal -- which the U.S. tabled all the way back in the fall of 2011.

Australia was expected to formally table an SOE legal text at this round based on a "principles-based" approach it had floated earlier, but decided to hold off. But Australia clarified at this round that these principles would be enforceable and would extend to the sub-central level. Application of disciplines at the sub-central level could be difficult for the U.S., as the U.S. proposal only covers central government SOEs.

On the issue of Japan joining this year, TPP negotiators -- and many U.S. business groups -- are

striking a cautious note in public, saying the door is open to Japan if it is willing to meet the high standard of the agreement and can help bring about the goal of concluding the talks in 2013. Stakeholders in New Zealand and Australia also offered their views on this issue in Singapore.

If Japan were to join, the prospect of concluding this year will have evaporated, although there is always room for negotiators to get creative. One possibility would be to place Japan on a "separate track," such that negotiations with Japan would continue even if the overall TPP talks come to a close, as had been suggested at an earlier point when Japan signaled it was considering joining.

PROCUREMENT

Inside U.S. Trade - 03/15/2013

In TPP, Canada May Seek Bilateral Deals With U.S. On Procurement, Visas

Posted: March 14, 2013

In the Trans-Pacific Partnership (TPP) negotiations, Canada may seek to negotiate bilateral deals with the United States on some of its priority issues, including government procurement rules that would free it from any "Buy America" restrictions and rules that promote the movement of business professionals between the two North American countries, Canadian Trade Minister Ed Fast announced yesterday (March 14).

Speaking at an event at the Peterson Institute for International Economics (PIIE), Fast hinted that both areas could be worked out bilaterally between the U.S. and Canada within the TPP talks. While stressing the importance of "robust outcomes" in TPP chapters dealing with these two issues, Fast said it is "certainly possible that that could be done in a bilateral agreement" with the U.S., in reference to these two Canadian priorities.

More broadly, Fast argued that bilateral deals within the regional TPP negotiations are needed to accommodate those situations where "unique circumstances that exist between two trading partners make it impossible to expand the application of the goals of those countries to all of the members." Negotiating a deal with the U.S. on movement of business professionals is certainly one example, and is a key focus of Canada, Fast told reporters after this speech.

"The TPP negotiations offer us a chance to optimize the rules for the easy movement of professionals and business people across our border," he said at the event. Fast said U.S. companies like Microsoft, Warner Brothers, IBM and Cisco have told him that "their businesses suffer when they cannot get the people they need across the border."

Facilitating the movement of professionals would likely require negotiating new rules on visas. Generally speaking, that is difficult for the U.S. to do within the context of TPP, or any other trade

agreement, because many members of Congress consider it inappropriate to deal with U.S. visa policy in that context. However, it is unclear whether Congress may be more open to a deal on visas in TPP if it only applied to Canada, but not to other TPP partners.

Fast also stressed that Canada wants to negotiate procurement rules in the context of the TPP talks that would help avoid the imposition of "Buy America" restrictions that have cropped up in the past. These restrictions have been a "persistent irritant" for Canadian companies, he said.

He never specified exactly what Canada wants to achieve on government procurement, and instead stuck to general descriptions. "Instead of more 'buy local' policies, what we need are stronger rules on government procurement" to ensure a "level playing field" and to "drive efficiency and competitiveness," he said. Fast also said Canada wants "rules that enhance governments' abilities to obtain the best value for taxpayer money in their purchasing."

Last week, a U.S. trade official was more specific, saying that Canada tabled a proposal during the Singapore round of TPP talks -- which wrapped up this week -- that aims to ensure that projects carried out by sub-federal entities with money provided by the central government will be open to competition from firms within TPP countries (*Inside U.S. Trade*, March 8). Fast was asked if this was accurate at the event, but declined to respond.

Canadian industry groups like the Canadian Manufacturers and Exporters (CME) have long pushed for this language. They want to avoid repeating a situation that arose in the 2009 U.S. stimulus bill, which excluded Canadian companies from participating in some sub-federal U.S. procurements paid for with federal stimulus money. Canadian industry groups highlighted this as a potential demand in TPP last October (*Inside U.S. Trade*, Oct. 12).

In response to Canadian complaints, the U.S. and Canada inked a deal in 2010 under which the U.S. waived "Buy American" requirements in stimulus-funded projects for Canadian firms, while Canada gave U.S. firms guaranteed access to its sub-federal government procurement markets in its provinces and territories (*Inside U.S. Trade*, Feb. 19, 2010).

Fast appeared to be referencing that 2010 deal when he noted that the relationship between Canada and the U.S. "is unique to the point where, on government procurement, we really should be looking at expanding our current arrangements under the Canada-U.S. procurement agreement."

Despite his focus on a U.S.-Canada bilateral procurement arrangement, Fast also signaled the importance of strong procurement rules among all TPP members.

For instance, he hinted that strong procurement rules could help ensure that U.S. firms have the access they need to infrastructure contracts in Southeast Asia. Canada may seek "rules that provide secure access to opportunities created by the rapid development of public infrastructures

throughout the Asia-Pacific region."

Fast also touched on some key structural issues and challenges facing Canada as it participates in the TPP talks, engages Japan bilaterally on a free trade agreement, tries to conclude FTA negotiations with the European Union, and contemplates the future of the North American Free Trade Agreement (NAFTA) in light of the fact that all three NAFTA partners are involved in TPP.

Fast said he expects NAFTA "will continue to be ... a key trilateral agreement amongst the three partner countries" even after TPP is concluded. But he cautioned that NAFTA partners would have to examine the final TPP outcome before deciding how TPP and NAFTA will relate to one another. Part of the reason NAFTA may still be valuable is because TPP may not be as ambitious across-the-board as NAFTA is, he signaled.

"I expect NAFTA will still exist because ... within a regional trade negotiation, you have the interests of ... different partners that have to be satisfied," meaning an individual country does not always get everything it wants, he said. "We would want to wait until we see the outcome" of TPP before deciding the fate of NAFTA, he added.

Concerning the possibility that Japan could join the TPP talks later this year, Fast conceded that that would add "another level of complexity" to the talks, although he said it would still be his goal to complete the negotiations by the end of the year, regardless of whether or not Japan joins.

But the Canadian trade minister also admitted that there are "many, many issues outstanding" among the current 11 participants and that completion of the TPP this year is "quite a daunting task."

Fast also signaled that Canada will continue its bilateral FTA talks with Japan even in the event that Japan were to join the TPP group. "We see them not being mutually exclusive in that perfect sense," he said, in reference to the Canada-Japan talks and the possibility of Japan joining TPP. He noted that the next negotiating round between Canada and Japan is scheduled to take place next month.

Overall, Fast signaled an openness to Japan joining TPP, saying Japan is a large economy and a "significant asset" to any trade negotiations.

The Canadian minister also stressed that Canada is watching the burgeoning U.S.-EU negotiations very carefully and mulling the impacts it could have on Canada. Gary Hufbauer, an expert at PIIE, asked Fast at the event if it is true that in the context of the Canada-EU negotiations, the EU has informally said that it will give Canada extra concessions beyond what was negotiated in their bilateral FTA to match what the EU ends up offering to the U.S. in any

U.S.-EU trade deal.

Fast declined to answer directly. "I can tell you that given the nature and the level of integration of the Canadian and American economies, obviously on the Canadian side, we have very clearly turned our minds to what happens beyond our agreement with the EU," he said. "We have to look to what happens between the U.S. and EU."

Moreover, he added that Canada has "taken extra care to ensure some of the opportunities we have to enhance even further our integration between [Canada and the U.S.] could take place ... if a U.S.-EU agreement is actually finalized." Fast also noted that some observers are speculating that once the U.S. and EU have a deal, it could "morph into a trans-Atlantic arrangement" incorporating the U.S., Canada, Europe and, presumably, Mexico.

Fast also touched on several other issues. For instance, he argued that sequestration -- and the budget cuts it enforced on U.S. agencies starting March 1 -- could hamper U.S.-Canada trade. "One of the concerns that I would express is that if sequestration is not addressed very soon, that we would see significant withdrawal of resources at our borders that would reinstate some of the very clear barriers that still exist at the border," he said.

This week, Fast met with business associations in Washington and also was slated to meet with various members of Congress, including Rep. Sander Levin (D-MI), the ranking member of the Ways and Means Committee. He was also scheduled to meet yesterday with Reps. Devin Nunes (R-CA) and Charles Rangel (D-NY), the chairman and ranking member, respectively, of the Ways and Means trade subcommittee.

Inside U.S. Trade - 03/15/2013, Vol. 31, No. 11

PHARMACEUTICALS

Inside U.S. Trade - 03/15/2013

TPP Countries Slowly Restart Formal Talks On Pharmaceutical IP Protections

Posted: March 14, 2013

SINGAPORE -- After roughly a year hiatus, countries participating in the Trans-Pacific Partnership (TPP) talks here restarted formal 11-party talks on pharmaceutical intellectual property rights (IPR), although the nature of that conversation was fairly basic. At the 16th round of negotiations, which wrapped up this week, as well as at the next formal round, TPP negotiators will focus on exchanging information, not text-based negotiations.

At a March 13 press conference, Singaporean chief negotiator Ng Bee Kim said negotiators will not discuss the existing U.S. proposal in this area, nor will they discuss any possible revision of

the U.S. proposal, at the next negotiating round, which is slated to take place May 15-24 in Lima, Peru. "For the coming round in Lima, there will continue to be discussion on this issue, but it will not be on textual proposals," Ng said.

The talks here on pharmaceutical IPR also did not delve into the specifics. "Countries shared respective information about their systems, and the delegations have also agreed to continue this exchange of information into the next round with a view to finding possible common grounds on this issue," Ng said. Before this week, TPP negotiators had not met formally to discuss pharmaceutical IPR since the Melbourne round back in March 2012.

Pharmaceutical IPR is one of the most contentious areas of the talks. The U.S. proposal, which focuses on the concept of an "access window," has been roundly rejected by many TPP partners. In response, the U.S. is now in a period of reviewing its proposal, and stakeholders are eager whether and how the U.S. opts to alter its proposal to make it more palatable to other TPP members.

While the comments by the chief Singaporean negotiator this week do not technically rule out the possibility that the U.S. could table a revised legal text prior to the Peru round but not discuss it there, one observer here said that scenario is highly unlikely. It is "impossible to believe" that TPP countries would avoid discussing a new legal text from the U.S. if it were on the table, this observer argued.

With negotiators saying they want to wrap up negotiations this year, however, this latest development does raise questions about when text-based negotiations will resume in this crucial area. After Lima, the next formal round that is now on the schedule will not take place until September, although there observers say TPP partners may schedule another round in July, after Lima and before that September round.

One observer offered several possible explanations for why the U.S. is apparently still holding off on tabling a revision. One possibility is that the administration simply needs more time in its deliberations. Another possible explanation is that Peru, which has the ability to set the agenda for the May round, has refused to allow a discussion on a revised U.S. proposal at that round, and wants to stick only to information exchange on this topic.

A third possible explanation is that TPP countries are aware that Japan may formally enter the negotiations sometime after the May round (see related story), and therefore want to ensure that Japan has the ability to negotiate on this sensitive issue, the observer said. The U.S. may believe that having Japan at the table could help drive a more favorable outcome on pharmaceutical IPR, this source speculated.

Speaking at the March 13 press conference, U.S. chief negotiator Barbara Weisel said the U.S.

internal review of its proposal has not yet concluded. "We have been internally discussing what approaches might be possible in the United States and those consultations ... are still underway, and until we conclude those discussions internally, we will not be prepared to put forward a proposal," she said.

Weisel did not give any indication as to when the U.S. would table a new proposal. She also clarified that the discussions on pharmaceutical IPR held in Singapore consisted only of an exchange of information to ensure that all parties understand the way in which others handle pharmaceutical intellectual property issues. That input will be valuable in informing the internal discussion in the U.S. about this issue in TPP, she maintained.

According to an industry source, most TPP countries have indicated that they will not be in a position to reply to the U.S. proposal until its missing pieces are tabled, including on biologic drugs. This source said it is unclear whether the U.S. internal review of the proposal will result in a revision, or merely a decision on how to fill in the missing pieces of the proposal as it now exists.

Sources said negotiators from other TPP countries are beginning to speculate that the U.S. may end up proposing some sort of "special and differential treatment" in a revised pharmaceutical IP proposal that would apply different standards to developing countries and developed ones.

Under this scenario, the U.S. could propose applying the stronger patent protections of the U.S.-Korea free trade agreement to developed countries in the TPP, while developing countries would be subject to the more flexible "May 10" standards included in U.S. FTAs with Peru, Panama and Colombia.

But this would require the U.S. to specify which TPP partners would be considered "developed" for the sake of the IP chapter, and sources said countries like Chile and Singapore would likely oppose being put in that category if it meant they had to adhere to the higher standard.

U.S. business groups, which favor the IP standards of the Korea FTA, in general oppose the idea of special and differential treatment although they support giving developing countries a transition period to phase in their TPP obligations, when necessary.

In general, the industry source said the U.S. has held bilateral consultations over the past several months with TPP partners on its proposal proposal, which has laid the groundwork for the U.S. to move forward in this area. Those consultations have yielded useful information in terms of what are the specific problems or sensitivities certain countries have regarding the proposal, as well as what sort of IP protections they already provide, this source said.

This will help U.S. negotiators see past the "rhetorical" opposition that was expressed by TPP countries when the proposal was discussed in earlier rounds, and to approach negotiations on this

issue pragmatically, this source said.

IPR negotiators discussed pharmaceutical issues on March 9 during a session in which Canada and Mexico for the first time provided information about their regimes for protecting pharmaceutical intellectual property. It was the first time Canada and Mexico engaged in talks on pharmaceutical IPR since joined the talks in October. During the March 9 session, other TPP countries also discussed their systems, and some described how they would be negatively impacted by the U.S. proposal, sources said.

The U.S. proposal would allow brand-name drug companies to obtain stronger pharmaceutical patent protections if they sought marketing approval for a drug in a TPP country within a certain period of time after first obtaining marketing approval in another TPP country. The length of this so-called "access window" was never defined in the U.S. proposal, and was a key missing element along with the length of data exclusivity protections for biologic drugs.

In response to a question at the press conference, Weisel said the U.S. has not yet made a proposal on biologics, and the issue was not discussed here. Brand-name pharmaceutical companies are urging the U.S. to propose 12 years of data exclusivity for biologics in TPP, which is the current length of protection under U.S. law.

Malaysian chief negotiator J Jayasiri acknowledged that IP is a sensitive area for his country in the talks. When it comes to the wide range of disciplines being discussed in TPP, "there are areas where current proposals would cause some difficulties for Malaysia," he said. "We would like to see ... sufficient flexibilities to accommodate the kind of difficulties that we face, and this includes in areas like intellectual property."

Ng signaled that TPP countries have not yet made a decision on whether to schedule an additional round in July. The initial 2013 schedule agreed upon by TPP countries only called for rounds in March, May and September. "As to whether we will have another round in July, what we will do is, really, we have to consider this question even as we look to build on the positive momentum to try to conclude the [negotiations] in the course of a later date," she said.

TPP countries may want to hold a July round whether or not Japan enters the negotiations, the observer speculated. If Japan were to declare its intent to join TPP this week, and TPP countries then quickly concluded bilateral and group discussions with Tokyo, and the Obama administration were to send its notification to Congress, Japan could potentially be at the table by a July round. If Japan opts not to join the TPP talks, the current 11 partners may still want to hold a July round so they could bolster their chances of concluding a deal this year, the observer said.

The observer speculated that chief negotiators may not have been able to formally announce a July round here because they need to go back to their capitals to work out scheduling and budgetary details. Another observer pointed out that the Islamic holiday of Ramadan begins on

July 9 and last through Aug. 7, and that TPP countries would likely want to avoid scheduling a round during that period because Muslim negotiators would be fasting during daylight hours.

Inside U.S. Trade - 03/15/2013, Vol. 31, No. 11

Inside U.S. Trade

Daily News

TPP Countries Will Not Discuss New Pharmaceutical IPR Text At Next Round

Posted: March 13, 2013

SINGAPORE – Countries participating in the Trans-Pacific Partnership (TPP) negotiations will not discuss an existing U.S. proposal on pharmaceutical intellectual property rights (IPR) protection or a potential new U.S. proposal in this area at the next negotiating round that will take place May 15-24 in Lima, Peru, a Singaporean trade official said at a press conference here to conclude the 16th round of negotiations.

Singaporean chief negotiator Ng Bee Kim said TPP countries had informally exchanged general information and views on the issue of pharmaceutical IPR at the round here, and planned to do the same in Peru. "Countries shared respective information about their systems, and the delegations have also agreed to continue this exchange of information into the next round with a view to finding possible common grounds on this issue," she said.

She emphasized that the pharmaceutical IPR discussion in Lima will be based on "further clarification" and not on a proposed text. "For the coming round in Lima there will continue to be discussion on this issue, but it will not be on textual proposals," Ng said.

While her comments do not technically rule out the possibility that the United States could table a revised legal text prior to the Peru round but not discuss it there, one observer here said that scenario is highly unlikely. It is "impossible to believe" that that TPP countries would avoid discussing a legal text if it were already on the table, this observer argued.

A more likely scenario is that the U.S. somehow already knows that it will not be able to table a revised proposal in time for the Lima round, this observer said. Another possible explanation is that Peru, which has the ability to set the agenda for the May round, has refused to allow a discussion on a revised U.S. proposal at that round, and wants to stick only to information exchange on this topic.

A third possible explanation is that TPP countries are aware that Japan may formally enter the negotiations sometime after the May round, and therefore want to ensure that Japan has the ability to negotiate on this sensitive issue, the observer said. The U.S. may believe that having Japan at the table could help drive a more favorable outcome on pharmaceutical IPR, this source

speculated.

The U.S. "access to medicines" proposal on pharmaceutical IPR, originally tabled in September 2011, has met with criticism from many TPP countries. As a result, the U.S. government has undertaken an internal review of its proposal, which U.S. chief negotiator Barbara Weisel said has not yet concluded.

"We have been internally discussing what approaches might be possible in the United States and those consultations ... are still underway, and until we conclude those discussions internally, we will not be prepared to put forward a proposal," Weisel said at the closing press conference.

She did not give any indication as to when the U.S. would table a new proposal. Weisel clarified that the discussions on pharmaceutical IPR held in Singapore consisted only of an exchange of information to ensure that all parties understand the way in which others handle pharmaceutical intellectual property issues. That input will be valuable in informing the internal discussion in the U.S. about this issue in TPP, she said.

IPR negotiators discussed pharmaceutical issues on March 9 during a session in which Canada and Mexico for the first time provided information about their regimes for protecting pharmaceutical intellectual property. It was the first time TPP partners had discussed the pharmaceutical IPR issue in roughly a year, and the first since Canada and Mexico joined the talks in October. During the March 9 session, other TPP countries also discussed their systems, and some described how they would be negatively impacted by the U.S. proposal, sources said.

The U.S. proposal would allow brand-name drug companies to obtain stronger pharmaceutical patent protections if they sought marketing approval for a drug in a TPP country within a certain period of time after first obtaining marketing approval in another TPP country. The length of this so-called "access window" was never defined in the U.S. proposal, and was a key missing element along with the length of data exclusivity protections for biologic drugs.

In response to a question, Weisel said the U.S. has not yet made a proposal on biologics, and the issue was not discussed here. Brand-name pharmaceutical companies are urging the U.S. to propose 12 years of data exclusivity for biologics in TPP, which is the current length of protection under U.S. law.

Malaysian chief negotiator J Jayasiri acknowledged that IP is a sensitive area for his country in the talks. When it comes to the wide range of disciplines being discussed in TPP, "there are areas where current proposals would cause some difficulties for Malaysia," he said. "We would like to see ... sufficient flexibilities to accommodate the kind of difficulties that we face, and this includes in areas like intellectual property."

At the press conference, chief negotiators faced a barrage of questions from Japanese press about Tokyo's potential entry into the talks. But they were extremely cautious in their responses, and mainly reiterated the official position that any new country joining the negotiations has to commit to pursue an ambitious outcome in TPP and not slow down the talks.

"In the event that a ... country should join the TPP, what is important, as we have reiterated a few times here, is there must be a clear understanding that they share the goal of working to have an ambitious and comprehensive agreement, and two is that they will be able to contribute positively to the momentum of concluding the [negotiations] in 2013," Ng said.

She emphasized that if Japan announces it wants to join TPP, it will then have to enter into consultations bilaterally with separate TPP countries as well as collectively with the entire group. This is because a decision to allow a new country into TPP must be made by consensus by the current members.

Even if TPP countries reach a consensus to allow Japan to join the negotiations, individual TPP parties must then also carry out their own domestic consultations and legal procedures to integrate new members, Ng said. In the U.S., for instance, the Obama administration would likely follow the rules of an expired fast-track law by notifying Congress and entering into consultations with lawmakers for a period of 90 days before entering into new trade negotiations with Japan.

Ng also signaled that TPP countries have not yet made a decision on whether to schedule an additional negotiating round in July. The initial 2013 schedule agreed upon by TPP countries only called for rounds in March, May and September.

"As to whether we will have another round in July, what we will do is, really, we have to consider this question even as we look to build on the positive momentum to try to conclude the [negotiations] in the course of a later date," she said.

TPP countries may want to hold a July round whether or not Japan enters the negotiations, the observer speculated. If Japan were to declare its intent to join TPP this week, and TPP countries then quickly concluded bilateral and group discussions with Tokyo, and the Obama administration were to send its notification to Congress, Japan could potentially be at the table by a July round. If Japan opts not to join the TPP talks, the current 11 partners may still want to hold a July round so they could bolster their chances of concluding a deal this year, the observer said.

The observer speculated that chief negotiators may not have been able to formally announce a July round here because they need to go back to their capitals to work out scheduling and budgetary details. Another observer pointed out that the Islamic holiday of Ramadan begins on July 9 and last through Aug. 7, and that TPP countries would likely want to avoid scheduling a round during that period because Muslim negotiators would be fasting during daylight hours.

TOBACCO

Don't sell our health for foreign investment

Philip Pattermore is associate professor of paediatrics at the University of Otago in Christchurch.
11 Mar 2013, *Dominion Post* (Wellington, New Zealand)

MORE than 400 health professionals, mostly doctors and nurses, wrote to the prime minister this week expressing their concerns about the potential impact of the Trans-Pacific Partnership Agreement (TPPA) on smokefree legislation in New Zealand.

The TPPA has just entered another round of talks in Singapore. Negotiations are being held in secret and, though the signatories don't object to free trade and understand the need for confidentiality in financial negotiations, leaked information shows intellectual property rights of foreign investors are key issues.

Companies trading in tobacco, alcohol and pharmaceuticals may be able to use this agreement to protect their interests over ours.

The problem in relation to tobacco is that the New Zealand Government has already committed itself to reducing and eliminating tobacco smoking. Tobacco use comes at a huge cost to the health of the public – not only to people who smoke but to people and children near them.

The Government has obligations under the WHO Framework Convention on Tobacco Control to protect public health policies from the commercial and other vested interests of the tobacco industry.

But the TPPA may provide new protections to foreign investors operating in New Zealand via clauses relating to intellectual property. It may also provide foreign investors new avenues for disputing future health legislation through World Trade Organisation arbitration.

The 415 health professionals urged the Government to consider the impact of joining the TPPA on its commitments, and have demanded tobacco companies be excluded from participation in any negotiations of their investments or intellectual property.

Tobacco is no ordinary product like shoes or washing machines. When used as intended, it is harmful and addictive, killing more than 5000 New Zealanders a year and damaging the health of thousands of children.

That tobacco trade continues is a historical anomaly – a similar toxic product would never be licensed for consumers today. The Government should be aiming to eliminate it, not foster its trade interests.

The Government should be free to protect the public health interest in response to scientific medical evidence, rather than being chained up by the threat of legal or financial penalties. Corporations that have no interest in the health of New Zealanders should not be given leverage over our Government's health legislation.

In the letter, the Government is also urged to contest the inequity and undemocratic process of the TPPA negotiations. US Congress and more than 600 US trade corporations have been given access to drafts of the agreement, while the New Zealand public and health experts have been denied access, giving those corporations more leverage over our country's health than its own

citizens.

The Government has also expressed its commitment, under Te Tiriti o Waitangi, to reduce inequity by reducing supply and demand for tobacco.

There is well-documented evidence that Maori and Pacific communities in New Zealand carry a disproportionate burden of disease and lower life expectancy as a result of tobacco use.

The tobacco industry is using its dispute over plain packaging in Australia to discourage other countries from enacting similar legislation.

Our Government's intention to mandate plain packaging appears diluted by the move to delay it until we see the outcome of the challenges to the Australian legislation.

The industry has moved to delay the hearing in Australia, with a flow-on effect for New Zealand's legislation.

The health professionals who have signed the letter urged the Government not to enter into further trade provisions that may stall the goal of a smokefree Aotearoa by 2025. Our health should not be sold to strengthen trade.

TEXTILES/FOOTWEAR

Inside U.S. Trade, Daily News

Vietnam Signals Willingness To Work With U.S. On Short-Supply Proposal

Posted: March 13, 2013

SINGAPORE – Vietnam is open to working with the United States and the private sector to see whether a U.S. proposal aimed at resolving the controversial issue of rules of origin for apparel will lead to a solution that would be acceptable to both countries in a Trans-Pacific Partnership (TPP) agreement, according to a Vietnamese trade official.

In a press conference to mark the end of the 16th round of TPP talks here, Vietnamese chief negotiator Khanh Tran Quoc said Vietnam “welcomes any idea that can help us move forward, including the idea [of] a short-supply list.”

The Office of the U.S. Trade Representative in December proposed the creation of permanent and temporary short-supply lists of items that could be sourced from outside the TPP region and still be made into apparel eligible for tariff benefits. These short-supply lists would serve as an exception to the restrictive yarn-forward rule of origin for apparel the U.S. has proposed in the talks.

Additional flexibility from the yarn-forward rule would be key for Vietnam, as that would make it easier for Vietnamese apparel products to qualify for reduced U.S. tariffs under TPP. But the U.S. wants to ensure that the TPP benefits accrue only to participating members, meaning it wants to

limit the number of exceptions to the yarn-forward rule.

In addition, U.S. textile manufacturers are worried that Vietnamese imports -- which are made with low labor costs and, according to U.S. manufacturers, benefit from a host of subsidies -- could displace apparel imports from Central America and other countries that are made with U.S. yarns and fabrics.

Khan said that Vietnam understands the importance of the textile issue for the U.S. and that he believes the U.S. recognizes its importance for Vietnam. "And that is why we've been working very closely, not only with the USTR but also with the business sector, in order to find all the possibilities that can help us to set up a formula that can be acceptable to both sides in this negotiation," he said.

But he emphasized that any potential solution to the rules of origin issue must meet two criteria. It must take into account the nature of the current globalized supply chain, and it must result in commercial benefits for businesses in the TPP region. "So in fact we are working and open to any proposal that can help us to move forward," Khan said.

After announcing its short-supply idea at the December TPP round, USTR began collecting suggestions for the lists from U.S. apparel importers and retailers as well as textile manufacturers through a complicated submission and vetting process on a White House website (*Inside U.S. Trade*, Feb. 7). That process is still ongoing.

USTR officials had hoped to present some initial proposals for items to include on the two lists at the round here, but apparel sector sources said they were not aware that this had occurred. They said the textile discussions held here on March 8 most likely consisted of USTR briefing other countries about the process it has set up for accepting proposals for the lists and vetting them with domestic industry.

Khan said his government had not yet decided whether Vietnam would consider coming up with its own proposals for items to be included on the short-supply lists. "We need to understand about the way to construct the list first, and then if we ... see that it could be a good way forward, then we might proceed to contribute to the list," he said.

In general, Khan stressed that Vietnam would prefer a more flexible rule of origin for apparel that would take into account the globalized nature of supply chains. "But at the same time, we understand it is a sensitive issue for a number of [countries], and that is why we are keen on working with them to find out a way, the best way, to ... move forward and to address the concern from each and every side," he said.

Sen. Roger Sherman, Chair
Sen. Thomas Martin Jr.
Sen. John Patrick
Rep. Joyce Maker, Chair
Rep. Bernard Ayotte
Rep. Margaret Rotundo

Heather Parent
Stephen Cole
Michael Herz
Michael Hiltz
Connie Jones



Wade Merritt
John Palmer
Linda Pistner
Harry Ricker
Michael Roland
Jay Wadleigh
Joseph Woodbury

Staff:
Lock Kiermaier

STATE OF MAINE

Citizen Trade Policy Commission

August 1, 2012

The Honorable Ronald Kirk
Trade Ambassador
Office of the United States Trade Representative
600 17th Street, NW
Washington, DC 20508

Mr. Probir Mehta
Deputy Assistant for Intellectual Property & Innovation
Office of the United States Trade Representative
600 17th Street, NW
Washington, DC 20508

Re: 2012 Trade Policy Assessment; commissioned by the Maine Citizen Trade Policy Commission

Dear Ambassador Kirk and Mr. Mehta:

As you may know, the Citizen Trade Policy Commission (CTPC) is required by current Maine Law (10 MRSA Chapter 1-A) to provide an ongoing state-level mechanism to assess the impact of international trade policies and agreements on Maine's state and local laws, business environment and working conditions. An important part of the CTPC mandate is to conduct a biennial assessment on the impacts of international trade agreements on Maine.

We have enclosed a copy of our recently completed 2012 Trade Policy Assessment. In a process that is more fully described in an addendum included within the printed document, the Citizen Trade Policy Commission contracted with Professor Robert Stumberg of Georgetown University to conduct this assessment.

We believe that the 2012 Trade Policy Assessment is an invaluable tool for a more complete understanding of both the proposed TransPacific Partnership Agreement (TPPA) which is currently being negotiated and other international trade treaties and their current and potential effects on Maine. As a specific result of the 2012 Trade Policy Assessment, the CTPC has voted unanimously to make a number of recommendations regarding the potential treatment of *pharmaceuticals* within the TPPA and other international trade agreements:

- CTPC members voted to cite previous communications to the USTR regarding the treatment of pharmaceuticals in international trade treaties. In particular, we have also enclosed a letter dated February 12, 2010 which was addressed to Ms. Jennifer Choe Groves within the USTR. In that letter, the CTPC:
 - Voiced its support for evidence-based reimbursement decisions to restrain pharmaceutical prices;
 - Endorsed the continued state use of Preferred Drug Lists to also reduce pharmaceutical prices; and
 - Opposed any promotion of international restrictions on domestic pharmaceutical pricing programs.
- More specifically, the CTPC is unanimous in our support for the inclusion of a footnote in the TPPA and other trade agreements which “carves out” federal reimbursement programs such as Medicaid, 340 B and Medicare Part B;
- The CTPC also voted unanimously to support provisions in the TPPA and other international trade agreements which emphasize, allow for and encourage the overall affordability of pharmaceuticals in each affected country; and
- Finally, the CTPC requests that the USTR develop a clear public statement on the specific elements of a pharmaceuticals-related provision, as they are proposed by the USTR for consideration as a part of the TPPA.

In making these and other recommendations, members of the CTPC expressed a clear desire to further discuss these subjects in detail with either of you in the context of a public meeting held by the CTPC. We invite you to appear at such a public meeting at a date that is mutually satisfactory and as an alternative to you traveling to Maine, we suggest that a conference call could be arranged on a date to be determined in the near future.

On behalf of the CTPC, we thank you for your attention to the issues we have raised regarding any pharmaceutical-related provisions to be included in the TPPA and other international trade agreements and we look forward to discussing these issues with you in more detail.

Sincerely,



Senator Roger Sherman, Chair



Representative Joyce Maker, Chair

- c: Governor Paul LePage
 Senator Olympia Snowe
 Senator Susan Collins
 Representative Michael Michaud
 Representative Chellie Pingree
 Maine State Representative Sharon Treat, member of Intergovernmental Policy Advisory Committee

Sen. Roger Sherman, Chair
Sen. Thomas Martin Jr.
Sen. John Patrick
Rep. Joyce Maker, Chair
Rep. Bernard Ayotte
Rep. Margaret Rotundo

Heather Parent
Stephen Cole
Michael Herz
Michael Hiltz
Connie Jones



Wade Merritt
John Palmer
Linda Pistner
Harry Ricker
Michael Roland
Jay Wadleigh
Joseph Woodbury

Staff:
Lock Kiermaier

STATE OF MAINE

Citizen Trade Policy Commission

August 1, 2012

The Honorable Ronald Kirk
Trade Ambassador
Office of the United States Trade Representative
600 17th Street, NW
Washington, DC 20508

Ms. Jean Grier
Senior Procurement Negotiator
Office of the United States Trade Representative
600 17th Street, NW
Washington, DC 20508

Re: 2012 Trade Policy Assessment; commissioned by the Maine Citizen Trade Policy Commission

Dear Ambassador Kirk and Ms. Grier:

As you may know, the Citizen Trade Policy Commission (CTPC) is required by current Maine Law (10 MRSA Chapter 1-A) to provide an ongoing state-level mechanism to assess the impact of international trade policies and agreements on Maine's state and local laws, business environment and working conditions. An important part of the CTPC mandate is to conduct a biennial assessment on the impacts of international trade agreements on Maine.

We have enclosed a copy of our recently completed 2012 Trade Policy Assessment. In a process that is more fully described in an addendum included within the printed document, the Citizen Trade Policy Commission contracted with Professor Robert Stumberg of Georgetown University to conduct this assessment.

We believe that the 2012 Trade Policy Assessment is an invaluable tool for a more complete understanding of both the proposed TransPacific Partnership Agreement (TPPA) which is currently being negotiated and other international trade treaties and their current and potential effects on Maine. As a specific result of the 2012 Trade Policy Assessment, the CTPC has voted unanimously to make a number of recommendations regarding the potential treatment of *procurement* within the TPPA and other international trade agreements:

- We favor an approach represented by procurement provisions in other previously negotiated trade agreements such as the World Trade Organization's Agreement on Government Procurement which allow state governors to decide whether to be subject to the procurement chapters of different Free Trade Agreements that have been negotiated between the U.S. and individual nations. The CTPC strongly believes that it is essential to a state's sovereignty to be able to decide whether to be subject to certain procurement provisions;
- The CTPC also is unanimous in our support for the inclusion of provisions in the TPPA and other trade agreements which allow for laws and regulations which permit "Buy America" procurement requirements and
- Finally, the CTPC requests that the USTR develop a clear public statement on the specific elements of a procurement-related provision, as they are proposed by the USTR for consideration as a part of the TPPA.

In making these and other recommendations, members of the CTPC expressed a clear desire to further discuss these subjects in detail with either of you in the context of a public meeting held by the CTPC. We invite you to appear at such a public meeting at a date that is mutually satisfactory and as an alternative to you traveling to Maine, we suggest that a conference call could be arranged on a date to be determined in the near future.

On behalf of the CTPC, we thank you for your attention to the issues we have raised regarding any procurement-related provisions to be included in the TPPA and other international trade agreements and we look forward to discussing these issues with you in more detail.

Sincerely,

Roger Sherman^{AM}

Senator Roger Sherman, Chair

Joyce Maker^{AM}

Representative Joyce Maker, Chair

c: Governor Paul LePage
 Senator Olympia Snowe
 Senator Susan Collins
 Representative Michael Michaud
 Representative Chellie Pingree
 Maine State Representative Sharon Treat, member of Intergovernmental Policy Advisory Committee

Sen. Roger Sherman, Chair
Sen. Thomas Martin Jr.
Sen. John Patrick
Rep. Joyce Maker, Chair
Rep. Bernard Ayotte
Rep. Margaret Rotundo

Heather Parent
Stephen Cole
Michael Herz
Michael Hiltz
Connie Jones



Wade Merritt
John Palmer
Linda Pistner
Harry Ricker
Michael Roland
Jay Wadleigh
Joseph Woodbury

Staff:
Lock Kiermaier

STATE OF MAINE

Citizen Trade Policy Commission

August 1, 2012

The Honorable Ronald Kirk
Trade Ambassador
Office of the United States Trade Representative
600 17th Street, NW
Washington, DC 20508

Ms. Barbara Weisel
Assistant U. S. Trade Representative for Southeast Asia and the Pacific
Office of the United States Trade Representative
600 17th Street, NW
Washington, DC 20508

Re: 2012 Trade Policy Assessment; commissioned by the Maine Citizen Trade Policy Commission

Dear Ambassador Kirk and Ms. Weisel:

As you may know, the Citizen Trade Policy Commission (CTPC) is required by current Maine Law (10 MRSA Chapter 1-A) to provide an ongoing state-level mechanism to assess the impact of international trade policies and agreements on Maine's state and local laws, business environment and working conditions. An important part of the CTPC mandate is to conduct a biennial assessment on the impacts of international trade agreements on Maine.

We have enclosed a copy of our recently completed 2012 Trade Policy Assessment. In a process that is more fully described in an addendum included within the printed document, the Citizen Trade Policy Commission contracted with Professor Robert Stumberg of Georgetown University to conduct this assessment.

We believe that the 2012 Trade Policy Assessment is an invaluable tool for a more complete understanding of both the proposed TransPacific Partnership Agreement (TPPA) which is currently being negotiated and other international trade treaties and their current and potential effects on Maine. As a specific result of the 2012 Trade Policy Assessment, the CTPC has voted unanimously to make a number of recommendations regarding the potential treatment of *tobacco* within the TPPA:

- We favor a complete “carve out” of tobacco from the trade provisions of the TPPA; in other words, we would prefer that any regulations or laws pertaining to tobacco be completely excluded from the TPPA. The CTPC believes strongly that the efforts of individual nations to control tobacco and combat its adverse health effects should not be interfered or impeded in any way by provisions of the TPPA or any other international trade agreement;
- Absent a complete “carve out” of tobacco from the TPPA, we favor an approach which modifies the purported compromise proposal being made by the USTR; more specifically, the CTPC favors an approach which ensures that all federal and state laws and regulations pertaining to tobacco regulation are not subject to jurisdiction under the TPPA and further that any tobacco-related provisions of the TPPA embrace an approach which minimizes potential litigation be it through local, state or federal court and the possible use of “investor-state” dispute settlement systems; and
- Finally, the CTPC requests that the USTR develop a clear public statement on the specifics on the specific elements of a tobacco-related provision, as they are proposed by the USTR for consideration as a part of the TPPA.

In making these and other recommendations, members of the CTPC expressed a clear desire to further discuss these subjects in detail with either of you in the context of a public meeting held by the CTPC. We invite you to appear at such a public meeting at a date that is mutually satisfactory and as an alternative to you traveling to Maine, we suggest that a conference call could be arranged on a date to be determined in the near future.

On behalf of the CTPC, we thank you for your attention to the issues we have raised regarding the treatment of tobacco-related provisions in the TPPA and we look forward to discussing these issues with you in more detail.

Sincerely,


 Senator Roger Sherman, Chair


 Representative Joyce Maker, Chair

c: Governor Paul LePage
 Senator Olympia Snowe
 Senator Susan Collins
 Representative Michael Michaud
 Representative Chellie Pingree
 Maine State Representative Sharon Treat, member of Intergovernmental Policy Advisory Committee

EXECUTIVE OFFICE OF THE PRESIDENT
THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

OCT 26 2012

Senator Roger Sherman, Chair
Representative Joyce Maker, Chair
State of Maine
Citizen Trade Policy Commission
c/o Office of Policy & Legal Analysis
State House Station #13
Augusta, ME 04333-0013

Dear Senator Sherman and Representative Maker:

Thank you for the recent letters you sent on behalf of the Citizen Trade Policy Commission (CTPC) and for sending a copy of your 2012 Trade Policy Assessment. I appreciate receiving your input on the possible impacts of international trade agreements generally and the Trans-Pacific Partnership (TPP) specifically, including the potential coverage of procurement by state governments and the potential treatment of tobacco and pharmaceuticals. In addition, you asked several questions regarding the status of the dispute in the World Trade Organization (WTO) regarding the Country of Origin Labeling Act (COOL).

With regard to your concerns with the potential coverage of state procurement under the TPP, let me assure you that the United States will only cover the state procurement of Maine or any other state where that state has expressly authorized such coverage. This is our long-established practice, which dates back to the inclusion of state procurement under the WTO Agreement on Government Procurement. With respect to your interest in further discussions of these issues, I understand our government procurement negotiator, Jean Grier, has been in contact with you.

In one of your letters you also outlined a number of CTPC recommendations regarding the treatment of tobacco in the TPP negotiations. We have heard from many stakeholders in recent months, with a number of perspectives on this issue and the draft tobacco proposal we developed. We are considering this wide-ranging input before determining how to move forward in the TPP negotiations. It is important to ensure we strike the right balance on an issue that is important to so many Americans. As we move forward in our review of the input we have received, we look forward to further discussion with interested stakeholders, including members of the CTPC.

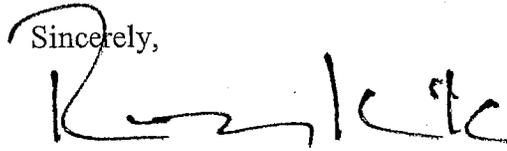
Regarding your concern on the reimbursement of pharmaceutical products and medical devices, USTR is seeking TPP transparency provisions to ensure transparency and procedural fairness for pharmaceutical products and medical devices. This is a significant area of concern for U.S. exporters, including those in the innovative and generic pharmaceutical industries and the medical device industry. Our emphasis on transparency and fairness preserves flexibility for all TPP governments to design evidence-based pricing and reimbursement programs at the national level, while ensuring respect for the rights of stakeholders of all viewpoints through basic norms of transparency and procedural fairness. We will continue to negotiate these provisions carefully with the concerns of state government authorities in mind. As USTR has indicated previously, it remains our view that corresponding provisions of existing agreements are not applicable to Medicaid or health care programs at non-central levels of government.

NOV 05 2012

Finally, you asked about the status of the WTO dispute settlement proceedings regarding COOL. The United States has stated that it intends to comply with the recommendations and rulings of the WTO in the COOL dispute. We are continuing to consult internally within the U.S. Government on this matter, and no decision has yet been made as to how we will implement the WTO's recommendations and rulings.

Thank you again for sharing your views on the TPP negotiations and other trade issues of interest to the CTPC. We appreciate this input and your active engagement with us, and we will continue to consult closely with stakeholders, including members of the CTPC, as we formulate and implement U.S. trade policy.

Sincerely,

A handwritten signature in black ink, appearing to read "Ron Kirk". The signature is fluid and cursive, with a large initial "R" and a distinct "K".

Ambassador Ron Kirk

Sen. Roger Sherman, Chair
Sen. Thomas Martin Jr.
Sen. John Patrick
Rep. Joyce Maker, Chair
Rep. Bernard Ayotte
Rep. Margaret Rotundo

Pamela Taylor
Stephen Cole
Michael Herz
Mike Karagiannes
Connie Jones



Wade Merritt
John Palmer
Linda Pistner
Harry Ricker
Jay Wadleigh
Joseph Woodbury

Staff:
Danielle Fox and Alyson Mayo
Legislative Analysts-Office of Policy and Legal
Analysis

STATE OF MAINE

Citizen Trade Policy Commission

October 4, 2012

Ms. Jean Grier
Senior Procurement Negotiator
Office of the United States Trade Representative
600 17th Street, NW
Washington, DC 20508

Dear Ms. Grier,

Please accept our sincere appreciation for your participation at the meeting held by the Maine Citizen Trade Policy Commission (CTPC) on September 19, 2012. Your comments were timely, informative, helpful and clear. We feel very fortunate that you were able to take the time to speak with us over the phone in spite of what we assume is an incredibly demanding schedule.

As you know, the CTPC dedicates itself to staying informed about international trade policy and how it impacts our state. We conduct biennial assessments of specific areas of interest with regard to trade policy; our most recent dealt with the Trans Pacific Partnership Agreement (TPPA) and was completed this summer. A copy of that assessment can be found on our website at: <http://www.maine.gov/legis/opla/citpolassessments.htm>

In addition to expressing our gratitude for your participation at our last meeting, we wanted to point out statements that we found particularly helpful and informative.

- In response to our question as to the potential negotiations for state-level procurement provisions in the TPPA, you stated that the USTR is committed to the same process of consulting with the states that has been used in other trade agreements. You assured us that USTR will seek state input if TPPA includes sub-federal level procurement provisions. We've established our strong support for state input. Not only are we one of the 37 states which have stated we want to be consulted with regard to procurement, we have also enacted legislation that requires the Governor to receive approval from the Maine Legislature to either opt in or opt out of the procurement provisions in international trade agreements. That requirement can be found at 10 MRSA §13. Subsection 5 of this law reads:

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

- You also spoke to our concerns regarding potential changes to the WTO Agreement on Government Procurement (GPA), stating that any changes to that umbrella agreement will only apply to procurement on the federal level. We have been aware of the pressure being applied by the European Union with regard to changes to the GPA in order for them to have greater access to state-level procurement opportunities. We are relieved to know that the USTR will support maintaining the provisions of the GPA that enable states to opt in or opt out of procurement provisions in trade agreements and that the USTR won't bind states in any way unless they opt-in.
- We understand that the trigger for seeking input from the states is procurement activity that equals or exceeds \$500,000 in value. It was reassuring to hear that there are no plans to reduce that threshold.
- You were helpful in pointing out that the Davis Bacon Act, which requires a prevailing wage be paid for federal projects, and the Berry Amendment, which requires the Department of Defense to give procurement preference to domestically made goods for the military, will not be impacted by procurement provisions negotiated in the TPPA.

The Commission is so fortunate to have access to and input from people directly involved with the important responsibility of negotiating international trade agreements. Please accept our sincere gratitude for your thoughtful and helpful participation at our September meeting.

Sincerely,


Senator Roger L. Sherman, Co-chair (PDF)
Maine Citizen Trade Policy Commission


Representative Joyce A. Maker, Co-chair CDDF
Maine Citizen Trade Policy Commission

Article notes: 3/22/13 CTPC agenda:

Senate Finance Committee holds Hearing on the President's Trade Agenda, Asks Questions on TPP and Trade Promotion Authority

- Senate Finance Committee held a hearing on the President's Trade Agenda on 3/20/13
- Sole witness was Acting USTR Deetrios Marantis
- Senate Chair Baucus supports renewal of the Trade Promotion Authority (TPA) and urges ratification of TPPA in 2013
- USTR Marantis stated that TPPA negotiations are intensifying, Trans Atlantic Free Trade Agreement negotiations are about to begin, and stated his intent to work with the committee on TPA

USTR Announcement: Obama Administration Notifies Congress of Intent to Negotiate Transatlantic Trade and Investment Partnership

- USTR sent a notification to Congress on 3/20/13 of its intent to negotiate TATIP agreement with leaders of the European Union
- TATIP to address issues of mutual job creation, growth and increased competitiveness

Japan to Join the Trans-Pacific Partnership – Finally!

- After nearly 2 years of discussions, Japan has agreed to become part of the TPPA

From Negotiation to Policy: the Power of a Trade Pact

- Useful overview of the process used to negotiate international trade treaties
- Advantages of trade agreements like TPPA include useful environmental, consumer and trade protections
- Disadvantages of trade agreements like TPPA include usurpation of meaningful Congressional oversight through the use of "Fast Track Authority" and the possibility of having trade agreements override federal, state and local laws for any participating nation

Senate Finance Committee Holds Hearing on the President's Trade Agenda, Asks Questions on TPP and Trade Promotion Authority

http://infojustice.org/archives/29049

Mike Palmredo

March 20, 2013

Today the Senate Finance Committee held a hearing on "The President's 2013 Trade Agenda." Opening statements, a webcast, and instructions for submitting comments to the record are all [here](#).

The sole witness at the hearing was Acting United States Trade Representative Demetrios Marantis.

There was much discussion of Trade Promotion Authority (TPA) – which many Senators want to see move forward. TPA legislation will include the defining of negotiating objectives for USTR. Senators also asked about the Trans Pacific Partnership (TPP) and the Trans Atlantic Free Trade Agreement negotiations. Most of the discussions about intellectual property and trade were about data exclusivity for biopharmaceuticals, which Sen. Hatch and Menendez want included in the TPP.

Prepared statements

Sen. Baucus called for the renewal of Trade Promotion Authority (TPA) in his opening statement, and said he would work to get it passed. He said that he wants the TPP to be concluded this year. Baucus said that China's "wholesale theft" of U.S. intellectual property "must be fought."

Sen. Hatch said that the TPP and TAFTA hold great promise, but that tough issues need to be resolved. The TPP must include strong IP protection for biologics, and TAFTA must include the "highest levels" of IPR protection in order to win his support.

Acting USTR Demetrios Marantis gave a very short prepared statement, in which he reported that USTR is intensifying TPP negotiations, preparing to begin negotiations for TAFTA, preparing to begin negotiating a services agreement in Geneva, and looking forward to "beginning" to work with the committee on Trade Promotion Authority. He also discussed enforcement activities, and warned that funding cuts have complicated USTR's efforts to fulfill its responsibilities.

Q&A

At the beginning of Q&A Baucus asked Marantis to discuss TPA. He brought up the fact that the law will define USTR's trade objectives going forward, and that the world economy has changed since the last time goals were legislated. Marantis reaffirmed that USTR is going to move forward on TPA, and he said that there is a diversity of interests on the committee and in general about what the negotiating objectives should be

Sen. Hatch said that the pharmaceutical industry is the biggest driver of innovation in the US economy, and that under U.S. law, biopharmaceuticals now have 12 years of data exclusivity. Therefore, he is "perplexed" that the administration has not sought 12 years of data protection for biopharmaceuticals in the TPP negotiations. Marantis answered that USTR is discussing data protection with committee and with the TPP partners, and that it is a "tough issue." Hatch asked him how it is his position to "ignore U.S. law."

Sen. Brown asked how a re-articulated TPA bill could "ensure that the benefits of trade are shared more broadly than they have in the past." He asked if there are any particular new negotiating objectives that the administration would seek. He suggested that more trade adjustment assistance could be included in a TPA bill. Marantis assured Brown that USTR would consult him and others on the committee about the negotiating objectives in new TPA legislation.

Sen. Menendez said that any 21st century agreement needs strong intellectual property protection, and that protections for biologics enjoy strong bipartisan support in Congress. He asked if it is the administration's plan to table a proposal for 12 years of data exclusivity for biopharmaceuticals in the TPP, and noted that it is the standard in US law. Marantis answered that USTR is not sure what it will table yet, and he said against that USTR has been discussing the issue with trading partners and with the Members of the Committee. Biopharmaceuticals are a new area of innovation. Some trading partners provide for this type of protection, and some do not. Menendez said that he will be looking for a 12 year term of data exclusivity when deciding whether or not to do support the final agreement.

Senators Portman, Grassley, and Thune also stressed their desire to see TPA move forward.



AUSTR Demetrios Marantis

USTR NEWS

UNITED STATES TRADE REPRESENTATIVE

www.ustr.gov

Washington, D.C. 20508

[202-395-3230](tel:202-395-3230)

For Immediate Release:

Contact:

Carol Guthrie

March 20, 2013

cguthrie@ustr.eop.gov

Obama Administration Notifies Congress of Intent to Negotiate Transatlantic Trade and Investment Partnership

Washington, D.C. – The Obama Administration today notified the U.S. Congress of its intent to enter into negotiations on a comprehensive trade and investment agreement with the European Union. Today’s notification follows a joint [announcement](#) last month by President Obama and the Leaders of the European Union indicating their intent to pursue talks toward a Transatlantic Trade and Investment Partnership. Acting United States Trade Representative Demetrios Marantis noted in a letter to lawmakers that an ambitious, comprehensive, and high-standard agreement could significantly expand trade and investment between the United States and the European Union, generating new business and job opportunities.

“The decision to launch negotiations on the Transatlantic Trade and Investment Partnership reflects the broadly shared conviction that transatlantic trade and investment can be an even stronger driver of mutual job creation, growth, and increased competitiveness,” the letter read. **“The support for a comprehensive agreement that has been offered by a significant and diverse set of stakeholders boosts our confidence that it will be possible to find mutually acceptable solutions on difficult issues and conclude an agreement that will benefit U.S. workers. With average U.S and EU tariffs already quite low, new and innovative approaches to reducing the adverse impact on transatlantic commerce of non-tariff barriers must be a significant focus of the negotiations. The Administration will hold regular and rigorous consultations with Congress and stakeholders on all elements of the agreement.”**

The transatlantic economic relationship is already the world’s largest, accounting for one third of total goods and services trade and nearly half of global economic output. Transatlantic trade and investment currently supports 13 million jobs on both sides of the Atlantic.

To view a copy of the notification letter to Congress, click [here](#). For more information on America’s trade with the European Union, please visit the [European Union page](#) of USTR’s website.

BROOKINGS



« Previous | Next »

Joshua Meltzer | March 18, 2013 10:27am

Japan to Join the Trans-Pacific Partnership – Finally!



Japanese Prime Minister Abe's statement of his country's willingness to join the Trans-Pacific Partnership (TPP) negotiations is good for the U.S., Japan and the TPP. It follows former Japanese Prime Minister Noda's announcement at the Asia-Pacific Economic Conference (APEC) in 2011 of Japan's interest in the TPP negotiations and almost two years of discussions between the Japanese government and the other TPP parties on their expectations should Japan join the trade agreement. The TPP parties currently include the U.S., Australia, Brunei, Canada, Chile, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam.

Japan's participation in the TPP will boost the agreement's economic and strategic significance. The TPP aims to be the 21st century trade agreement that sets the rules for trade and investment in the Asia-Pacific region going forward. Achieving this goal will require other major economies in the Asia-Pacific region to join the agreement with the intention of the TPP ultimately becoming a Free Trade Agreement of the Asia-Pacific (FTAAP), and Japan's participation in the TPP will give added momentum towards this goal. For one, with Japan the TPP will cover 8.6 percent of global trade and almost 40 percent of global GDP. Japan's entry into the TPP is also likely to give further impetus to other countries joining the TPP. In particular South Korea, which already has an FTA with the U.S., should now see the TPP as a key opportunity to negotiate new market access opportunities with Japan, with which it has a \$108 billion trading relationship. Other countries such as Colombia, the Philippines and Thailand are also watching the TPP negotiations carefully with an eye to joining.

Japan's participation in the TPP is also of economic significance for the U.S. Without Japan's participation in the TPP the market access opportunities for the U.S. are limited because the U.S. has FTAs with six of the 10 TPP parties. Should the TPP lead to new market liberalization beyond what has already been promised in their current FTAs with the U.S., the already significant liberalization committed to under these FTAs means that any new market access gains for the U.S. will be minimal.

In contrast, the U.S. does not have an FTA with Japan, which is the world's third largest economy with significant tariff and nontariff barriers in areas of key export interest for the U.S., ranging from agriculture to automobiles to financial services. As a result, an ambitious outcome in the TPP could provide the U.S. with important new markets. Its potential economic value is highlighted by the size of total bilateral trade of \$220 billion in 2012 and a trade deficit of \$80 billion. But this understates the size of the trading relationship as many Japanese goods and services are now inputs into final goods exported from countries such as China and South Korea. Value-added trade data more accurately captures these dimensions, and on a value-added basis the U.S. trade deficit with Japan increases by approximately 60 percent. Additionally, there is a significant bilateral investment

Fear of Lowering Standards

TPP disputes might follow a similar path and serve as an alternative to revamping domestic laws and regulations to change their effect.

"An agreement like the TPP becomes a mechanism for a broad array of industry interests to re-litigate policies that they lost when the debate occurred in the sunshine of public scrutiny and the open congressional process," says Lori Wallach, director of Public Citizen's Global Trade Watch, who kept an eye on the negotiations unfolding in Singapore and whose group opposes the free-trade pact. "It can become a backdoor strategy for changing domestic policy."

That prospect isn't lost on Congress. Rep. Rosa DeLauro says she is worried that food and agriculture interests will weaken the 2010 food safety law, which she helped write, while the Obama administration continues to implement its provisions.

"It's my fear," the Connecticut Democrat says, that "it would mean we would have to lower our standards."

Vessels for Grievances

Congress typically takes up trade agreements under presidential fast-track authority, which forces lawmakers to vote up or down on the whole deal without being able to amend it. (The president's fast-track authority has expired, but the administration is expected to seek its renewal.)

The Obama administration rejects the notion that the trans-Pacific talks could gut portions of statutes such as the Dodd-Frank financial overhaul, the 2010 health care law or DeLauro's measure.

"Only Congress changes U.S. law, period," Carol Guthrie, spokeswoman for the U.S. Trade Representative, wrote in an email, "and only administrations, in consultation with Congress, change U.S. policies and regulations."

Lobbyists and representatives of several corporations deny that the trade talks could be an opportunity for U.S. policy do-overs.

One longtime lobbyist and expert in trade pacts calls the legislating-via-trade-deal route an "unusual strategy." He says that companies and other groups weighing in on negotiations are more likely to use their muscle to raise other countries' standards so that they are in harmony with those of the United States.

But the complex nature of the TPP negotiations coupled with the reach of those countries involved with the United States - Australia, Brunei, Canada, Chile, Malaysia, Mexico, New Zealand, Peru, Singapore, Vietnam and, perhaps in the future, Japan - fuel speculation about the deal's eventual impact on the policies of individual countries.

David Thomas, the Business Roundtable's vice president for trade, says the TPP agreement "creates an opportunity to sort of knit together a regional free-trade area that can allow companies to more efficiently do business across those countries as well as within those countries."

There is precedent for trade-driven changes to U.S. laws. When Congress two decades ago passed the Uruguay Round Agreement Acts, transforming the General Agreement on Tariffs and Trade into the World Trade Organization, lawmakers approved a change in patent law that extended market exclusivity for U.S. products from 17 years to about 20 years. Trade and patent law experts say the change harmonized U.S. and international patent laws and benefited, in particular, big companies that file patents in multiple countries.

The North American Free Trade Agreement that Congress approved in 1993, "downwardly harmonized" federal rules for interstate trucking, says Mike Dolan, the legislative representative who handles trade policy for the International Brotherhood of Teamsters, which complained about NAFTA provisions giving Mexican trucks access to U.S. highways.

"The free-trade lobby," Dolan says, "uses these trade deals to enact a kind of domestic regulatory agenda that they can't get otherwise."

Inside Track

With the TPP talks, an immediate concern for Dolan is the "Buy American" policies that give preferential treatment to U.S. goods in federal procurement contracts. Negotiators could give that same preferred status to goods made in the 10 other countries.

Several senators late last year spelled out their Buy American concerns in a letter to President Barack Obama. Ohio Democrat Sherrod Brown, who signed the letter, has been a critic of pacts such as the Central American Free Trade Agreement and says he wants to use his position on the Finance Committee, which has jurisdiction over international trade matters, to illuminate the otherwise secretive process of trade negotiations such as the TPP.

"Corporate CEOs often have better access to information on trade negotiations than Congress does," Brown says. "These trade agreements are often good for large corporations and not so good for American workers."

Rep. Zoe Lofgren, a California Democrat and free-trade supporter who backs the TPP generally, is especially concerned about what might be in the copyright provisions of a deal.

Lofgren opposed legislation aimed at curbing online piracy - known by its acronym, SOPA - which was backed by the movie industry and other sectors that rely on copyright protections, because it would, she said, hamper Internet freedom. Technology giants such as Google Inc. led a lobbying and grass-roots effort in 2012 that derailed the legislation. Movie executives and other content providers, she says, have looked to trade pacts such as the Anti-Counterfeiting Trade Agreement as a back channel to resurrect some of SOPA.

"In the past, there have been efforts by Big Content to get in a trade agreement what they could not get through the Congress," Lofgren says, noting that ACTA had stalled.

Lofgren says she warned U.S. Trade Representative Ron Kirk, "Look at what happened to ACTA. ACTA went down because of a perception that it was delivering SOPA-like rules to the Internet. If there's overreach in the TPP, the entire trade agreement could go down just as ACTA went down." (Kirk stepped down March 15.)

A spokesman for the Motion Picture Association of America declined to comment, referring questions to the USTR and the U.S. Chamber of Commerce, which led a delegation to Singapore.

Richard Bates, senior vice president of government relations for Walt Disney Co., says movie studios would like to see in the TPP the same level of protections for intellectual-property rights as are included in a congressionally approved free-trade agreement with South Korea.

One entertainment industry executive, who declined to speak on the record because of the sensitivity of the talks, says allegations that content providers are trying to get SOPA policies into the TPP deal are "scare tactics."

On the flip side of this debate, some content providers and entertainment industry lobbyists say that technology companies are eying TPP as a way to weaken existing intellectual-property laws. Not surprisingly, both camps are watching the unfolding negotiations with immense interest. "Generally," says one lobbyist familiar with the issue, "the approach in the United States to these trade agreements has been to get other countries to adopt stronger intellectual-property rights so our movies, our products, aren't ripped off around the world."

Lawmakers gave corporate interests a say in trade talks in the Trade Act of 1974, which created industry trade-advisory committees that give feedback on relevant issues to trade negotiators. AFL-CIO President Richard Trumka has the same privilege.

"The purpose of a trade agreement is to help the U.S. economy," says one entertainment industry official, who was not authorized to discuss the talks. "The U.S. exporters have an important role to play in understanding what the barriers are."

This lobbyist added, though, that openness in negotiations often falls victim to the "horse trading" that goes on behind closed doors to arrive at a final deal.

Potential Complications

The secrecy of the deal-making may well provide lobbyists with an opportunity, but it can just as easily get in their way.

Because the draft text of any agreement is secret, lobbyists with the best access to officials on the inside must be careful to not reveal too much in public while also figuring out how to press their cases.

In Singapore, for example, the USTR hosted a "stakeholder engagement event" on March 6, at which business and other interests had "the opportunity to raise questions and share views directly with negotiators and other stakeholders," according to the USTR website.

Such out-in-the-open discussion is not the only way to try to influence the deal, however. The American Chamber of Commerce in Singapore hosted a March 8 reception for diplomats and outside interests in the grand ballroom of the hotel where negotiations were being held.

Corporate representatives also book suites where they can huddle with their counterparts and with government officials. Even public interest groups get in on the lobbying: Wallach of Public Citizen said that during a previous TPP round in New Zealand she took to standing outside, in the rain, trying to persuade negotiators to chat about her concerns.

Catherine Mellor, a trade policy expert with the U.S. Chamber of Commerce, says the group regularly keeps in touch with the USTR's office, administration officials and members of Congress. But the negotiations offer a potentially one-stop opportunity for face time with foreign officials too.

"We do meet with the foreign negotiators," explains Mellor, whose subtle accent is a reminder of her Australian roots. "A lot of these companies have real-market examples of why these policies are needed."

Banking-industry insiders say privately that the talks may be an opportunity to clarify "international, cross-border applications" of the "Volcker rule" in the Dodd-Frank law, which restricts banks from making speculative investments and is much maligned by the industry, one banking source says.

High stakes ensure that business will be engaged in future deal-making on trade, even when negotiators rebuff their input. "They might publicly say they don't want this, but they might give in if they need something else," says Mark Grayson of the Pharmaceutical Research and Manufacturers of America. Industry groups hang around so "they know you're there, in case they have some questions."

FOR FURTHER READING: Changing dynamics on congressional trade policy, 2008 Almanac, p. 6-18; World Trade Organization approval (PL 103-465), 1994 Almanac, p. 123; NAFTA approval (PL 103-182), 1993 Almanac, p. 171; Uruguay Round approval, 1993 Almanac, p. 171.

Source: CQ Weekly

The definitive source for news about Congress.

(c) 2013 CQ Roll Call All Rights Reserved.

