

Meeting Summary
Maine Citizen Trade Policy Commission
November 15, 2013
Room 214, Burton M. Cross State Office Building
Augusta, Maine

Members Present: Senator John Patrick, Senator Roger Sherman, Representative Sharon Anglin Treat, Representative Bernard Ayotte, Steve Cole, Linda Pistner, Pamela Taylor, Jay Wadleigh, Mike Karragiannes, Michael Herz, Dr. Joel Kase

Staff: Lock Kiermaier (Contract)

After determining that the statutory requirement that 11 members must be present to officially convene had been satisfied, CTPC Chair Representative Sharon A. Treat convened the meeting at approximately 1:15 PM.

To begin the meeting, Representative Treat asked Commission members to introduce themselves.

Review of EU TTIP Position Papers

CTPC staff person Lock Kiermaier introduced this topic by explaining that in July of 2013, the Institute for Agriculture and Trade Policy, located in Washington D.C. and Minneapolis, Minnesota, posted on their website (<http://www.iatp.org/documents/european-commissions-initial-position-papers-on-ttip>) a series of leaked position papers on the TTIP from the European Union. Since these leaked papers are now publicly available on the internet and have a direct bearing on topics to be negotiated in the TTIP, the CTPC Chairs, Senator Troy Jackson and Representative Sharon Anglin Treat asked that a summary of the various EU position papers be developed for review by the CTPC. The original downloaded document is 65 pages in length and will be available on the CTPC website. A single copy of the entire downloaded document was available for review during the meeting.

Mr. Kiermaier further explained that this summary document that he had prepared at the Chair's request had been briefly discussed during the September 19th meeting of the CTPC but there had not been enough time to present a more complete review of the documents under review. It was agreed at that meeting that this summary be brought back for further review.

In his review of the summary document, Mr. Kiermaier explained that the various EU position papers were organized by TTIP chapter and included the following verbatim topics:

- Initial Position Paper: Motor vehicles in TTIP;
- Initial position paper: Chemicals in TTIP;
- Initial position paper: Pharmaceuticals in TTIP;
- EU Initial position paper on SPS matters for the TTIP negotiations;
- EU Initial position paper on Trade and Sustainable Development;

- Initial position paper on Technical Barriers to Trade;
- Initial position paper on Anti-Trust & Mergers, Government Influences and Subsidies;
- Initial position paper on TTIP: Cross-cutting disciplines and Institutional provisions;
- EU-US FTA negotiations: Non paper on Public Procurement; and
- Initial Position Paper on Trade and Investment in Raw Materials and Energy for the TTIP Negotiations Between the EU and the US.

Mr. Kiermaier also suggested that these leaked papers offer a rare glimpse into understanding what the negotiating stance of the EU nations is likely to be. In addition, Mr. Kiermaier and various CTPC members made the following points about the leaked EU position papers:

- These position papers are lengthy and involve the use of a particular lingo which makes use of code words and phrases that make it difficult for the uninitiated reader to easily understand;
- Understanding the EU negotiating position also provides insight into the likely USTR position and response to different topics;
- Each of these position papers seems to have a common denominator of seeking “regulatory harmonization”; i.e. what is the lowest standard of existing regulation that can be agreed to as an approach to negotiating each chapter of the TTIP?;
- Another related common denominator is a “harmonization of standards” that will commonly be used by each of the TTIP signatories. As an example, standards in the permissible levels of chemical safety will be the same in the US as in any EU nation;
- A divergence in regulatory standards is commonly referred to in these documents as “trade irritants” and this term is commonly used in international trade parlance as a reference to various duly enacted laws and regulations which are seen as restricting the free flow of international trade;
- In effect, the goal of regulatory harmonization is an attempt to supersede or bypass many laws and regulations of participating sovereign nations and this stance is endorsed by many large and influential international corporations;
- The secrecy with which these chapters of the TTIP are being negotiated and the fact that these position papers can be viewed only because they have been leaked also speaks to the same level of secrecy that the USTR uses to restrict access to negotiated text. In fact, access to TTIP (and TPP) negotiated text for members of Congress is limited to a “supervised” reading of text without copying or note taking;
- An interesting example of the effort to achieve regulatory harmonization exists around the topic of chemical safety. The EU nations currently have a set of proactive regulations commonly known as REACH which prohibit the use of chemicals until they are proven to be safe. In contrast, the US approach, as embodied in federal legislation known as TSCA, instead allows chemicals to be used until they can be conclusively identified as unsafe. It is clear that the US seeks to negotiate the TTIP to adopt a position that adopts the US approach to chemical safety as the goal of regulatory harmonization whereas the EU would prefer to retain its existing higher levels of proof;

- A failure to reach agreement on the appropriate level of chemical safety standards (or any other topic) in the TTIP or any other FTA would result in a continuation of the regulatory status quo that currently exists in each sovereign nation;
- It is clear from a careful reading of these various position papers that the EU negotiators favor allowing industry (i.e. the private sector) to establish voluntary standards which would achieve regulatory harmonization and would be enforceable through the provisions of the TTIP. It is also likely that the USTR negotiators would ultimately favor the establishment of voluntary standards;
- From an international corporate or private sector perspective, many of their concerns and perspectives transcend a purely national stance and instead seek international trade standards which would help increase international trade activity and therefore increase their profit levels in a significant fashion; and
- Representative Treat suggested that several of the topics covered in these papers, particularly that of government procurement with an overall focus on the TTIP, might be excellent topics for the 2014 Assessment that CTPC is required to conduct.

Review of USTR 2013 Report on Technical Barriers to Trade (TBT)

Moving on to the next item of the draft agenda, Mr. Kiermaier next began a discussion of a staff summary of a 2013 report from the USTR on technical barriers to trade (TBTs). This report has been published annually by the USTR since 2010 and is designed to respond to concerns from US companies, farmers, ranchers and manufacturers in response to non-tariff trade barriers such as product standards, testing requirements and other technical requirements. This year's report suggests that TBTs are problematic for small and medium enterprises (SMEs) and states that the USTR is committed to removing unnecessary TBTs through the negotiations for the TPPA and TTIP.

As reflected in the staff summary, the 2013 TBT Report is organized into the following sections:

Executive Summary (page 3)

The report emphasizes that Standards based measures are important to facilitating international trade and are necessary to protecting public health, the environment and preventing deceptive practices and further suggests that when standard based measures are unreasonable, discriminatory or lacking in transparency, they are referred to as TBTs.

Introduction (page 5)

The Obama administration has reaffirmed its support for a transparent, rules-based approach to international trade and in doing so, has focused on the growing prevalence of TBTs as a significant hindrance to international trade. In particular, the USTR has focused on two prominent TBTs:

- *Sanitary and phytosanitary (SPS) measures; and*
- *Standards-related measures;*

Standards-related measures are defined as standards, technical regulations, and conformity assessments which play an important role in the flow of international trade.

The use of tariffs has significantly decreased in recent years, only to be replaced, in effect, by TBTs. When carefully conceived, standards-related measures can:

- *Provide reliable standards that manufacturers can use to efficiently produce products for international trade;*
- *Facilitate and encourage technological innovation;*
- *Encourage the increased confidence of both buyers and sellers; and*
- *Assist SMEs in gaining access to global supply chains;*

On the other hand, poorly conceived standards-related measures can:

- *Reduce competition;*
- *Stifle innovation; and*
- *Create TBTs*

Overview of Trade Obligations and Standards-Related Measures (page 9)

The current WTO Agreement on Technical Barriers to Trade (TBT Agreement) includes rules to ensure that standards-related measures:

- *serve legitimate objectives;*
- *are transparent; and*
- *do not function as TBTs.*

U.S. Statutory and Administrative Framework for Implementing Standards-Related Trade Obligations (page 19)

The primary legal tools used by the USTR and other federal agencies for implementation of the TBT Agreement and FTAs are:

- *Administrative Procedure Act of 1946 (APA) and*
- *Trade Agreements Act of 1979 (TAA);*

Standards (page 23)

The use of voluntary standards largely developed by the private sector is touted as advantageous by the USTR in the following ways;

- *The increased facilitation of buyer-seller transactions;*
- *Spurring competition and innovation;*
- *Increase the efficiency of production;*
- *Unify markets; and*
- *Promote societal goals;*

As defined by the TBT Agreement, the concept of “international standard” has the following principles:

- *Openness;*
- *Transparency;*
- *Impartiality and consensus;*
- *Relevance and effectiveness;*
- *Coherence; and*

- *The prospect for further development.*

Conformity Assessment Procedures (page 27)

The TBT Agreement defines "conformity assessment procedures" as: "Any procedure used directly or indirectly, to determine that relevant requirements in technical regulations or standards are fulfilled". The 2013 report maintains that costs associated with unnecessary CA are a concern to international trade.

US Processes for Identifying Standards-Related Trade Barriers and Determining How to Address Them (page 29)

The USTR heavily scrutinizes any activities that foreign governments use to enact standards-related measures that may result in barriers to US trade and coordinates the various efforts of federal agencies to determine what barriers may have been created.

Engagement in Voluntary Standards Activities (page 31)

In the U.S., standards development is led by private sector with the significant involvement of the federal government. The federal government has 5 fundamental strategic objectives for involvement in standards development:

- 1. Produce timely and efficient CAs that are necessary;*
- 2. Achieve cost-efficient and effective solutions to satisfy policy objectives;*
- 3. Promote standards that encourage innovation and foster competition;*
- 4. Enhance US economic growth and ensure non-discrimination;*
- 5. Facilitate international trade and avoid unnecessary trade barriers.*

Overview of US Engagement on Standards-Related Measures (page 33)

Through the USTR, the U.S. maintains a constant overview of trying to prevent unnecessary barriers to trade and standards-related measures. The USTR accomplishes this overview through participation in the WTO TBT Committee and through administering the different provisions of the various FTAs;

2012-2013 Trends Regarding Standards-Related Measures (page 45)

Several nations including Thailand and Chile have recently implemented significant labeling requirements for different food and nutritional products. The EU has recently pursued reaching a series of regional agreements regarding the conformity assessment and acceptance of industrial products which include:

- *Machinery;*
- *Electrical products;*
- *Pressure equipment;*
- *Medical appliances;*

- Gas appliances; and
- Pharmaceuticals.

These regional agreements have caused concern for U.S. manufacturers.

The issue of mandatory labeling requirements for foods derived from genetic engineering is an issue of serious contention between the U.S. and EU nations. The U.S. approach relies on a science based approach to food labeling and requires that foods that are produced through genetic engineering only be labeled as such when there is material information that would significantly differ from food that is conventionally produced. In contrast, the EU approach has been to require that food produced with genetically engineered ingredients must be labeled as such.

Country Reports (page 49)

This section provides information about specific countries that have made use of TBTs from the USTR's perspective. The countries reviewed and their alleged TBTs include:

- *Argentina – printing and electronic equipment;*
- *Brazil- medical devices and telecommunications equipment;*
- *Chile – food labeling requirements;*
- *China – food labeling requirements, information systems, medical devices, pollution control requirements, cosmetic labeling requirements;*
- *Columbia – distilled products requirements and emission controls requirements;*
- *EU nations - Biotechnology labeling requirements, accreditation rules, food safety certification and labeling requirements, chemical safety requirements, definition and use of descriptive terms used in the production and sale of wine, aging requirements for distilled spirits products and biofuel certification and use requirements;*
- *India – cosmetic registration requirements, biotech crop requirements; telecommunications equipment requirements, toy safety registration and requirements;*
- *Indonesia – labeling requirements for horticulture and imported food products, licensure for various product distribution and toy safety standards;*
- *Japan – organic product and labeling requirements;*
- *Kenya – alcoholic beverage labeling requirements;*
- *Korea – cosmetic labeling requirements, chemical safety requirements, organic certification standards, standards for information technology equipment, solar panel testing requirements, auto parts certification requirements and telecommunications equipments certification requirements;*
- *Malaysia – food products standards;*
- *Mexico – energy efficiency labeling requirements, certification of sanitary pipes, certification of medical devices and vitamin supplements;*
- *Russia – food labeling requirements and excise tax , labeling and storage requirements for alcoholic beverages;*
- *South Africa – alcoholic beverage requirements;*

- Taiwan – certain building product standards and commodity labeling requirements;
- Turkey – pharmaceutical labeling requirements and mandatory food labeling requirements; and
- Vietnam – registration requirements for processed food.

In attempting to summarize his objective impressions of the report, Mr. Kiermaier stated the following:

- The 2013 USTR report is written from a perspective that TBTs are necessarily undesirable- even when the alleged TBTs represent duly enacted laws of sovereign nations;
- The TBTs (often duly enacted laws of other countries) that are identified in this report are identified from a singular US perspective and are often labeled as “trade irritants”;
- With its singular national perspective on TBTs that have been put into place by other countries, the USTR report devotes little or no effort to objectively assessing what TBTs the US may have put into place through its own laws and regulations;
- The report largely fails to acknowledge that some alleged TBTs may serve a legitimate sovereign purpose from the perspective of the host nation and as such should not be subject to be superseded by the provisions of FTAs like the TTP and the TTIP;

Articles of Interest

Moving on to the next item listed on the draft agenda, Mr. Kiermaier briefly described and discussed each of the following recent articles about international trade treaties:

Investor-State Dispute Resolution: The Monster Lurking Inside Free Trade Agreements; Glyn Moody, Techdirt.com, 4/16/13

This article devotes itself to a critical review on the prevalent use of Investor-State Dispute Resolution arbitration panels in FTAs like NAFTA, TPP and TTIP as a means of resolving trade disputes between international corporations and sovereign nations.

A Transatlantic Corporate Bill of Rights: Investor privileges in EU-US trade deal threaten public interest and democracy (Seattle to Brunswick Network, Corporate Europe Observatory and Transnational Institute; October 2013)

This article also concerns itself with a critical look at the use of ISDR arbitration panels in FTAs and how the use of these panels can usurp national sovereignty.

Letter to President Obama about treatment of pharmaceutical and medical device pricing in the TPP (numerous public interest organizations; 11/8/13)

This letter addressed to President Obama expresses the grave reservations of 15 national organizations about certain USTR proposals for the TPP which will limit the ability of federal and state governments to use programs like Medicare, Medicaid and the Affordable Care Act to effectively moderate increasing costs for prescription drugs and medical devices.

This transatlantic trade deal is a full-frontal assault on democracy (George Monbiot, The Guardian, 11/4/13)

This EU-US trade deal is no “assault on democracy” (Ken Clarke, The Guardian, 11/11/13)

These two columns, which appeared in recent issues of The Guardian, provide deeply contrasting perspectives on the desirability of the TTIP.

Letter to USTR and NSA on surveillance in the realm of international trade policy (38 national organizations; 11/12/13)

38 diverse national organizations sent a letter to the USTR and the National Security Agency (NSA) asking for a full disclosure as to whether the NSA has spied on domestic trade advocacy groups on behalf of the USTR.

KEI analysis of Wikileaks leak of TPP IPR text, from August 30, 2013 (James Love, <http://keionline.org/node/1825>; 11/13/13)

Knowledge Ecology International (KEI) has published the complete copy of the negotiated text regarding the Intellectual Properties (IP) Chapter for the TPP. This document was leaked to Wikileaks who then passed it on to KEI for publication on their website.

In general, the negotiated text has the potential to expand the reach of intellectual property rights by:

- increasing the duration of patents,
- making patents easier to obtain;
- creating the concept of intellectual property rights for data;
- expanding right holder privileges; and
- increasing penalties for copyright and patent infringement.

KEI suggests that the IP chapter is detrimental to efforts to access knowledge, creating access to medicine and for efforts to innovate. KEI also maintains that the US appears to have the most anti-consumer and anti-freedom negotiating positions and that other TPP countries are willing to follow the hard-line US position in negotiating the IP chapter of the TPP.

WikiLeaks publishes secret draft chapter of Trans-Pacific Partnership (Alex Hern and Dominic Rushe, *The Guardian*; 11/13/13)

The Guardian's story on the Wikileaks publication of the leaked IP Chapter of the TPP focuses on the extreme secrecy and lack of transparency used so far to negotiate the TPP;

House Stalls Trade Pact Momentum (Annie Lowrey, *New York Times*, 11/12/13)

This article discusses the Obama administration's efforts to rush through the congressional approval of the TPP is hitting some significant roadblocks. 151 House Democrats (including Maine Representatives Chellie Pingree and Mike Michaud) have signed a letter opposing the administration's Fast Track Authority proposal regarding approval of the TPP. In addition, 22 House Republicans have also signed a separate letter to the President indicating similar opposition to the Fast Track proposal, thereby raising the total of House members who oppose Fast Track Authority to 173.

Discuss topics for CTPC Chairs to bring up with Senator Angus King

Turning to the final item on the printed draft agenda, Mr. Kiermaier discussed the meeting between the CTPC Chairs and US Senator Angus King that would be occurring after the CTPC meeting. The purpose of this meeting is to discuss the various positions taken by the CTPC and the Maine State Legislature in recent years regarding various aspects of FTAs like the TPP and the TTIP. The CTPC Chairs will be presenting different written documents to Senator King which illustrate these positions. CTPC Chair Representative Sharon Anglin Treat also informed the CTPC that because fellow CTPC Chair Senator Troy Jackson was unable to attend either meeting, former CTPC Chair and current member Senator Roger Sherman would be attending in Senator Jackson's place.

The documents that were to be presented to Senator Angus King included the following:

- Resolution from the 126th Maine State Legislature opposing current form of proposed "Fast Track" authority;
- Resolution from 125th Maine State Legislature supporting states rights and the need for greater transparency in international trade treaty negotiations;
- 8/22/13 letter from CTPC Chairs to USTR criticizing most recent USTR tobacco proposal for TPP;
- 11/12/13 letter from 12 US Senators to USTR criticizing most recent USTR tobacco proposal for TPP;
- 3/23/13 letter from CTPC to USTR supporting the removal of ISDR tribunals from TPP;
- 2/17/10 letter from CTPC to USTR opposing USTR position on pharmaceutical pricing policies; and
- 6/23/10 letter from CTPC to Chairs of US Senate Finance Committee supporting efforts to retain current footwear tariff policies.

After a brief discussion of each of these documents, CTPC members were invited to suggest different messages to Senator King that would be relayed by Representative Treat and Senator Sherman:

- CTPC member Senator John Patrick voiced his strong support for all the aforementioned documents and the need for much greater transparency in the TPP and TTIP negotiating process. Senator Patrick also stated his fervent opposition to the use of ISDR tribunals in these FTAs;
- CTPC member Steve Cole expressed his grave concerns about the expansion of the scope trade policy negotiations worldwide and believes it threatens the serenity and intent of domestic policy decisions that sovereign nations routinely make. He also favors a dismantling of the WTO superstructure which seems like a “monster”;
- CTPC member Michael Herz agreed with Mr. Cole’s statement and expressed further concern that the FTA negotiating process favors private enterprise over the people that populate the nations. He expressly endorsed Senator Patrick’s previous prioritization on the need for greater transparency;
- CTPC member Jay Wadleigh believes that the TPP and TTIP represents an attack on our nation’s sovereignty and strongly opposes the Fast Track Authority proposal from the Obama administration;
- CTPC member and Chair Representative Sharon A. Treat stated her intent to ask Senator King why he had not signed the 11/12/13 letter from 12 US Senators opposing the current USTR proposal on tobacco for the TPP which she pointed out is consistent with past stands taken by the CTPC on this issue. Representative Treat also stated her intention to raise the issue of footwear tariffs with Senator King;
- CTPC member Dr. Joel Kase also expressed his concern about the tobacco control position of the USTR and mentioned the need to balance the notion of cost for value in our health care system and supports any effort to keep prices affordable and the paramount need for greater transparency;
- CTPC member Representative Bernard Ayotte also expressed his support for the documents under discussion and mentioned his concern that these FTAs primarily represent the interests of large corporations; and
- CTPC member Mike Karagiannes expressed his concern about the ISDR provisions and how they might affect Maine law particularly in the environment and labor areas.

As a final action, the CTPC members present unanimously endorsed the positions expressed in the documents listed above. It was emphasized that due to a lack of the required voting quorum, this action did not represent a formal motion of the CTPC.

The meeting was then adjourned at approximately 3:30 PM.