

**Article notes: August 26, 2013**  
**Citizen Trade Policy Commission**

**Tobacco in the TPPA**

**Protest by Tobacco State Politicians, Business groups May Snuff Out Obama Administration Trade Move; (Fair Warning, 8/13/13)**

- After strong opposition from various business groups and members of Congress from tobacco producing states, the Obama administration appears to be backing off from a previous trade proposal which would have prevented tobacco companies from using the TPPA to attack tobacco control measures that exist in many countries;
- Business groups such as the U.S. Chamber of Commerce, the National Association of Manufacturers and the American Farm Bureau Federation had strongly objected to special treatment for tobacco in the TPPA and apparently were successful in convincing the TPPA to back off from its original proposal;
- Public health advocates are concerned about the USTR change in position regarding tobacco and note that whatever is decided for the TPPA is likely to be replicated in the upcoming TTIP negotiations;
- Public health advocates also note that FTAs like the TPPA have been increasingly used by tobacco companies to derail tobacco control measures in several different countries including Australia; and
- Tobacco proponents have waged a very successful, behind the scenes effort to stop the original USTR tobacco proposal for the TPPA and among others, enlisted the support of former USTR Mickey Kantor to voice his opposition to special treatment for tobacco in the TPPA;

**Letter from five U.S. Senators to USTR Froman regarding tobacco provisions in the TPPA; 8/15/13)**

- Five U.S. senators [Blumenthal (CT), Durbin (IL), Markey (MA), Heitkamp(ND) and Harkin (IA)] sent a letter dated August 15, 2013 to USTR Michael Froman stating their concerns about the status of tobacco-specific language in the TPPA. Their letter included the following points:
  - They prefer an exclusion of all tobacco products from the TPPA;
  - They maintain that the TPPA must allow nations to “fully implement and enforce strong nondiscriminatory tobacco control language”;
  - The US has been a strong leader in the effort to reduce illness and death caused by tobacco use;
  - Tobacco use kills 400,000 people in the US each year and 6 million people across the world;
  - Tobacco is a unique consumer product which when used as intended kills one out of every 2 consumers;

- As evidenced by the ratification of the World Health Organization Convention on Tobacco Control ratified by 177 nations, tobacco is the only consumer product reflecting a global consensus to reducing harmful tobacco use; and
- Tobacco companies should not be able to use the TPPA to legally challenge national tobacco control regulations.

USTR Prepares to Table TPP Tobacco Proposal, Briefs Congress; (Daily News, 8/15/13)

- The USTR has substantially changed its previous draft proposal regarding tobacco control in the TPPA. The proposed changes have two essential elements:
  - The TPPA will reference provisions in the General Agreement on Tariffs and Trade (GATT) which establish that nations may establish measures “necessary to prevent or reduce tobacco use or its harms”. Many public health advocates are concerned that this provision is ambiguous at best and certainly increases the chances that the TPPA will be used to challenge national measures to control tobacco use; and
  - The TPPA will stipulate that a consultation requirement will be mandated for any challenges to tobacco control measures. Again, many public health advocates view this element of the proposal as having no real significance and likely to be ignored by ISDR tribunals;
- The new USTR tobacco proposal does not recognize tobacco as a unique consumer product that is a significant threat to public health;
- The previous USTR draft proposal on tobacco provided a “safe harbor” for tobacco control measures developed on a federal level and had been fiercely opposed by the tobacco industry and certain members of Congress. The objections to the previous USTR tobacco proposal held that permitting “origin-neutral, science-based restrictions” on tobacco regulations represented a lowering of the bar when compared to the standards expressed in the GATT;

USTR Abandons Plan to Protect Tobacco Control measures under Trans-Pacific Partnership Trade Agreement (Campaign for Tobacco-Free Kids; 8/19/13)

- Disappointing that USTR has abandoned its previous proposal that would have made it difficult for tobacco companies to challenge tobacco control measures under the terms of the proposed TPPA;
- Previously, the USTR had backed a proposal which would have created a “safe harbor” in the TPPA for national tobacco control measures and had stated that the proposed tobacco “carve out” would “...explicitly recognize the unique status of tobacco products from a health and regulatory perspective”; and
- As an alternative, the USTR is proposing a weaker measure whereby the TPPA would make reference to existing language in the General Agreement on Tariffs and Trade (GATT) which recognizes the authority of nations to enact health and safety measures; this proposal would not halt tobacco companies from suing countries for tobacco control measures which allegedly violate the provisions of an international trade treaty such as the TPPA.

OBAMA GOES TO BAT FOR BIG TOBACCO IN TPP (Action on Smoking and Health; 8/19/13)

- The Obama administration has backed down from their previous TPPA proposal to protect public health from the harmful effects of tobacco;
- The new TPPA tobacco proposal from the USTR "...benefits tobacco companies with zero tariffs, expanded investor rights and greater limits on regulation of tobacco advertising and other services" (Professor Robert Stumberg);
- The draft USTR proposal will make it easier for international tobacco companies to directly sue TPPA nations;
- The previous USTR tobacco proposal featured a "safe harbor" provision which would have protected certain national tobacco control measures and was regarded by many in the public health filed as a good starting point for negotiations;
- Non-tobacco corporations supported the tobacco industry's position that no exception should be made in the TPPA for tobacco control measures;

TOBACCO CONTROL AND TRADE AGREEMENTS: STRATEGIES FOR POLICY CHANGE IN THE 21<sup>ST</sup> CENTURY (Center for Policy Analysis on Trade and Health; undated)

- This paper reflects the positions of the Center for Policy Analysis on Trade and Health (CPATH) and the Center for Tobacco Control Research and Education (CTCRE) established at a meeting held on 2/19/13;
- International trade treaties such as the TPPA are increasingly being used to challenge the tenets of federal, state and local tobacco control measures;
- The TPPA represents an opportunity for the US to become a leader in the effort to protect public health and safety through the reduced use of tobacco;
- Iterated concerns include the following:
  - Tobacco is the only legal consumer product that "kills when used as intended" causing 6 million deaths per year;
  - Curtailing tobacco use is an essential element of public policy that seeks to reduce childhood mortality and illness;
  - International trade agreements offer tobacco companies a strong vehicle to combat tobacco control measures;
  - International trade treaties like the TPPA are negotiated in secret and offer no meaningful participation by the public or the democratic process; and
  - The proposed TPPA and TTIP offer significant threats to public health;
- Suggested strategies include the following:
  - Trade agreements must guarantee a nation's right to protect public health from tobacco use;
  - Each trade agreement must incorporate specific language from the WTO Doha Declaration on countries' rights to protect public health and this language must single out and identify tobacco control;
  - TPPA must not undermine a nation's ability to use tobacco control measures to reduce tobacco use and its threat to public health; and
  - Trade policy needs to be negotiated and agreed upon in a manner that is transparent to the public.

## **USTR Weekly Newsletters**

### **USTR Weekly E-Newsletter (USTR; 8/1/13)**

- This edition of the weekly USTR newsletter included the following articles:
  - USTR Michael Froman urged continuation of the 37 year old Generalized System of Preferences (GSP) which promotes trade for developing nations by providing duty-free importation of up to 5,000 products from a preferred list of 127 countries;
  - USTR representatives will be visiting Japan for high level bilateral negotiations on TPPA related provisions dealing with autos, insurance and non-tariff measures;
  - USTR Michael Froman met with the U.S. chamber of Commerce CEO Tom Donahue to discuss the TPPA, TTIP, Trade Promotion Authority (aka Fast Track Authority) and the WTO

### **USTR Weekly E-Newsletter (USTR; 8/8/13)**

- This edition of the weekly USTR newsletter included the following articles:
  - USTR won a case at the WTO with a ruling that Chinese tariffs on certain chicken products was unjustified under international trade rules;
  - USTR Michael Froman will be attending TPPA negotiations in Asia; and
  - USTR Michael Froman announced an agreement with the EU allowing high-quality, non-hormone treated beef to be sold in the EU with no tariffs

### **USTR Weekly E-Newsletter (USTR; 8/15/13)**

- This edition of the weekly USTR newsletter included several articles about African trade developments:
  - USTR Michael Froman recently attended the 3 day meeting of the African Growth and Opportunity Act Forum in Ethiopia and pledged U.S. support to strengthen the AGOA and its role in international trade; and
  - USTR Froman also announced U.S. efforts to strengthen the East African Community (EAC) through the use of a proposed Trade Facilitation Agreement which will parallel the existing US-EAC TIP with a focus on sanitary/phyto-sanitary measures and technical barriers to trade;
- The office of the USTR also held high level meeting with Peruvian officials on the need for participation in international standards development processes and involvement in the regulatory development system;

## **Other International Trade Topics**

**Who's at the Table/ Demanding Answers on Agriculture in the Trans-Pacific Partnership**  
(Institute for Agriculture and Trade Policy; February 2013)

- As of 2011, the 11 countries participating in the TPPA represent 30% of the world's agricultural exports and 20% of the agricultural imports;
- Despite the potential of the TPPA becoming the largest and most comprehensive FTA to date, there has been relatively little publicity about the potential implications and even less disclosure from the USTR and other negotiating partners about the text being considered ;
- TPPA is not just about lowering tariffs; more fundamentally, the TPPA could expand protections for investors over those for consumers and farmers and significantly restrict the efforts of governments to develop and implement public policy to reshape food systems;
- As currently proposed, there is no separate food chapter in the TPPA. Instead, provisions that significantly affect food policy are woven throughout the other chapters;
- The Investor-State Resolution Mechanism (ISDR) included in a leaked text of the TPPA Investment chapter would result in the ability of investors to challenge public policy decisions in agriculture and other trade topics and potentially receive millions of dollars in damages from TPPA participating governments;
- ISDRs have already been used successfully under NAFTA to challenge a ban on high-fructose corn syrup in Mexico (to the preference for native cane sugar); Mexico was forced to pay \$169.18 million in damages;
- Several countries (Australia, Bolivia, Ecuador and Venezuela) have begun to question the wisdom of including ISDRs in FTAs;
- The leaked TPPA chapter on Investment also propose to ban performance requirements which will effectively limit a nation's ability to limit volatility to international markets and to build integrated food systems;
- Industry advocates are pushing that the TPPA be made a "comprehensive undertaking"; i.e. that the agreement will apply to all sectors of trade and the economy, further meaning that all TPPA countries would be subject to ISDRs and would be unable to exclude (or protect) certain agricultural products;
- Food safety is a primary topic of concern relative to the TPPA; for example, the importation of Vietnamese shrimp may be exempt from current U.S. food safety standards;
- It is anticipated that food safety standards in the TPPA would be reduced to the lowest common denominator (i.e. "regulatory harmonization") so as to increase food exporting markets;
- The use of ractopamine in cattle to accelerate growth is allowed in the US but banned in many other countries; the TPPA could be used to allow the use of ractopamine in all TPPA countries;
- Food safety policy should be governed by the Precautionary Principle as opposed to waiting for exhaustive and comprehensive scientific proof- which is a goal of the food industry;
- Procurement rules in the TPPA should be developed to exempt national, state or local anti-hunger programs from a ban on procurement requirements to buy locally grown food;
- The potential removal of agricultural import tariffs under the TPPA also threatens the viability of local food systems and national food policies;

- The excessive concentration of corporate agricultural enterprise is a significant issue in many TPPA countries as well as around the world. Some examples include:
  - In the US, 4 companies control 83.5 of the meat industry;
  - In New Zealand, one company (Fonterra) controls 90% of the dairy industry;
  - 3 companies (Monsanto, DuPont and Syngenta) control 57% of the international seed market; and
- In previous FTAs, competition policy has been limited to attempts to rein in the perceived advantages enjoyed by state-owned enterprises (SOEs);
- Competition policy as it pertains to agriculture policy in the TPPA should also include a focus on reining in the monopolistic power of huge international agribusinesses;
- The TPPA should be negotiated with the benefit of an informed public debate with the need for increased transparency.

New England shoe companies push for elimination of shoe tariffs; (Kennebec Journal, 8/23/13)

- Six New England based shoe companies recently wrote to the USTR expressing their opposition to the inclusion of tariffs on footwear in the TPPA;
- The opposition of the six companies (Converse, Adidas, Saucony, Sperry Top-Sider, Clarks Americas and Black-Diamond Group) is in reaction to USTR Froman recent trip to the New Balance facility in Maine. During that visit, New Balance officials maintained that the retention of existing tariffs on shoes is crucial to the preservation of more than 1,000 manufacturing jobs in New England;
- The letter to the USTR from the other leading shoe companies disputes the New Balance assertions and states that high tariffs have largely failed to preserve manufacturing jobs and instead have led to artificially high shoe prices that have the effect of depressing retail employment across the country;
- New Balance reacted to the letter by stating that none of these companies make shoes in the US and that it is inaccurate to compare manufacturing jobs with those in the retail sector. New Balance also stated that the removal of shoe tariffs will definitely result in the loss of the 1,000 New England manufacturing jobs and have little of no effect on the creation of other jobs.

Textiles in the News; selected articles (Textiles in the News; 8/19/13)

The following articles appeared in the 8/19/13 edition of Textiles in the News; a very brief summary of each article is provided:

- **Froman Says TPP in 'End Game;' Ministers To Provide Political Direction at Next Round** (Daily News, August 9, 2013)
  - USTR Froman announced that TPPA is nearing final agreement and that most important trade issues have been resolved;
- **Trade Agreement a Bad Deal for Maine** (SunJournal.com, August 8, 2013)
  - The Sun Journal editorialized against adoption of the TPPA citing their concerns about ISDRs, lack of transparency, and fast track authority;

- **Elections In Australia, Chile, Malaysia Could Impact TPP Negotiations** (Inside U.S. Trade, August 15, 2013)
  - Upcoming elections in Australia, Chile and Malaysia have the effect of creating caretaker governments in each of these countries thereby reducing their ability to negotiate effectively;
  - Of particular interest in Australia is the fact that ISDRs are an issue in the parliamentary elections; the ruling party opposes them and the opposition party would consider their use on a case-by-case basis;
- **TPP Members Commit To Tariff Offers on All Products in Coming Months** (Inside U.S. Trade, August 9, 2013)
  - The various TPP member nations are committed to a first step of offering “goods market access offers” which could conceivably lead to reduced tariffs for any market item. This negotiating stance is considered to be vital for such issues as US/Vietnam footwear trade and US/Japan auto trade;
- **Textile, Garment, Leather and Footwear Sector Offered TPP Opportunities** (TalkVietnam, August 16, 2013)
  - TPP negotiations offer a big opportunity for Vietnam trade in textiles, garment, leather and footwear with current tariff rates possibly being reduced to zero;
- **News Analysis: Imported Raw Materials the Biggest Challenge for Vietnam to Enter TPP** (Xinhua News, August 14, 2013)
  - The biggest challenge to the Vietnamese garment industry will be a TPP requirement that TPP members use TPP member-produced yarn in textiles to qualify for tariff free access;
- **Malaysian Textile and Apparel Exports to Rise 20 Percent Apparel Views** (August 16, 2013)
  - Malaysian textile and apparel exports are expected to increase by 20% as a result of the TPP;
- **China Debates Membership in US-Led Trans-Pacific Partnership** (Asia Pacific Defense Forum, August 7, 2013)
  - China is seriously considering the pros and cons of attempting to join the TPP;
  - China is currently the second-largest economy in the world which casts some doubt about the effectiveness of the TPP without such a major Pacific trading partner;
- **Froman Expects 'Real' TTIP Negotiations to Begin at October Round** (Inside U.S. Trade, August 2, 2013)
  - USTR Michael Froman expects the real, more substantive TTIP negotiations to begin in October