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Prepared for the Maine Citizen Trade Policy Commission

Maine Agriculture and Food Systems in the Transatlantic Trade and Investment Partnership

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Executive Summary

The negotiations for the Transatlantic Trade and Investment Partnership (TTIP) began with a series of bold assertions that it would serve to jump start the two ailing economies, resulting in rising economic growth and job creation on both sides of the Atlantic. Tariffs are already quite low. The bigger challenge – and the real target -- is the very different approaches to regulation. Past experiences with free trade, such as those under the North American Free Trade Agreement, give reasons for concern. It is impossible to accurately predict the real impacts of changes in tariff and non-tariff barriers on specific sectors of agricultural production in Maine. The bigger question may be how the changes that could result from TTIP would affect the state's food sovereignty, i.e., farmers' efforts to produce sustainable crops at fair prices, consumers' demands for healthy and affordable foods, and their joint efforts to support local economies.

Food Safety: Tariffs on most crops are already very low. There are, however, some real differences in rules on food additives, pesticides and other agrochemicals that are allowed in one jurisdiction but not the other. The EU's restrictions on GMOs and its labeling laws could come under pressure in TTIP. Any changes in those rules made under TTIP would apply to the U.S. as well as the EU, potentially limiting what is allowable under Maine law. The Maine Citizen Trade Policy Commission (CPTC) should request information from USTR, including:

- Are commitments on food safety issues such as the use of chlorine rinses of poultry, Ractopamine in meat production and diphenylamine (DPA) on fruit being discussed within the TTIP negotiations on Sanitary and Phytosanitary Standards (SPS) or Technical Barriers to Trade (TBT), and, if so, would TTIP SPS or TBT requirements limit states' abilities to raise food safety standards?
- If those issues are not being addressed within the chapters on SPS or TBT, would they be covered under a chapter on regulatory coherence? How would regulatory coherence subordinate U.S. and Maine laws to protect public and environmental health in agriculture and food?
- Is GMO labeling being discussed in TTIP and, if so, how would any commitments made affect Maine's GMO labeling laws?

Public procurement programs, whether for local foods, roads, or renewable energy, are important tools to strengthen local economies. Maine (along with 36 other states), the U.S. and the EU are already included in the plurilateral Government Procurement Agreement, which requires many procurement programs (but not Farm to School programs) to be open to bids from foreign companies. The EU is seeking to expand those commitments in TTIP at the state level to include all goods, all services and all sectors, potentially undermining these important programs.

- The CPTC should insist on a written answer from USTR to its questions on procurement commitments for Farm to School and other local foods programs in TTIP, as well as on the EU's suggestion that federal grant funds used at the state level be opened up to European vendors. It might also consider sharing these concerns with other states and cities being approached by EU negotiators for procurement commitments.
- The CPTC should request information from the Governor's office on any meetings or other communications with EU or U.S. officials on potential procurement commitments under the trade agreement, both in terms of possible risks to local foods programs and more generally to clarify the

process of agreeing to those commitments at the state, county or city level. Those commitments should be the result of a fully informed public debate.

Geographical Indications establish legal protections for products based on their place of origin, specific production techniques, and the reputation of quality for those goods. The EU protects over 1,200 such products through intellectual property rights rules enforceable through trade agreements. Some U.S. GIs exist, such as Maine Lobster, which are protected by trademarks held by producers. The EU seeks to protect GIs in TTIP, potentially including cheese names such as feta, gorgonzola and munster, as it did in recent bilateral trade agreements with Canada, Central America, Peru and Korea.

- The CPTC should call on the European Commission and USTR to provide a list of the specific Geographical Indications protections sought by the EU in TTIP, as well as the U.S. response to date.
- Based on that information, the Commission could issue a request for comments or convene a hearing of Maine dairy, wine, cheese and processed meat producers on how they see their interests being affected by those protections. Their recommendations should inform advocacy by the Commission with USTR.

Dairy: Maine dairy farmers—like all American dairy farmers—have been struggling for the past decade, due to low producer prices, which are set by a complicated formula administered by the Federal Milk Marketing Order system (FMMO). FMMO prices have rebounded somewhat in the last two years, due in great part to increased demand for non-fat dry milk (NDM). It is likely that increased trade could lower the price of NDM, and in so doing, drive FMMO prices down significantly. This could prove particularly devastating to Maine dairy farms. Beyond this, Maine currently supplements payments to farms through a Dairy Stabilization Program, which could be subject to legal challenges under the trade deal as an unfair price support. It is also important to note that Maine dairy farmers, like EU farmers, do not use artificial bovine growth hormone. Depending on how the U.S. and EU deal with this issue in trade talks, the outcome may not prove beneficial to Maine farmers.

- The CPTC should request information from dairy groups and other available sources on the likely impact of increased export activity on the U.S. Class I milk price, given (in particular) the role that non-fat dry milk has in Federal Milk Marketing Order pricing.
- The CPTC should make sure trade negotiators are aware of the Maine's Dairy Stabilization Program and its importance to Maine.
- Work with in state players (e.g., Maine Farmland Trust, Maine Organic Farmers & Gardeners Association) to alert Maine's dairy processors (that do not accept milk with bovine growth hormones) of the possible consequences of an international trade agreement on their operations.

The establishment of common standards should serve to prohibit – rather than promote – efforts by corporations to play off regulatory standards in one jurisdiction against the other. The U.S.-EU Organic Equivalency Arrangement was negotiated outside the confines of a trade agreement. The current approach to our bilateral economic relations in TTIP is a political choice; alternatives are entirely possible. If not, if the talks are to continue along the lines of other recent trade agreements, then civil society and policy makers should seriously consider putting a halt to the TTIP until a different approach is underway.

An Assessment of TTIP's Impact on Maine's Agriculture and Food System*

Prepared for the Maine Citizen Trade Policy Commission
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Introduction

The negotiations for the Transatlantic Trade and Investment Partnership (TTIP) began with a series of bold assertions. The agreement, leaders said, would serve to jump start the two ailing economies, resulting in rising economic growth and job creation on both sides of the Atlantic. It would streamline unnecessary red tape while at the same time raising standards to the highest levels. And it would serve as a guidepost for standards in trade agreements all over the world, and even at the floundering World Trade Organization (WTO).

The truth of these assertions, of course, will depend on the specific content of the trade deal. The U.S. and EU governments have so far refused to publish negotiating texts, but they have provided some information in summary form, and leaked negotiating documents and meeting reports continue to emerge. Civil society groups and legislators continue to push for greater transparency in the negotiations, so that analysis and advocacy is based on real and complete information. In the meantime, a fair amount of information can be deduced from existing information, as well as the results of recent trade deals, particularly the EU-Canada Comprehensive Economic and Free Trade Agreement (CETA).

Trade barriers between the U.S. and EU are already remarkably low, with weighted tariffs for U.S. agricultural exports to the EU averaging just 4.8 percent, and 2.1 percent for EU exports to the U.S.,[1] differences that could vanish with minor fluctuations in exchange rates one way or the other. In just the last year, for example, data at Bloomburg.com indicates that the dollar fell 8.8 percent against the euro from July 2013 to July 2014, in effect making U.S. exports cheaper (compared to a 5 percent rise the previous year)[2]. The bigger challenge – and the real target -- is the very different approaches to regulation. Regulatory coherence, like expanded trade, is in itself a neutral term. But the political context and economic consequences are not neutral, with corporations and their allies on both sides of the Atlantic pressing for harmonization of rules that limit their ability to buy and sell goods and services.

The trade agreement could affect a broad range of sectors, from energy to environment, and intellectual property rights to labor rights. TTIP could also have a significant impact on the evolution of agricultural markets and food systems in the U.S. and EU. Unlike the WTO, there is no specific chapter in TTIP on agriculture. Instead, the rules affecting agriculture, food safety and food systems are woven throughout the texts.

In this paper, we attempt to outline some of the concerns around issues of importance to Maine agriculture and food systems, focusing especially on topics that are key for healthier, more equitable and sustainable agriculture and food systems. These issues include possible TTIP provisions on:

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* *Written with research assistance from Adam Needelman.*

- procurement rules on farm to school and other local foods initiatives,
- proposals for protections of Geographical Indications for cheese, meats and wines; and
- changes in market access rules that could affect dairy, fruit and other sectors relevant to Maine agriculture.

Free trade experiences

While it is impossible to predict with any certainty how the trade agreement would affect particular sectors of production, the history of trade liberalization since the North American Free Trade Agreement (NAFTA) was enacted in 1994 gives reason for concern, especially for the smaller scale, decentralized production that characterizes agriculture in Maine. Over the last 20 years, there has been a marked shift in the size of U.S. farms, with the number of very small farms and very large farms increasing dramatically. The increase in the number of small farms is due to several factors, including urban people returning to the land (although many are reliant on off-farm jobs to support themselves) and the growth in specialty crops for local farmers markets. The number of farms in the middle, those that are small but commercially viable on their own, dropped by 40 percent, from half of total farms in 1982 to less than a third in 2007.[3]

During this process of farm consolidation, the corporations involved in agriculture and food production also consolidated, both domestically and internationally. Mary Hendrickson at the University of Missouri calculates the share of production in different sectors held by just four firms. The U.S. share of the top four firms (Cargill, Tyson, JBS and National Beef) in total beef slaughtering, for example, increased from 69 percent in 1990 to 82 percent in 2011. The story is the same in pork slaughtering, where the ratio increased from 45 to 63 percent, soybean processing (61 to 85 percent) and other sectors, as fewer firms control bigger and bigger shares of total production. This concentration constrains farmers' choices about where to sell their goods, as well as consumers' choices about where and what they can buy.[4]

The trade rules are only part of the story of why agriculture and food systems have changed over the last few decades, but the NAFTA provisions on investment (which gave foreign investors new rights and protections) and tariffs clearly enabled corporations to separate various aspects of production to take advantage of the lowest costs. That is an explicit goal of most trade deals, including TTIP. Under the NAFTA rules, for example, U.S. companies grow cattle in Canada and pork in Mexico that they then bring back to the U.S. for slaughter and sale. Along the way, independent U.S. hog and poultry producers and competitive markets for their products have nearly disappeared.

Efforts to at least label those transnational meats under Country Of Origin Labeling (COOL) laws have been vigorously opposed by the Mexican and Canadian governments and are now facing a review at the WTO. In that case, Canada and Mexico asserted that the labeling laws constitutes a technical barrier to trade because of reporting requirements and that they discriminate against their exports to the U.S. The panel agreed with Canada and Mexico, and in response the U.S. government issued revised rules on COOL that it asserts places it in compliance. The final decision by the WTO panel is due later this year.[5]

The impacts of trade rules on food systems often extend well beyond the direct impacts on where food is produced and by whom. Changes in rules on foreign investment and trade barriers under NAFTA resulted in significant changes in the Mexican food system. Sharp increases in foreign investment in snack food production, fast food restaurants and supermarkets, coupled with rises in consumption of dairy, meat and processed foods, shifted the default food environment available to consumers and contributed to rising obesity rates. Mexico is now tied with the United States for the highest obesity rates in the world.[6]

The issues around trade and agriculture are not just whether costs can be lowered or production volumes increased, but what impacts those changes would have on rural economies, sustainable agricultural production and local control over the food system. Would the trade rules in TTIP help or hinder farmers' and consumers' efforts to re-localize food systems and build connections from farm to fork? How would a possible increase in dairy imports affect farm prices and subsidies? We in the U.S. have a lot to learn from the EU's efforts to retain their cultural and environmental heritage with family farms and sustainable agriculture, but in many ways this trade agreement would take us in the opposite direction.

Market access and Maine agriculture

Agricultural production is at the heart of Maine's economy, both in terms of economic interests and in the state's reputation as a leader in sustainability. As indicated in Table 1, since 1997 there has been an increase in the number of farms and the land used for farming. While the average farm size in acres seems stable, behind that average are a significant increase in relatively smaller farms, and a decrease in mid-sized farms, which corresponds to national trends. The market value of crops in Maine, as well as production of vegetables, increased substantially during the period, reflecting the increase in production of higher value products such as organic crops and specialty cheeses.

Table 1: Maine Agriculture

	2012	2007	2002	1997
Number of farms	8,173	8,136	7,196	7,404
Land in farms	1,454,104	1,347,566	1,369,768	1,313,066
Average size	178	166	190	177
Farms by size				
1 to 179 acres	6311	6446	5285	5322
180 to 499 acres	1318	1178	1334	1545
500 or more acres	544	510	577	537
Market value of agricultural products sold ($1,000)	763,062	617,190	463,603	450,278

Source: 2012 Census of Agriculture, USDA National Agricultural Statistics Service

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Tables 2 and 3 compares the top five Maine agricultural exports to the EU and the top five agricultural imports from the EU with the relevant tariff rates (a full listing of Maine's top exports to the EU prepared by the Maine International Trade Commission is included in Annex 1). For the most part, the tariffs on agricultural commodities are already very low, with the tariff rates rising with the degree of processing. The notable exception is exports of Maine lobsters to the EU. It is worth noting, however, that the lobster exports have dropped considerably in the last few years, from just over $20 million in 2011, to $17.5 million in 2012 and $15.8 million in 2013, while the tariffs have remained stable. So it is not clear that a change in tariffs would actually affect exports to the EU market for that product. Even when tariffs do drop, as in the case of U.S. corn exports to Mexico in the wake of NAFTA's approval, the benefits do not necessarily trickle down to producers.[7]

Table 2: Top ten Maine agricultural exports to the EU and corresponding tariffs

Description	**2014 EU Tariffs**	**Total 2013 (in US $)**
Lobsters, Live, Fresh, Ch, Salted	8% Live, 20% Prepared, 8% Whole, 10% Other	11,473,428
Lobsters, including in shell, Frozen	20%	4,372,555
Beer Made from Malt	0%	811,951
Potatoes, Prepared Etc. No Vinegar Etc., Frozen	14.40% cooked; 7.60% + EA(1) (formulated depending on ingredients) if in flakes, flour or meal; 17.6% otherwise	478,575
Waters Not Sweetened or Flavored; Ice and Snow	0%	459,206
Scallops Incl. Queen Scallops, Live, Fresh, Chilled	8%	361,449
Scallops Incl. Queen, Frozen/Dried/Salted/In Brine	20%	350,755
Vegetable Seeds For Sowing	8.30% for salad beet seed or beetroot seed; 3.00% otherwise	247,166
Juice of Single Fruit/Veg, Not Fortified Etc Nesoi	19.20% to [33.60% + 20.60 EUR/100kg]--depending on product	236,180
Cranberries, Blueberries, Etc, Fresh	0%, 3.20%, or 9.60% depending on product	215,520

Source: USDA Economic Research Service: Farm and Wealth Statistics, tariff data from Tariff information from the USITC Dataweb Tariff lookup tool: http://dataweb.usitc.gov/scripts/tariff_current.asp

Table 3: Maine's top ten agricultural imports from the EU and corresponding tariffs

Description	2014 US Tariff	Total 2013 (in US $)
Vodka	0%	6,854,953
Wine, from Grape Nesoi & Gr Must W Alc, Nov 2 Liters	$0.169/liter	4,116,780
Hams, Shoulders & Cuts, Bone In, Salted, Drd, Smkd	$0.014/kg	3,566,466
Animal Feed Prep Except Dog Or Cat Food	0%, 7.5%, [$0.804/kg+6.4%], 1.9%, 1.4%, Depending on product	915,877
Vegetable Seeds For Sowing	0%, $0.0068/kg, $0.01/kg, $0.015/kg, $0.059/kg depending on type of seed	574,119
Sparkling Wine Of Fresh Grapes	$0.198/liter	555,936
Seabass, Fresh Or Chilled	3% if containers are 6.8 Kg or less; Free otherwise	421,155
Beer Made from Malt	0%	392,779
Fish Meat Fresh/Chilled Exc Fillets & Steaks	0%	383,557
Meat Of Swine, Salted, In Brine, Dried, Smkd	$0.014/kg	273,338

Sources: WISERTrade, State HS Database and Tariff Data Source: "TARIC Consultation" European Commission Taxation and Customs Unit

Food safety and Technical Barriers to Trade

But just as the trade agreement is about much more than the actual flows of products and services, the negotiations on agricultural market access will focus on much more than tariffs. As in the chemical sector, the push for "behind the border restrictions," i.e., regulatory coherence on food safety and plant and animal health standards, is driving the trade talks. Much of the debate so far has focused on the EU's relatively higher food safety standards, especially its prohibitions on chlorine rinsed chicken, regulations on the use of additives such as ractopamine in pork and other meat production, its bans on beef produced using growth hormones, and restrictions on and labeling of genetically modified organisms. European policymakers continue to rely on the Precautionary Principle, which gives regulators the ability to impose restrictions in the face of scientific uncertainty over a product's safety. The default position under that principle is that food additives and chemicals can't enter the market unless the companies seeking to introduce those ingredients provide sufficient data to prove them safe, while in the U.S., for the most part food additives or processes are allowed to be commercialized unless

they are proven unsafe, based on studies conducted by the government. The Precautionary Principle is enshrined in the Treaty of Lisbon, the EU's founding document and guides the operations of the European Food Safety Authority (EFSA).

The U.S. National Chicken Council and CropLife America,[8] among others, have complained about the EU restrictions on food additives in comments to USTR on TTIP. The Chicken Council asserts that the EU's stricter rules on poultry rinses (the EU has allowed only plain tap water rinses of chicken) unnecessarily restrict its exports. Speaking at a Senate hearing on TTIP, the Chicken Council's Bill Roenigk said, "One of the more irksome tricks in the EU bag has been the precautionary principle, which I understand the EU uses when it's convenient."[9] EFSA's recent opinion on the use of peroxyacetic acid as a poultry rinse (while not a final change in its regulations) has eased some of the Chicken Council's concerns. It also illustrates the kind of regulatory changes that could take place in anticipation of TTIP. While not formally linked to the agreement, that decision, as well as the U.S. decision to ease restrictions on meat imports from the EU despite lingering concerns over contamination with BSE (Mad Cow Disease), reflects political accommodations that are clearly related to the trade talks.

Fruit exporters have also criticized EU restrictions on pesticide levels. The Northwest Horticultural Association notes that EU tariffs on apple exports range from 4 to 9 percent, depending on the time of year, and that graduated quotas for pear and apple imports restrict sales of lower cost U.S. fruits in European markets. They also point to the EU's restrictions on diphenylamine (DPA), which is used to control scald on apples and pears. The EU sets the maximum residue level for that chemical at 0.1 ppm as of November 2013, a level the Northwest Horticultural Association asserts will effectively ban U.S. apple and pear exports to Europe.[10]

EU regulators are concerned that DPA can combine with nitrogen while the fruit is in storage to produce nitrosamines. According to Environmental Working Group, both the U.S. and EU ban nitrosamines because they have been shown to cause cancer in laboratory animals, "and some studies have found that people eating foods with nitrosamines have elevated rates of stomach and esophageal cancers. Nitrosamines form when nitrogen-containing compounds combine with amines, which are compounds derived from ammonia. Since the 1970s, government agencies have regulated foods and consumer products to limit concentrations of chemicals that can serve as building blocks of nitrosamines."[11] These EU restrictions would not apply to imports of organic apples, as they are produced without that chemical.

The EU has also raised its own concerns about restrictions on fruit exports to the United States. In its 2014 Trade and Investment Barriers Report, the European Commission states that it, "also remains worried by the extremely long delays in treating other Sanitary and Phytosanitary (SPS) export applications submitted by the EU, e.g. for apples, pears, stone fruits and bell peppers."[12] These concerns were echoed in joint comments submitted by Copa-Cocega and FoodDrink Europe, who assert that, "Although it is possible to import apples and pears from Italy, currently US phytosanitary regulation establishes extremely restrictive conditions, which are equivalent to an import ban [of EU products]." They assert that the U.S. preclearance process is unfairly slow and bureaucratic, and that it essentially reflects "political" rather than food safety concerns. Noting a substantial market for pears and apples in

the U.S., it points to bilateral negotiations already underway between food safety agencies in Italy and the United States, and a separate process between the European Commission and USDA.[13]

Several organizations have raised concerns that the proposed chapter on regulatory coherence could drive regulatory standards down to the lowest common denominator by establishing a process that would require notification to the trading partners of any proposed regulations, new cost-benefit assessments and comment periods on any new laws. The Center for International Environmental Law sent a letter signed by 170 U.S. and EU organizations raising concerns that those provisions could affect federal and even state level laws, among other things.[14] This could potentially affect specific legislation enacted in Maine, such as stricter regulations on pesticides.

Potential challenges to Maine's GMO labeling law

Disputes between the U.S and EU over restrictions on GMOs have been seething for more than a decade. The U.S. has challenged the EU's restrictions on GMOs in bilateral talks and multilateral talks, most notably in a dispute brought to a WTO dispute panel in 2003.[15] In that case, the panel ruled against the EU's de facto moratorium on GMOs, finding that they constituted an unfair barrier to trade. The issue of GMO labeling has also been contentious. After a protracted debate at the international standards setting body Codex Alimentarius, the U.S. accepted its finding in support of voluntary labeling of GMOs. Codex definitions, standards and guidelines may be referenced in WTO disputes on Sanitary and Phytosanitary Standards, as well as in bilateral trade agreements like TTIP that are considered WTO plus.

The U.S. government, however, continues to challenge mandatory GMO labeling laws through its trade policy. In its 2013 report on Technical Barriers to Trade (TBTs), USTR notes ongoing discussions with the over labeling of GMO honey, and its objections to Peru's new rules establishing mandatory labeling of GMOs, complaints that it has raised at the WTO committee on TBTs.[16] In USTR's 2014 report, it adds concerns about Ecuador's new mandatory labeling of transgenic foods and comments that it will raise these issues in WTO forums. It also raised concerns about the EU's framework regulation 1169/2011, which, as of December 2014 will allow Member States latitude in setting nutritional labeling standards. USTR notes that, "The chief concern of U.S. industry is that regulation 1169/2011 appears to provide wide latitude for EU Member states to adopt non-uniform implementing regulations. U.S. industry is concerned about the burden of meeting multiple labeling requirements, particularly if those requirements cannot be met through stickering or supplemental labeling."[17]

While there is no official or leaked information yet indicating that the U.S. is seeking to undermine the EU's mandatory GMO labeling laws in TTIP, it would certainly be consistent with the U.S. trade agenda in other forums and with industry demands.[18] In comments to USTR, the National Oilseeds Processors Association lists the elimination of EU GMOs labeling laws as a major objective for the negotiations, saying that, "Since no evidence has ever been presented that such products are unsafe, the label's effect is to generate unjustifiable fear of biotechnology."[19] This demand is echoed by the American Confectioners Association[20] and the American Soybean Association in separate comments to USTR, which asserts that, "There are no health, nutritional or food safety reasons for food products containing

biotech ingredients to be labeled, and any inclusion of biotech ingredients should not be stigmatized with a label."[21]

Food industry groups, joined by the Chamber of Commerce, have already weighed in on the WTO dispute on Country Of Origin Labeling, urging Congress to back off even before the panel issues its final ruling. Pending the final report, due in late July, a coalition of meat industry groups and the Chamber of Commerce urged Congress to suspend the program. The National Farmers Union disagreed, saying, "Urging Congress to repeal COOL laws before the WTO report is issued is just another desperate attempt to prevent consumers from having access to basic information about their food. NFU eagerly awaits the WTO report and will recommend a response if necessary. Consumers have a right to know where their food comes from and our family farmer and rancher members agree."[22]

It is also possible that those groups would use investment provisions in the trade agreement to challenge GMO labeling laws. Investor State Dispute Settlement (ISDS), which gives foreign investors the right to sue governments for compensation over rules or regulations that undermine their expected profits, has become an extremely controversial issue in the trade talks. Under that provision, Phillip Morris is suing the government of Australia over its cigarette labeling laws. In that case, since Australia had refused to include ISDS in its free trade agreement with the United States, the company utilized an older Bilateral Investment Treaty between Hong Kong and Australia that does include ISDS to bring the lawsuit through its Hong Kong subsidiary. This raises the possibility that a U.S. company that is also incorporated in the EU could utilize such a provision to challenge GMO labeling or other consumer protection or environmental laws in the U.S.[23]

If the U.S. and EU were to agree to restrict GMO labeling in TTIP, or to make it voluntary rather than mandatory, those commitments could supersede Maine's GMO labeling law. Given the massive opposition to mandatory labeling by Monsanto, the Grocery Manufacturers Association and other corporate interests that are also active in USTR's Trade Advisory Committee system, it is reasonable to assume that they have made this link too and are pressing USTR on the issue.

Recommendations

It is impossible to accurately predict the real impacts of these changes in tariff and non-tariff barriers on specific sectors of agricultural production in Maine. The bigger question is how the changes that could result from TTIP would affect the state's food sovereignty, i.e., farmers' efforts to produce sustainable crops at fair prices, consumers' demands for healthy and affordable foods, and their joint efforts to support local economies. Tariffs on most crops are already very low, so this is unlikely to be an issue in the trade talks. On the other hand, there are some real differences in rules on food additives, pesticides and other agrochemicals that are allowed in one jurisdiction but not the other. The EU's restrictions on GMOs and its progressive labeling laws could come under pressure from TTIP. Any changes in those rules made under TTIP would apply to the U.S. as well as the EU, potentially limiting what is allowable under Maine law.

A first step should be to insist that USTR provide more information on what is actually being negotiated and what rules or principles are off the table. The Maine Citizen Trade Policy Commission could request information on:

- Are commitments on food safety issues such as the use of chlorine rinses of poultry, ractopamine in meat production and diphenylamine (DPA) on fruit being discussed within the TTIP negotiations on Sanitary and Phytosanitary Standards or Technical Barriers to Trade, and, if so, would TTIP SPS or TBT requirements limit states' abilities to raise food safety standards?
- If those issues are not being addressed within the chapters on SPS or TBT, would they be covered under a chapter on regulatory coherence? How would regulatory coherence subordinate U.S. and Maine laws to protect public and environmental health in agriculture and food?
- Is GMO labeling being discussed in TTIP and, if so, how would any commitments made affect Maine's GMO labeling laws?

Procurement policies at risk in TTIP

Efforts to promote healthier, more sustainably produced foods span the entire food chain, from farm to table, and increasingly, from farm to school, hospital or other public institutions. These programs recognize the value of fresh, healthy foods and help make connections between urban consumers and farmers. There are thousands of farmers' markets, farm to supermarket and other voluntary initiatives along those lines throughout the United States and Europe.

These important, and yet fragile efforts flourish when they are an integral part of the community. As part of this movement towards local foods, new governmental programs are emerging that include bidding preferences for sustainable and locally grown foods in public procurement programs. In the United States, the 2008 Farm Bill specifically authorized public schools to include geographic preferences for locally grown unprocessed foods in their purchasing decisions.[24] These popular programs now reach almost six million students in all 50 states, including more than 200 schools in Maine.[25]

These initiatives have been successful both because they help the school systems to source fresher, healthier foods at fair prices, and because they support urban to rural connections that build communities and encourage local economic development. New proposals to broaden that approach to foods for hospitals and other public institutions have emerged in Maine, Minnesota, Oklahoma, Oregon, Vermont and other states.[26]

Similar initiatives in Europe also encourage local preferences for school lunch programs. In Italy, for example, schools consider location, culture, and how foods fit into their educational curriculum in making purchasing decisions.[27] As of 2010, 26 percent of school food purchases in Rome were from local farmers, and 67.5 percent were organic. EU procurement rules seem to limit such preferences, but Denmark, Austria and other countries have interpreted those rules liberally to allow for sustainable and local procurement of food in various public programs.[28]

Unfortunately, these exciting examples of participatory food democracy could be at risk under TTIP. Both the U.S. and EU have targeted the elimination of "localization barriers to trade." This could mean that bidding criteria designed to favor local foods or local jobs could be deemed illegal under the trade deal. The EU, in particular, has been insistent on the inclusion of procurement commitments at all levels of government, for all goods, and in all sectors. At a speech last spring in San Francisco, French trade minister Nicole Briqc declared, "Let's dream a little with respect to public procurement. Why not replace "Buy American" which penalizes our companies with "Buy transatlantic" which reflects the depth of our mutual commitment?"[29]

Public procurement in recent trade agreements[30]

Procurement rules in trade agreements are designed to ensure that foreign firms can compete for publicly funded programs. In general, they require National Treatment (i.e., establish rules that prohibit discrimination against foreign suppliers of a good or service), establish rules on transparency in bidding processes, and set thresholds on the size of contracts covered by the trade commitments. They prohibit the use of measures designed to encourage local development by favoring local content or a degree of local ownership of businesses competing for procurement contracts. Parties to each agreement will also

Table 4: Government Procurement Agreement (GPA) restraints on government procurement, from the 2012 Assessment:*

• **Nondiscrimination.** The GPA contains "most favored nation" (MFN) and "national treatment" (NT) provisions that prohibit Parties from implementing procurement policies that prefer domestic products, services or suppliers over those of another Party, or that fail to treat the products and services of other Parties equally. Impermissible discrimination under WTO rules can include measures that have discriminatory effects as well as those which intentionally discriminate in order to favor domestic producers.

• **Performance based standards**. Article VI of the GPA contains language stating that "where appropriate," technical specifications for procurement shall be prescribed "in terms of performance rather than design or descriptive characteristics . . .."

• **Use of "relevant international standards**." Article VI also indicates that "where appropriate," technical specifications for procurement contracts shall "be based on international standards, where such exist; otherwise, on national technical regulations, recognized national standards, or building codes."

• **Procedural requirements**. The GPA contains various procedural provisions, including a requirement in Article XII:2 that "[t]ender documentation provided to suppliers shall contain all information necessary to permit them to submit responsive tenders . . .." The specific information that must be provided includes "a complete description of the products or services required or of any requirements including technical specifications, conformity certifications . . . [and] any factors other than price that are to be considered in the evaluation of tenders . . .."

indicate which sectors are excluded from these commitments, and whether environmental or social criteria can be used as bidding criteria.

At the international level, those rules can be set in bilateral free trade agreements or at the Government Procurement Agreement (GPA) at the WTO. The GPA is a plurilateral agreement, so it includes only the 43 countries that have agreed to sign on. It includes rules on goods and services, at the federal and sub-national levels of government and to public utilities (such as energy, water and public transport).[31] The GPA was revised in 2011 to include additional commitments at the federal level, with those changes implemented as of April 2014.

All EU member states and thirty-seven U.S. states (including Maine) are part of the GPA.[32] The inclusion of those U.S. states in the GPA generated considerable controversy. USTR recruited state governors to sign up for the agreement, with very little public consultation on the potential impacts. Several states later attempted to withdraw their approval, and six states, led by Maine, passed laws requiring approval by the state legislature.[33] In the bilateral trade deals that followed the GPA controversy, fewer states consented to have their procurement programs bound by the trade rules, with just 19 agreeing to commitments under the U.S.-Central America Free Trade Agreement (CAFTA) and eight making commitments under the U.S.-Peru FTA. In 2004, the Governor of Maine withdrew its approval of CAFTA commitments, and the state has not agreed to commitments under any free trade agreements since that time.

In 2011, the EU and Japan brought a complaint against Canada over the Ontario government's feed in tariff program for renewable energy, which included procurement preferences for wind and solar energy equipment manufactured in the province. Ontario is not bound by the GPA, but in any case the EU and Japan argued that the program does not qualify for procurement exceptions because, among other things, the energy is resold to consumers on commercial terms. The WTO panel agreed with those arguments and, as of June 2014, the Canadian government was in the process of revising the program to conform to WTO rules.[34]

It is not entirely clear whether a similar argument could be made that school lunches, which are resold to many students in cafeterias, could be challenged on similar lines. In an article on local foods procurement in Ontario, Canadian attorney Kyra Bell-Pasht argues that while the WTO decision raises questions about that possibility, the GATT General Public Interest Exception (g) for conservation of natural resources (including the use of fossil fuels) could be used to justify local procurement provisions as environmental measures.[35]

The EU's aggressive approach to local procurement in that dispute (an approach backed by the U.S. government in its own submission on the case), and in its approach to the CETA talks, raises concerns about how public programs designed to encourage local job creation and economic growth would fare under TTIP. In its summary of the results of the CETA negotiations, the European Commission (EC) states:

> "As regards market access, the Canadian offer [m.d. 374/11 of 19 July 2011] is the most ambitious and comprehensive Canada has made so far to a third country, including in comparison to the access granted to the United States. For the first time, Canadian provinces and municipalities will open their procurement to a foreign partner, going well beyond what

Canada has offered in the GPA (the multilateral Government Procurement Agreement) or in NAFTA."

According to the Canadian Government's summary, the government maintained the ability to include social and environmental criteria in procurement contracts, as well as federally funded [but not, apparently, provincially funded] agricultural programs that are part of food programs. While the agreement does not cover procurement by public entities for goods "not with a view to commercial resale", it does cover procurement contracts for "regional and local entities and bodies governed by public law, including hospitals, schools, universities and social services" over 200,000 SDRs[36] (about USD$300,000), a threshold that could easily affect many state and local programs. While the details will not be known until the final text is published, the Toronto Food Policy Council, Food Secure Canada, and the Council of Canadians, among others, continue to raise serious concerns that the procurement commitments under CETA could jeopardize local foods programs across the country.[37]

The EU's agenda on procurement in TTIP

The EU outlined its general objectives on public procurement just before the first round of negotiations for TTIP in July 2013. It states that, "This negotiation would present an important opportunity for the EU and the U.S. to develop together some useful "GPA plus" elements to complement the revised GPA disciplines, with a view to improve bilaterally the regulatory disciplines." It describes the EU's intention to include 13 U.S. states not already covered by the GPA and bilateral arrangements, as well as 23 larger cities and metropolitan areas including New York, Philadelphia and Los Angeles.[38]

More recently, in a leaked Note for the Attention of the Trade Policy Committee dated February 25, 2014, the European Commission's Directorate of Trade lists its expectations of U.S. deliverables for "approximately 20 of the (economically) most important states." This includes commitments by all state government executive agencies, including counties with a population over 700,000, state capitals and other cities with over 250,000 inhabitants, as well as public universities with enrollment 10,000 students and public hospitals with more than 500 beds.

According to data at the U.S. Bureau of Economic Analysis website, Maine is number 43 in terms of state GDP, so perhaps would be lower on the EU's list of priorities. However, the European Commission memo also notes its priorities for all states with existing commitments under the Government Procurement Agreement (which would include Maine), particularly upgraded market access coverage of executive entities of state governments. Efforts to develop state-specific procurement requirements would likely conflict with the EU's push to open procurement at all levels. Existing Maine law already requires state agencies and schools to buy a certain percentage of meat, fish, many dairy products and fresh fruits and vegetables directly from Maine farmers or food brokers. LD 1254, which was enacted in Maine but ultimately vetoed, would have established minimum purchase requirements for percentages of Maine foods in those programs.[39]

Both the USTR and the EU's Directorate of Trade have asserted that one of the major objectives in the TTIP is to eliminate localization barriers to trade, including local content requirements. In principle, this could include restrictions on procurement preferences for locally grown foods. Under Notes to Annex 1 of the GPA, however, the U.S. listed an exemption for the Department of Agriculture, stating, "This

Agreement does not cover procurement of any agricultural good made in furtherance of an agricultural support programme or a human feeding programme." This means that federally funded Farm to School or similar farm to institution programs are not covered by GPA commitments. There is no similar note in the GPA on state-level commitments, so any locally funded feeding programs could potentially be subject to challenge.

The inclusion of procurement commitments on farm to school or other public feeding programs would be new, but each trade agreement sets specific rules and exclusions. In February 2014, both the Maine Citizen Trade Policy Commission and a separate group of national and regional farm to school and other networks,[40] in separate letters, wrote to the U.S. Trade Representative requesting written assurance that it would not agree to procurement commitments on farm to school or similar local foods procurement programs in TTIP. As of June 2014, neither group had received a written response.

Broader implications

While it is not clear if local foods programs would be included in procurement commitments under TTIP, the EU has stated clear priorities for state level procurement commitments in other sectors, particularly energy, transportation and construction and other Buy American programs designed to promote local employment and economic activity. State-level commitments on procurement and regulatory coherence are two of the EU's most significant "offensive" interests in the trade agreement.

It is also not clear who would decide if a state, county or city is bound by procurement commitments under TTIP. A leaked memo on the December 2013 negotiating session notes USTR's reluctance to press states on this issue despite pressure from EU negotiators, but informal reports indicate that EU officials are already visiting many states to build their case for inclusion in the agreement.

Under CETA, the Canadian government agreed to open federally funded programs at the provincial level to EU procurement bids. The Canadians also agreed to create a single electronic procurement website to provide information to European vendors on procurement opportunities. It is possible that the EU could take a similar approach under TTIP to open up state and local procurement using federal grants. In an article on European procurement directives and TTIP, Christopher Yukins reports that, "Because of an apparent reluctance to challenge the U.S. government's argument that it may not compel the states to join a free trade agreement, some in the European procurement community have suggested that Europeans could instead gain nondiscriminatory access to state procurement markets indirectly, through the federal government's grantmaking authority."[41] Yukins notes that this approach would be consistent with existing procurement reforms conditioning state use of federal grant monies, while avoiding the political problems associated with either convincing states to sign on to new commitments under TTIP or decreeing that it has the authority to unilaterally include them in the agreement.

Public procurement programs, whether for local foods, roads, or renewable energy, are important tools to strengthen local economies and give preference to disadvantaged groups such as minorities and small-scale businesses. As taxpayer funded initiatives, they also offer the opportunity to include criteria such as environmental sustainability or living wages into broader economic programs. Members of Congress have also weighed in on this debate. An amendment to the fiscal year 2015 Commerce, Justice, Science (CJS) Appropriations bill sponsored by Rep. Alan Grayson requires that, "[n]one of the funds made available by this Act may be used to negotiate an agreement that includes a waiver of the 'Buy American Act.'" The bill, with the amendment, was approved 231-87 by the House of

Representatives on May 30. While it is not clear if that amendment would actually prohibit USTR from negotiating procurement commitments in trade agreements (if it were to pass the Senate and conference committee), it sends a strong political signal to negotiators on both sides of the Atlantic.[42]

Recommendations:

The Maine Citizen Trade Policy Commission should:

- Insist on a written answer from USTR to its questions on procurement commitments for farm to school and other local foods programs in TTIP, as well as on the EU's suggestion that federal grant funds used at the state level be opened up to European vendors. It might also consider sharing these concerns with other states and cities being approached by EU negotiators for procurement commitments.

- Request information from the Governor's office on any meetings or other communications with EU or US officials on potential procurement commitments under the trade agreement, both in terms of possible risks to local foods programs and more generally to clarify the process of agreeing to those commitments at the state, county or city level. Those commitments should be the result of a fully informed public debate.

Geographical Indications in TTIP

A contentious debate over Geographical Indications (GIs) has emerged in the TTIP talks. To many Americans, this is an obscure and apparently new issue. Reports on EU demands to protect what most Americans would consider common food names such as "feta" have elicited surprised and rather derisive comments among Members of Congress and the media.

But, in fact, these kinds of protections have existed for more than a century. Geographical Indications establish legal protections for products based on their place of origin, specific production techniques, and the reputation of quality for those goods. The Paris Convention for the Protection of Industrial Property of 1883 (Paris Convention) established protections for industrial and agricultural goods with a view to protecting producers' intellectual property. While there was much less trade than today, diplomats at the time were concerned about protections for their citizens' products at international trade fairs. That accord was followed by the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods of 1891 and the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration of 1958.[43]

The World Trade Organization (WTO) Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) includes a special section on the protection of GIs. Article 22.1 of the TRIPS Agreement defines GIs as:

> "..indications which identify a good as originating in the territory of a Member [of the World Trade Organization], or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin."[44]

That article establishes that Members have a duty to prevent deceptive uses of product names through trademark or other intellectual property protections. However, Article 24 also establishes certain exceptions, notably, Article 24.6, which states:

> "Nothing in this Section shall require a Member to apply its provisions in respect of a geographical indication of any other Member with respect to goods or services for which the relevant indication is identical with the term customary in common language as the common name for such goods or services in the territory of that Member."[45]

The question of whether GIs such as "feta" or "parmesan" are in fact common names or protected designations is at the heart of the current debate on GIs in TTIP.

EU protections for Geographical Indications

The central idea behind protections for GIs is that these products have inherent qualities related to their place of production (such as soil or climatic conditions, called *terroir*), as well as cultural knowledge and traditions, that differentiate them from similar products. That designation creates a kind of place-based "brand" that informs consumers about their special qualities and often allows producers to charge a premium price. GIs are most common for wines, cheeses and certain meats, but there are some GIs for certain kinds of textiles (such as Thai Silk) or Swiss Watches produced according to specific criteria.[46]

Unlike other more controversial forms of intellectual property, protections for GIs are not held by specific companies or individuals. As opposed to trademarks, which are owned by a particular company or trade association, GIs are a collective right. They cannot be bought, sold or assigned to other rights holders.

These protections are most advanced in the European Union, which has established a process to register and protect GIs. In each case, producers apply to register a product using specific production and geographic standards. Those decisions are made first at the national level, although non-EU applicants may also apply directly to the European Commission.

The EU has separate registration and protection regimes for wines, spirits, and agricultural and food products. As of May 2014, 1226 food and agricultural products were registered at the European Commission as protected products. Those products include meats and meat products, cheeses, beers, fruits and flowers. They are produced and marketed locally or regionally, but some categories, especially cheeses, are widely exported as well. The list includes 216 cheeses, among them Gruyere, Roquefort, Queso Manchego, Mozzarella di Bufala, Camembert de Normandie, Neufchatel, Fontina, Gorgonzola, Asiago, Parmigiano Reggiano, Pecorino Romano, Gouda Holland, Edam Holland and Feta. It is important to note that in some cases, it is the compound name, such as Parmigiano Reggiano, that is protected, rather than the broader category of parmesan cheese.[47]

In 2006, the U.S. and EU reached a bilateral agreement on the protection of wines. That agreement requires the U.S. to make changes in laws to limit the use of certain wine names considered "semi generic": Burgundy; Chablis; Champagne; Chianti; Claret; Haut Sauterne; Hock; Madeira; Malaga; Marsala; Moselle; Port; Retsina; Rhine; Sauterne; Sherry and Tokay.[48] Existing producers of these wines would be "grandfathered" in, but non-EU producers not meeting the GI criteria for those wines would not be allowed to use those names. The EU has a similar bilateral agreement on wine with Australia, and agreements on wine and spirits with Canada, Mexico, Chile and South Africa.

The EU has been seeking to expand protections of geographical indications in its negotiation of bilateral free trade agreements. New commitments on the issue were reached in FTAs with Peru and Colombia, Central America, and Korea. In May, EU Trade Commissioner Karel De Gucht told a United Kingdom House of Lords subcommittee hearing on TTIP that, without securing at least partial protection for EU GIs in the United States, it would be very difficult to conclude a deal on agriculture. According to a report in Inside U.S. Trade, the EU is seeking GI protections for a list of 200 items, including meats, fruits and vegetables, wines and spirits, and 75 kinds of cheese.[49]

There is no public information yet on the exact list of GI protections the EU will seek in TTIP, but an examination of the commitments made in other recent trade agreement could give some indications. Table 1 lists GI commitments made in three recent trade agreements negotiated by the EU.

Given the similarities in culture, consumer tastes and production with the U.S., the results of the Canada-EU Comprehensive Economic and Trade Agreement (CETA) could also help to clarify the EU agenda in TTIP. The main CETA negotiations concluded in October 2013, when the two sides reached a political agreement, but the final negotiations are still underway as of this writing. Still, the technical summaries of the negotiations published by the EU and Canada are instructive. A leaked technical summary by the European Commission of the outcomes from the CETA text reports:

> "Another very positive result is the outcome on Geographical Indications (GIs). It is remarkable that Canada - not traditionally a friend of GIs - has accepted that all types of food products will be protected at a comparable level to that offered by EU law and *that additional GIs can be added in the future* [emphasis added]. This is a very satisfactory achievement in itself, but at the same time also a useful precedent for future negotiations with other countries.
>
> 125 of our 145 priority GIs will enjoy in full the high protection reserved by Article 23 TRIPS to wines and spirits, i.e. that the use of a GI name is prohibited even when the true origin of the product is indicated or in translation or with expression such as "kind", "type", style", "imitation" or the like.
>
> In addition – after very difficult negotiations - Canada finally agreed to follow our [the EU's] request regarding the five cheeses (Asiago, Gorgonzola, Feta, Fontina, Munster) the names of which are largely considered generic on the North American market. The use of these protected denominations will be prohibited with an exception for the already existing uses on the Canadian market ('grandfathering').
>
> New entrants into the Canadian market will only be able to sell their product if these 5 names are accompanied by indications such as "style", "type" "kind", or "imitation". This is a compromise solution, but one that achieves that Canada recognises that these names are protected GIs. It protects the market position of our producers by clearly distinguishing them from the original product. In addition, we have obtained for all GIs protection from the misleading use of symbols from the countries of the original GI owners. For instance, the misleading uses of flags and symbols are prohibited, and all products must have a clear and visible indication of their origin."[50]

Table 5: Geographical Indications for Cheeses Protected in Recent EU Trade Agreements

EU-Central America Association Agreement (2012)	EU-Peru-Colombia Trade Agreement (2012)	EU-Korea FTA (2010)
Allgäuer Emmentaler		
Allgäuer Bergkäse		
Asiago		Asiago
Brie de Meaux	Brie de Meaux	Brie De Meaux
Camembert de Normandie	Camembert de Normandie	Camembert De Normandie
Comté	Comté	Comté
Danablu	Danablu	
Emmental de Savoies	Emmental de Savoie	Emmental De Savoies
Esrom		
Feta	Feta	Feta
Fontina		Fontina
Gorgonzola	Gorgonzola	Gorgonzola
Grana Padano	Grana Padano	Gran Padano
Idiazábal	Idiazábal	
Kefalograviera		
Mahón-Menorca		Mahón-Menorca
Manouri		
Mozzarella di Bufala Campana		Mozzarella Di Bufala Campana
Parmigiano Reggiano	Parmigiano Reggiano	Parmigiano Reggiano
Pecorino Romano		Pecorino Romano
Provolone Valpadana	Provolone Valpadana	Provolone Valpadana
Queijo S. Jorge		Queijo De São Jorge
Queijo Serra da Estrela	Queijo Serra da Estrela	
Queso Manchego		Queso Manchego
Reblochon	Reblochon	Reblochon
Roquefort	Roquefort	Roquefort
Taleggio	Taleggio	Taleggio

Source: http://ec.europa.eu/trade/policy/countries-and-regions/agreements/#_other-countries

While the details of the EU's specific negotiating objectives on GIs in TTIP are not clear, it is clearly a priority area in the negotiations. The "Directive for the negotiation of the Transatlantic Trade and Investment Partnership between the European Union and the United States of America," which was adopted by the EU Council on 17 June 2013, outlines main negotiating objectives for the agreement. The only specific issue identified in the section on intellectual property rights is a mention of GIs. The text emphasizes that, "The negotiations shall aim to provide for enhanced protection and recognition of Geographical Indications through the Agreement, in a manner that complements and builds upon the TRIPS, also addressing the relationship with their prior use on the US market, with the aim of solving existing conflicts in a satisfactory manner."[51]

The debate on GIs in the United States

While this concept is most developed in the EU, there are a number of Geographical Indications already in use in the United States. Although there is no centralized list as in the EU, names such as Maine Lobsters, Idaho Potatoes, Vidalia Onions, Kona Coffee and Florida Oranges are protected under trademarks held by industry associations. The American Origin Products Research Association, an organization established to promote the establishment and protection of GIs in the United States, argues that increased designation and protection of GIs for locally produced cheeses and other goods would enhance value added for local producers and provide more accurate and useful information to consumers. They argue that existing trademark law puts the burden of protection on those industry associations, raising unfair obstacles to producers of locally established producers to establish their own place-based names for cheeses and other products.

Those concerns have found some resonance among Maine cheese producers. In an article in the Portland Press Herald, Caitlin Hunter, a cheese maker at Appleton Creamery said, "I completely agree with the Europeans that we should not use their cheese names. They have spent centuries developing their distinctive regional styles, and we should not steal them, or try to reproduce them." She labels her cheese "Camdenbert," (a takeoff on the coastal town Camden) for example.[52] However, extending those protections to what most would regard as generic names is another matter.

The Consortium for Common Food Names (CCFN) argues that the EU's agenda on GIs would unfairly restrict food names that are no longer strictly associated with particular regions. It notes that a federal standard for production of Asiago cheese has existed since 1977 (almost 20 years before the European Commission recognized Asiago as a GI) and asserts that, "Despite its long-time usage in the Americas, consumption of asiago cheese in the United States was relatively limited until a few U.S. dairies increased production, and the restaurant chain Panera Bread began to sell asiago bagels (a breakfast pastry). Panera has now sold millions of asiago bagels, and American consumers are very familiar with asiago cheese. This is not due to asiago producers in Italy, but to producers in the United States and around the world that have been manufacturing and marketing this product for years."[53]

The CCFN argues for a process to establish which food names are actually in common usage, perhaps with a registry at the international level. It further suggests requiring that GIs include the name of the

place where the good is produced, i.e., Camembert de Normandie (which is the actual GI approved by the EU) rather than simply Camembert (which, in fact, the EU has not sought to protect).

These issues have found resonance in Congress, where two major letters to USTR have rejected the EU's push for GI protections in TTIP. In an April 4 letter to USDA Secretary Tom Vilsack and USTR Michael Froman, 45 U.S. Senators rejected the EU's approach on GIs in TTIP, focusing on protections for processed meat names such as bologna. They called on USTR to work aggressively to ensure that the EU's approach on GIs does not impair the ability of U.S. businesses to compete, stating, "We are concerned that these restrictions would impact smaller businesses who specialize in artisan and other specialty meat products such as bratwurst, kielbasa, wiener schnitzel and various sausages."[54] It is worth noting that the EU does not recognize GIs for any of those terms as single meat names. According to the European Commission's Database of Origin and Registration (DOOR), it does recognize Mortadella Bologna, Thüringer Rostbratwurst, Nürnberger Bratwürste, Nürnberger Rostbratwürste and Kiełbasa lisiecka.

That letter was followed in May by a letter from 177 members of the House of Representatives (including Reps. Michaud and Pingree) focused on GIs for cheese names. That letter, led by the Congressional Dairy Farmers Caucus with support from the National Milk Producers Federation, asserts that, "The EU is taking a mechanism that was created to protect consumers against misleading information and instead using it to carve out exclusive market access for its own producers. The EU's abuse of GIs threatens U.S. sales and exports of a number of U.S. agricultural products, but pose a particular concern to the use of dairy terms."[55]

Potential impacts on Maine producers

According to at least one report, Maine has more artisan cheese producers than any state except New York. Jeff Roberts, the author of The Atlas of American Cheese and a consultant to the Vermont Institute of Artisan Cheese at the University of Vermont, reports that since he wrote that book in 2006, the number of artisan cheese producers in the state increased from 25 to 75. "To me, that's a truly remarkable expansion in a relatively short period of time," he commented. "And most of us outside of Maine have never heard of Maine artisan cheese because it really doesn't leave the state."[56]

If TTIP were to include GI protections for specialty cheeses produced in Maine, producers could be compelled to modify those cheese names, either to other names or to include qualifiers like "style." The fact that the EU has already established protections for cheese names in its recent agreements with Colombia and Peru, Central America and Korea means that any exports by Maine producers to those markets could be restricted, potentially undermining the expansion of cheese production in the state.

Which cheese (or meat) names are protected would influence how cheese and dairy producers would be affected. If the EU focuses primarily on protections for the cheese names it protected in CETA (Asiago, Feta, Fontina, Gorgonzola, Munster), it seems most likely that it would impact larger corporations such as Kraft, rather than smaller producers of artisan cheeses. These impacts would be lessened if the protections are established for compound names such as Parmesano Reggiano rather than Parmesan.

However, a recent article in Inside Trade indicates that the EU is seeking protections for as many as 200 products, which would expand protections for their goods without necessarily including corresponding protections for US GIs in ways that benefit local producers. The way those protections are established would also matter, so that any GIs advance the interests of smaller, innovative local producers over those of larger corporations interested primarily in protecting export markets.

On the other hand, a vigorous public debate on the issues of protections for place based names, such as those advanced by the American Origin Products Association, could result in new protections for innovative cheeses and other goods. Maine Lobster is one such GI already in existence. Raising the profile of that issue, and examining the potential of existing trademark law or possibly other mechanisms such as those used in the EU, could enable Maine producers to establish specialty markets and potentially retain more of the value added from their production.

Recommendations:

- The CPTC should insist on transparency in this issue, calling on the EU and USTR to provide a list of the specific Geographical Indications protections sought by the EU in TTIP, as well as the U.S. response to date.
- Based on that information, the Commission could issue a request for comments or convene a hearing of Maine dairy, wine, cheese and processed meat producers on how they see their interests being affected by those protections. Their recommendations should inform advocacy by the Commission with USTR.

Impact on Maine's dairy sector

TTIP and other international trade agreements threaten Maine's dairy industry. To understand how, one must first learn about milk pricing.

Federal Milk Pricing

The prices paid to most American dairy farmers for their milk (i.e., producer prices) are set by the federal government through complicated formulas. The formulas, which are administered by the Federal Milk Marketing Order (FMMO) establish producer milk prices based on the wholesale price of various dairy products, namely cheese, butter, dry whey, and not-fat dry milk (NDM).

FMMO sets prices for four classes of milk:

- Class I is Grade A fluid milk.
- Class II is Grade A milk used in ice cream, yogurt, cottage cheese an similar products.
- Class III is Grade A milk used to make cream cheese and hard cheeses.
- Class IV is Grade A milk used to make butter or used for dry milk.

The formula for each milk class has been the same for decades. However, the results of applying the formula have changed dramatically. The reason is that the price of NDM has soared in recent years,

primarily due to increased demands in developing nations; and the price of NDM has a direct and significant impact on milk prices in Classes I, III, and IV.

It's worth noting that, until recently, the price of NDM had no impact on Class I pricing. This is because the formula for Class I pricing is based on either the price of butter or the price of NDM, whichever is higher. For decades, the price of butter has exceeded the price of NDM, so that NDM had no effect on the Class I price of milk. But that has now changed. Now—and for the foreseeable future—it is expected that NDM will continue to be driver, not butter.

A key detail about federal dairy pricing is that producer prices during the last decade have often been below most farmers' cost of production. Many farmers hold on even though they are losing money every day. (They do so, in part, because you cannot turn off a cow, as you turn off a piece of equipment; and in part, because even though these farmers may be losing money if they measure all their costs, having some cash flow enables them to continue to service their debt and keep the farm.) Still, many farmers have not been able to hold on; they have gone of business. Vermont, for example, lost over half its farms between 2004 and 2011.

Since 2011, the FMMO price has rebounded somewhat. (Few dairy farmers are making money if you look at true costs, including depreciation and real wages for family members; but more farmers are covering their marginal costs than a few years ago, which is enough to keep them in business.) However, it's important to recognize that recent increases in producer prices are due primarily to the increase price of NDM.

Maine Dairy Stabilization Program

The next key piece of information to know is that Maine has a unique program that augments the payments farmers receive when the FMMO price is low. The Maine Dairy Stabilization Program was enacted into law in 2004, immediately providing critical support to the troubled industry. In the period from 2004 to 2011, when Vermont lost over 50 percent of its dairy farms, Maine lost only 19 percent. The difference was this program.

The Maine Dairy Stabilization Program provides direct funding to Maine farms, based on the difference between the FMMO price and the cost of production for an average farm of that size. The program pays out different amounts for four tiers of production, based on the fact that larger farms have, on average, a lower cost of production. (Because of this structure, the program is generally referred to by Maine farmers as the "tier program".)

Once every three years, the Maine Milk Commission contracts with University of Maine researchers to conduct a "cost of production" study, identifying a different average cost for each of the four tiers. When the FMMO price falls below this cost figure, the Maine Milk Commission begins to pay farmers extra. (Without the program, dairy farmers are already paid by the Commission, so structuring the payments in this way is not requiring the Commission to take on a major new function, but simply to pay out a different amount.) The greater the difference between the FMMO price and the cost of production, the more the farmers are paid.

Maine has also enacted into law a mechanism to bring in new revenues when the FMMO price is low. The mechanism is a "handling tax" applied to retailers on every gallon of milk sold. The size of the tax goes up when the FMMO price goes down.

This tax can be applied without driving up consumer costs, as long as the level of taxation is moderate. The reason is this: what retailers charge for milk is dependent on what a consumer is willing to pay; when the FMMO price drops lower, the store's cost drop as well, as explained below, so that the store's margins increase; the new tax can be paid out of the this margin without any negative impact on the consumer price.

There are three players in the milk distribution chain: farmers (producers); processors; and retailers. As explained above, the producer price is set by government policy. The price paid to the processor by a retailer is also set by government policy. (The processors are treated like a public utility, in that they are allowed to cover their costs and make a little profit.) But the retailer is allowed to sell the milk for as much as the market will bear.

Consider what happens when the FMMO price drops: the farmers make less and the processor makes the same. Usually the consumer price also remains the same. (There is little reason it will not, because it is the price consumers have been paying—and the retailers can sell if for that.) This means that retailers are making greater profit when the FMMO price drops. The effect of Maine's handling tax is to take away *some* of this this profit. The Maine Dairy Stabilization program then provides that money to the farmers.

It's an elegant way to correct a major deficiency in the FMMO system. If applied well, the farmers fare better, while the retailers still come out fine. Consumers benefit as well, because in the long run, consumers will be hurt if so many local dairy farmers go out of business and there is no longer adequate milk from local sources.

But even though this program works well in Maine, similar strategies have not been applied elsewhere. That's because Maine is in a unique situation. First, Maine is not as closely bound to some of the legal constraints of the FMMO system (for complicated historical reasons). Second, the program only works because the amount of milk produced in Maine is roughly equal to the amount consumed.

A rough balance is essential to making this program work, because under the Interstate Commerce Clause, the handling tax needs to be applied to all milk sold in the state.

Consider if such a program was in place in Vermont, which is a smaller state with a larger proportion of its agriculture in dairy production. Vermont produces about six times the amount of milk it consumes. To help the farmers to the same degree as in Maine, the tax would need to be six times higher—and at that level, the system simply cannot work.

One final point about this system: the two programs (one paying farmers; another generating revenue) cannot be legally linked without violating the Interstate Commerce Clause. So the two programs are legally separate: the Maine Dairy Stabilization Program pays out funds to farmers from the state's

General Fund; while the handling tax collects revenues into the General Funds, which the Legislature could use for any purpose.

Bovine Growth Hormones

In Maine, there is practically no use of artificial bovine growth hormones by dairy farmers. There is not a legal prohibition, but the two primary milk processors do not accept milk from cows that have received the hormones. This approach has worked extremely well for Maine's dairy industry. Although bovine growth hormones increase milk production, they are costly, and often reduce the working life of a dairy cow. All in all, the financial benefits are modest, if existent at all. Meanwhile, the fact that Maine milk is hormone free has helped sell it. So, while this is a major point of tension nationally in the trade talks, it isn't an issue for Maine producers.

Potential negative impacts of international trade agreements

One potential negative impact of the trade agreements now being pursued is that they could depress FMMO prices further. This risk is very real, due to the increasing importance of NDM prices on what farmers get paid. As noted above, the recent boost in FMMO prices is due primarily to the increased price of NDM. Broader trade opportunities could increase imports of NDM, which could easily depress the price of NDM, with potentially devastating impacts on farmer incomes.

This is clearly a concern with the TPP, as New Zealand is a major producer of NDM. For that reason, several major dairy industry organizations have spoken out against TPP.[57]

However, the U.S. dairy industry has not expressed the same kind of organized opposition to TTIP. In fact, some industry organizations are supporting a new US-EU trade pact. This is because the "EU currently enjoys a trade surplus of $1.2 billion" and some dairy groups believe that a "transatlantic agreement can do a lot to drive more reciprocal dairy trade between the US and the EU."[58]

Presumably, these dairy groups feel that the extra revenues from new exports would more than offset any FMMO price depression that could be caused by more EU trade. That might be true for the kind of large dairy farms prevalent out West—some of which are situated in huge buildings that abut powdered milk plants (often owned by the same conglomerate that owns the herd). Yet Maine's dairy sector has limited export opportunities, given both its far smaller size and the fact that there is no powered milk plant in the region. It is realistic to expect that, in Maine, the potential negative impacts of TTIP on FMMO prices will outweigh any benefits from new exports.

Another set of concerns stems from Maine's Dairy Stabilization program. It is possible, if not likely, that any international trade agreement would view this program as an unfair price support, particularly given the pressure to harmonize state and federal regulations. Given that the program only exists in Maine, there would not be any significant political pressure to have a trade agreement treat this program favorably. And yet this program has been (and remains) critically important to Maine's dairy industry.

Even if a new international trade agreement does not flat out prohibit Maine's Dairy Stabilization Program, it is likely that the program would be at greater risk for a legal challenge. As noted above, the program walks a fine line with the Interstate Commerce Clause. Though the authorities in Maine believe

that the state's current system is legally supportable, it's also true that the system is legally complicated. The likelihood of a lawsuit increases if Maine's dairy polices are under closer scrutiny due to a new international trade agreements.

Another area of concern stems from Maine's de-facto prohibition of bovine growth hormone. Growth hormones are generally not used in the EU, which suggests that the U.S. will try to address that forthrightly in any new trade agreement, as a way to increase export opportunities. The EU's restrictions on those hormones is already a flash point in the negotiations. Depending on the concessions granted, the unintended consequence could be that Maine's current position with bovine growth hormones, particularly its ability to promote any milk exports as hormone free, comes under renewed scrutiny and is weakened.

Recommendations:

The Maine Citizen Trade Policy Commission should:

- Make sure trade negotiators are aware of the Maine's Dairy Stabilization Program and its importance to Maine.
- Request information from dairy groups and other available sources on the likely impact of increased export activity on the U.S. Class I milk price, given (in particular) the role that NDM has in FMMO pricing.
- Work with instate players (e.g., Maine Farmland Trust, Maine Organic Farmers & Gardeners Association) to alert Maine's dairy processors (that do not accept milk with bovine growth hormones) of the possible consequences of an international trade agreement on their operations.

Overall conclusions

TTIP could affect Maine's agricultural and food sectors for decades to come. While there may be legitimate reasons to coordinate regulations between the U.S. and EU, those discussions need to happen under conditions of full transparency, something that is not possible under the current regime of secrecy. The establishment of common standards on food safety, procurement, or protections for local producers should serve to prohibit – rather than promote – efforts by corporations to play off regulatory standards in one jurisdiction against the other.

Any efforts to develop coherent approaches need to achieve a delicate balance on at least three dimensions: the appropriate level of decision making (subsidiarity); the right risk assessment and technical capacity; and fair and sustainable livelihoods and prices for farmers and consumers. Achieving the right balance among those complex topics within the context of a trade agreement, in which proposals on any one of those issues could be traded off for market access or other proposals on entirely different issues, seems fraught from the outset. This is a risky approach in any aspect of the

trade agreement, but is especially problematic in the arena of food and agriculture, which touches on public health, rural and urban economies and environmental protection.

Subsidiarity, the idea that decisions should be made at the smallest, lowest or least centralized level of decision making possible, was a central topic of debate in the formation of the European Union. Article 4 of the founding Treaty of Maastricht establishes that principle as a key element in the balance between the authorities of the Member States and the EU as a whole. In the U.S., that issue, while not usually described with that term, has long been a subject of tension between states' rights and federal authority. Maine's GMO labeling laws (as well as those in other states) for example, may eventually come into conflict -- or ultimately influence – federal policy on that issue, and will undoubtedly raise the public profile of GMO safety across the country. In both the EU and U.S., that tension, and the grounding in the democratic concept of subsidiarity, reflects the conflict between local level innovations such as farm to school programs or restrictions on food additives or technologies based on emerging science, and the economic pressures driving commercialization even when the risks are not fully understood.

The common standards for organic foods negotiated between the US and EU, for example, offers an alternative approach to resolving those tensions within trade deals. The carefully crafted Organic Equivalency Arrangement incorporated input from the Organic Trade Association and the International Federation of Organic Agriculture Movements. As an Arrangement (rather than an Agreement or Treaty), it was enacted through an exchange of letters from USDA and USTR from the United States, and the European Commission for Agriculture and Development.

The Arrangement, which began in 2012, recognizes certification by the USDA National Organic Program as equivalent to the EU Organic Program. It provides for periodic reviews and establishes a work plan to exchange information on emerging issues.[59] A formal review of the process is scheduled for 2015. It provides a flexible basis for mutual learning and expanded trade in those goods. The fact that this bilateral arrangement was negotiated on its own, outside the horse trading inherent in any trade negotiations, created the conditions for a reasonable approach that can also be reopened should conditions change in the future.

There is ample room for cooperation among regulators in the U.S. and EU on issues related to food safety and food markets. Discussions of locally appropriate standards for chemicals or food additives or technologies benefit from shared knowledge across the Atlantic. On the other hand, the pressure for mutual recognition agreements in TTIP on chemical policy and financial reforms, among others, creates the conditions for a push to the lowest standards prevalent in either jurisdiction.

Those discussions always reflect pressures from competing interests, but they are also always enhanced when they take place under conditions of transparency and full information. That will not be possible in TTIP as long as the negotiations remain shrouded in secrecy. This is a general problem that runs throughout the trade agreement.

Governments should engage in meaningful discussions with all stakeholders on these and other issues before each negotiating session and upon its conclusion. Those dialogues should also include frank discussions on the potential tradeoffs among sectors and hold open the possibility that the most

productive avenues for progress could be outside of the trade talks, as happened with the agreement on organic standards.

While it seems unlikely that “harmonization” in TTIP will mean anything but a race towards the lowest common denominator in terms of standards, the public attention created by the trade talks does offer a platform to learn from the best experiences on both sides of the Atlantic. This could be an opportunity, for example, to recast the public debate in the United States (and perhaps even in the EU) on the Precautionary Principle as a sensible, scientific, and democratic approach to technologies that are advancing much more rapidly than knowledge of their safety. EU dairy producers (many of whom are opposed to TTIP) could learn from Maine’s experience with dairy prices supports. And local policymakers in many European countries, who are becoming increasingly alarmed about the potential impacts of TTIP on their food and agricultural systems, could learn from the Maine Citizen Trade Policy Commission’s experience at fostering an informed public debate.

The current approach to our bilateral economic relations in TTIP is a political choice; alternatives are entirely possible. If not, if the talks are to continue along the lines of other recent trade agreements, then civil society and policy makers should seriously consider putting a halt to the TTIP until a different approach is underway.

Annex 1: Maine Exports to the European Union

Rank	Code	Description	ANNUAL 2010	ANNUAL 2011	ANNUAL 2012	%2010-2011	%2011-2012	Duty Rate
		TOTAL ALL COMMODITIES	374,062,772.	404,058,102.	364,415,948.	8.02	-9.81	
1	880000	Civilian Aircraft, Engines, And Parts	28,668,336.	51,544,840.	70,921,039.	79.80	37.59	Free
2	481190	Paper, Paperbd, Cellulose Wadd Etc, Coat Etc Nesoi	33,886,397.	32,770,621.	27,956,065.	-3.29	-14.69	Free
3	470329	Chem Woodpulp, Soda Etc, N Dis S Bl & Bl Nonconif	38,813,782.	52,715,777.	22,244,855.	35.82	-57.80	Free
4	902750	Instruments Etc Using Optical Radiations Nesoi	35,986,913.	28,398,666.	22,209,385.	-21.09	-21.79	Free
5	382200	Composite Diagnostic/Lab Reagents, Exc Pharmaceut	29,658,364.	20,655,662.	18,492,365.	-30.35	-10.47	Free
6	392113	Plates, Sheets Etc. Nesoi, Cellular Polyurethanes	18,317,531.	14,080,447.	17,972,372.	-23.13	27.64	6.5%
7	030622	Lobsters, Live, Fresh,Ch, Dried, Saltd Or In Brine	11,669,946.	14,865,606.	16,573,213.	27.38	11.49	8%
8	853221	Tantalum Electrolytic Fixed Capacitors	4,693,204.	7,053,571.	12,010,418.	50.29	70.27	Free
9	841199	Gas Turbine Parts Nesoi	11,277,421.	3,594,681.	10,362,879.	-68.12	188.28	4.1%
10	300210	Antisera And Blood Fractions, Immun Products	4,347,583.	7,794,924.	8,764,881.	79.29	12.44	Free
11	841391	Parts Of Pumps For Liquids	6,794,132.	8,652,296.	8,026,103.	27.35	-7.24	1.7%
12	470429	Chem Wdpulp Sulfite Ex Dsslvng Gr Nonconf Semi/Blc	0.	0.	7,437,811.	0.-nan	0.inf	Free
13	980110	Value Of Repair/Alter Articles Previous Imported	2,835,496.	3,667,193.	5,094,972.	29.33	38.93	NA
14	480261	Paper & Paperboard, Uncoated, >10% Mech.Fib.,Rolls	0.	1,152,597.	4,356,210.	0.inf	277.95	Free
15	848340	Gears; Ball Or Roller Screws; Gear Boxes, Etc	197,019.	2,623,040.	4,071,911.	1,231.36	55.24	NA
16	890399	Yachts Etc For Pleas/Sport Nesoi; Row Bts, Canoes	2,273,650.	2,289,828.	3,838,196.	0.71	67.62	1.7%-2.7%
17	961900	Sanitary Towels And Tampons Diapers For Babies Etc	0.	0.	3,533,280.	0.-nan	0.inf	Free-12%
18	481013	Ppr/Pbrd For Writ/Pring,Clay Ctd,<=10%Mec Fbr,Rls	3,128,772.	3,941,725.	3,391,991.	25.98	-13.95	Free

19	440320	Coniferous Wood In The Rough, Not Treated	0.	9,273.	3,036,941.	0.inf	32,650.36	Free
20	840690	Parts For Steam And Other Vapor Turbines	553,781.	350,555.	2,828,346.	-36.70	706.82	2.7%
21	480419	Kraftliner, Uncoated, Bleached, In Rolls Or Sheets	0.	0.	2,697,607.	0.-nan	0.inf	Free
22	903039	Inst Meas Volt Crrnt Etc W-Out Rcrdng Dvce, Mltmtr	1,264,821.	1,955,116.	2,141,926.	54.58	9.55	2.1%-4.2%
23	441890	Builders Joinery And Carpentry Of Wood, Nesoi	1,236,784.	1,952,260.	1,999,364.	57.85	2.41	Free
24	844900	Mach F Manuf Or Finish Nonwovens;Hat Blocks; Parts	46,981.	34,937.	1,854,710.	-25.64	5,208.73	1.7%
25	930591	Parts & Accessor. Of Military Weapons Of Head 9301	17,282.	918,576.	1,736,617.	5,215.22	89.06	Free
26	711319	Jewelry And Parts Thereof, Of Oth Precious Metal	558,450.	277,286.	1,726,041.	-50.35	522.48	2.5%
27	591140	Textile Straining Cloth Used In Oil Presses Etc	2,487,358.	1,879,325.	1,584,498.	-24.44	-15.69	6%
28	930190	Military Weapons,Oth Thn Revol,Pist,&Hd 9307,Nesoi	82,690.	1,756,140.	1,584,320.	2,023.76	-9.78	Free
29	853190	Parts Of Electric Sound Or Visual Signaling Aprts	29,439.	432,895.	1,494,764.	1,370.48	245.29	Free-2.2%
30	392690	Articles Of Plastics, Nesoi	3,306,589.	829,454.	1,462,912.	-74.92	76.37	Free-6.5%
31	853710	Controls Etc W Elect Appr F Elect Cont Nov 1000 V	1,398,707.	1,340,213.	1,430,997.	-4.18	6.77	2.1%
32	842890	Lifting, Handling, Loading & Unloading Machy Nesoi	437,371.	83,067.	1,387,566.	-81.01	1,570.42	Free
33	470321	Chemical Woodpulp, Soda Etc. N Dis S Bl & Bl Conif	51,100.	0.	1,364,248.	-100.00	0.inf	Free
34	850450	Electrical Inductors Nesoi	8,000.	683,853.	1,143,948.	8,448.16	67.28	Free-3.7%
35	860791	Parts, Nesoi, Of Locomotives	171,210.	2,682,611.	1,101,948.	1,466.85	-58.92	1.7%-3.7%
36	160530	Lobster, Prepared Or Preserved	1,470,428.	1,560,063.	1,095,897.	6.10	-29.75	20%
37	970600	Antiques Of An Age Exceeding One Hundred Years	536,122.	478,880.	1,090,413.	-10.68	127.70	Free
38	902790	Pts Of Inst, Phys/Chem Analysis Etc, Nesoi	2,791,597.	2,148,143.	1,070,217.	-23.05	-50.18	Free-2.5%
39	848420	Mechanical Seals	818,379.	1,095,637.	1,046,995.	33.88	-4.44	1.7%
40	391390	Natural And Modified Natural Polymers Nesoi, Pr Fm	1,180,327.	1,078,944.	988,436.	-8.59	-8.39	NA

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