September 2, 2014

Via www.regulations.gov

Douglass Bell, Chair
Trade Policy Staff Committee
Office of the United States Trade Representative
Washington, D.C.

Re: T-TIP Environmental Review [Docket No. USTR 2014—0012]

Dear Mr. Bell:

The Environmental Law Institute (ELI) appreciates the opportunity to submit these comments on the topics that should be included in the scope of the environmental review of the Transatlantic Trade and Investment Partnership (TTIP) Agreement.

ELI is an internationally-recognized, independent, and non-partisan environmental research and education organization dedicated to achieving its vision of a healthy environment, prosperous economies, and vibrant communities founded on the rule of law. Since 1969, ELI has fostered innovative, just, and practical law and policy solutions that enable leaders to make environmental, economic, and social progress. ELI's Invasive Species Program works specifically to promote effective and efficient federal and state policies to prevent the introduction and spread of invasive species.

We urge the United States Trade Representative (USTR) to consider and assess in its environmental review how the TTIP Agreement may affect the introduction and spread of invasive species, both as a result of trade in wildlife, plants, and other organisms, and due to alteration of invasion pathways, such as solid wood packing material and ballast water, that enable invasive species to enter the United States.

The TTIP Agreement may increase the number of invasive species present in the United States and thereby result in harm to the environment, economy, and public health.

Invasive species are "alien species whose introduction does or is likely to cause economic or environmental harm or harm to human health."[1] Invasive species impose approximately $120

[1] Exec. Order No. 13,112, 64 Fed. Reg. 6183 (February 8, 1999).

billion per year in direct and indirect costs to the United States.[2] These costs negatively affect property values, agricultural productivity, public utility operations, fisheries, tourism and outdoor recreation, and other uses of our lands and waters. In addition, invasive species cause substantial harm to native species—including threatened and endangered species[3]—through predation, habitat degradation, and competition for shared resources.

The only effective way to avoid harm from invasive species is to prevent their introduction into the United States. By identifying and closing off pathways that harmful organisms use to enter into the United States, we can effectively and cost-efficiently prevent introduction of new invaders. If prevention efforts fail, new harmful organisms can enter and become established in the United States. Once present, these species cannot be eradicated; instead, federal and state governments are left with rapidly escalating and never-ending costs for control and management.

International trade is associated with a wide variety of pathways enabling the intentional and unintentional introduction of new invasive species into the United States.[4] For example, trade in plants and animals—whether for ornamental, agriculture, aquaculture, pet or aquarium, or other purposes—results in a substantial number of harmful invasions. Trade also creates a variety of pathways for unintentional invasions, including but not limited to the movement of vehicles and conveyances used to transport commodities (e.g., ballast water in ships, shipping containers that may contain insects or other organisms) and the movement of products containing invasive organisms (e.g., grains contaminated by weed seeds, insects in wooden packaging materials or on plants and plant products, pests and pathogens in soil or in living organisms).

The TTIP Agreement may substantially affect the introduction and spread of invasive species. It may result in changes in the amount and nature of international trade, which may substantially affect the rate of new invasive species introductions and their propagule pressure (i.e., increasing the risk that introduced species become established)[5] in the United States. In addition, it could limit, in law or in practice, the ability of the federal and state governments to prevent invasive species introductions—particularly through regulation of pathways associated with international trade. We therefore urge the USTR to consider not only how changing patterns of trade may affect invasive species introduction, but also whether the TTIP Agreement may limit or otherwise affect the ability of legislatures and agencies to regulate invasion pathways associated with trade and how such limitations may affect the introduction or spread of invasive species.

---

[2] David Pimentel et al., *Update on the environmental and economic costs associated with alien-invasive species in the United States*, Ecological Economics 52 (2005) 273–288.
[3] *Id.*
[4] U.S. Congress Office of Technology Assessment, *Harmful Non-Indigenous Species in the United States*, OTA-F-565 at 77 *et seq* (Washington, DC: U.S. Government Printing Office, September 1993).
[5] *See* Daniel Simberloff, *The Role of Propagule Pressure in Biological Invasions*, Annual Review of Ecology, Evolution, and Systematics 40(2009): 81-102 (2009); Julie Lockwood et al., *The role of propagule pressure in explaining species invasions*, Trends in Ecology and Evolution 20(5): 223-228 (2005).

The USTR should consider the impact of the TTIP Agreement on the ability of the United States to regulate trade in harmful organisms.

Trade in living organisms is a substantial pathway for the introduction of invasive species into the United States. Plants and animals are imported for a variety of reasons, including but not limited to ornamental (horticulture), exotic pet, or aquarium use; food (as agriculture or aquaculture crops); and energy sources (biofuel feedstocks). Regardless of the reason for importation, organisms like lionfish, Asian carp, giant reed, and Burmese python have caused substantial harm after escaping into the environment.

Federal and state governments limit the intentional importation of harmful species through legislative and regulatory programs that seek to prevent trade in plants and animals that are known or predicted to be harmful. These laws and regulations are critical elements of the nation's response to the invasive species threat.

Congress authorized the U.S. Fish and Wildlife Service (FWS) to prohibit the importation of listed species of injurious wildlife through the Lacey Act of 1900.[6] Congress and FWS have each prohibited the importation and interstate transportation of a number of species through this mechanism, thereby preventing the intentional trade in listed species. Similarly, Congress, in the Plant Protection Act of 2000, instructed the U.S. Department of Agriculture (USDA) to prevent the importation of plant pests into the United States. Under this authority, USDA prohibits or restricts the importation of certain plants and plant products into the United States.[7]

United States laws and regulations governing the importation of wildlife and plants are consistent with both international agreements and customary international law.[8] International agreements to which the United States is a party, including but not limited to the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) under the General Agreement on Trade and Tariffs, International Plant Protection Convention (IPPC), and Convention on the International Trade of Endangered Species of Wild Flora and Fauna (CITES), consistently include provisions protecting the authority of signatories to restrict trade, including to prevent the introduction of harmful organisms.

When conducting its environmental review of the TTIP Agreement, the USTR should consider the effects that the Agreement may have on the ongoing ability of the United States to regulate the international trade in plants and animals that may be or are invasive species. If the TTIP Agreement limits the authority of Congress, FWS, USDA, or other federal or state actors to

[6] 18 U.S.C. § 42.
[7] 7 C.F.R. Part 319.
[8] Stas Burgiel et al., *Invasive Alien Species and Trade: Integrating Prevention Measures and International Trade Rules* (2006), *available at* http://www.necis.net/wp-content/uploads/2010/11/trade_invasives_0106.pdf.

regulate trade in such organisms, it may undermine existing domestic laws that benefit the economy, environment, and human health of the United States, including those implementing commitments undertaken by the United States under existing international agreements.

The USTR should consider the impact of the TTIP Agreement on pathways and vectors of invasion that enable the unintentional introduction and spread of invasive species in the United States.

International trade is associated with a large number of pathways and vectors, other than intentional trade in plants and animals, by which invasive species enter the United States. Invasive species may hitchhike on or in ships and other conveyances, materials and articles used in trade (e.g., shipping containers), and products that are moved in trade. Many invasions can be traced to each type of pathway, including organisms introduced into the United States due to trade with the Europe (e.g., zebra mussel, European green crab). The United States has worked, independently and in partnership with other nations, to address critical invasion pathways, including but not limited to ballast water and wood packaging, which are discussed in more detail in this section.

Ballast Water Management

Increased trade arising from the TTIP Agreement may increase the risk of invasion due to discharge of ballast water. Ships carry 90% of goods in international commerce, and these ships may carry invasive aquatic species in their ballast tanks and hulls. More than 21 billion gallons of ballast water are discharges into United State waters from international ports every year. An estimated 10,000 marine species are transported around the world in ballast water every day.[9]

A wide variety of harmful species have been introduced into the United States as a result of ballast water discharge. The zebra and quagga mussels are notable among these introductions, as they have altered the water chemistry and contributed to the development of toxic algal blooms in the Great Lakes, as well as clogging intake pipes and other structures in the Great Lakes region to the annual cost of $100-400 million.[10] Increased transatlantic trade will increase both the number of vessels bringing goods to and from the United States and the associated invasion risk from ballast water discharge and hull fouling.

The United States has worked to address the risk presented by ballast water through the National Aquatic Invasive Species Act and Clean Water Act and associated regulations and permits,

[9] Eugene H. Buck, *Ballast Water Management to Combat Invasive Species*, Cong'l Res. Serv. 7-5700 (April 10, 2012).

[10] Leigh Johnson et al., *Managing Hull-Borne Invasive Species and Coastal Water Quality for California and Baja California Boats Kept in Saltwater*, Cal. Sea Grant T-61, at VI-10 (2007), *available at* http://anrcatalog.ucdavis.edu/pdf/8359.pdf.

which together require ships to exchange ballast water at sea and install ballast water treatment technologies.[11] The authority to regulate ballast water discharge is similarly well-established at the international level, through the International Maritime Organization's Ballast Water Management Convention.

Wood Packaging Material

Increasing trade in goods from Europe that are packaged in crates or other packaging made from wood will add to the threat of introduction of non-native insects that attack trees. At least eight wood-boring insects from Europe have been introduced to the United States in wood packaging, including several insects that attack pines and other conifers and the European oak borer (*Agrilus sulcicollis*).

Both the United States and Europe have implemented the International Standard on Phytosanitary Measures (ISPM) No. 15, which requires treatment of wood packaging with the aim of reducing the pest risk. However, ISPM#15 has reduced pest presence in wood packaging by only about half from previous levels,[12] and the Bureau of Customs and Border Patrol (CBP) continue to detect damaging pests in wood packaging entering the U.S. At the estimated current infestation rates of ISPM-compliant wood packaging entering United States (0.11%), approximately 13,000 shipping containers that enter the U.S. every year probably harbor a damaging wood-boring pest.[13] One study has estimated that continued implementation of ISPM#15 at the current level of efficacy could result by 2050 in tripling the number of wood-boring pests established in the United States.[14] These wood-boring insects cause immense damage to the American economy and environment.[15]

While the proportion of infested containers that originate in Europe is not public, one study reported that, as recently as 2009, wood packaging accompanying imports from Italy was infested at a rate almost ten times the overall rate.[16] Many of the infested shipments contain decorative tile and stone (*e.g.*, granite countertops), the commodity type which is associated with the most pest detections in wood packaging.[17] Europe was the source of 15% of U.S. imports of this commodity type in 2002.[18] Additional and more specific information on the proportion of

[11] *See* US Coast Guard, *Ballast Water Management Program, at* http://homeport.uscg.mil/ballastwater; EPA, *Vessel General Permit, at* http://water.epa.gov/polwaste/npdes/vessels/Vessel-General-Permit.cfm.
[12] Haack R.A. et al., *Effectiveness of the International Phytosanitary Standard ISPM No. 15 on Reducing Wood Borer Infestation Rates in Wood Packaging Material Entering the United States*, PLoS ONE 9(5): e96611 (2014).
[13] *Id*.
[14] Leung, B. et al., *Pathway-level risk analysis: the net present value of an invasive species policy in the US*, Frontiers in Ecology and the Environment 12(5): 273-279 (2014).
[15] Aukema, J.E. et al., *Economic Impacts of Non-Native Forest Insects in the Continental United States*, PLoS ONE 6(9): e24587 (2011).
[16] Haack *et al*, *supra* note 12.
[17] *Id*.
[18] Colunga-Garcia, M. et al., *Freight Transportation and the Potential for Invasions of Exotic Insects in Urban and Periurban Forests of the US*, J. Economic Entomology 102(1): 237-246 (2009).

infested containers originating in Europe is available to CBP and the USDA Animal and Plant Health Inspection Service, and we encourage the USTR to obtain and consider this information during its environmental review of the TTIP Agreement, as well as other related impacts arising from the expansion of trade under the TTIP Agreement.

The TTIP Agreement will intensify the invasion risks associated with international trade. While the preceding discussion considers potential impacts on a few high-profile invasion pathways, a more comprehensive analysis is required to understand how the TTIP Agreement may affect other pathways and their regulation. In addition, the environmental review should encompass whether and how the Agreement may affect the ability of the United States to prevent or regulate invasion pathways under domestic or international law.

Conclusion

ELI respectfully requests that the USTR's environmental review of the TTIP Agreement includes a comprehensive and searching analysis of the Agreement's potential impacts on the introduction and spread of invasive species in the United States. We urge that the review go beyond merely considering the effect of increased propagule pressure due to increased trade to also consider the *effectiveness* of existing regulatory structures: the presence of regulation to address a pathway does not indicate that invasion risk has been removed. While the plant and animal trade, ballast water discharge, and use of wood packaging material are all regulated, existing provisions are imperfect and continue to allow invasive organisms to enter the country.

Moreover, we urge the USTR to consider whether and how effectively the Agreement protects the authority of the United States to legally regulate invasion pathways that are associated with international trade. Trade-related limitations on the regulatory authority of Congress or agencies would undermine existing and future responses to invasive species and allow the entry of new and harmful organisms into the United States.

Thank you for this opportunity to comments and for your efforts to ensure that the Environmental Review is comprehensive. Please do not hesitate to contact me with questions or to seek additional information.

Sincerely,

Read Porter
Director, Invasive Species Program
Environmental Law Institute