

The Sovereignty-Busting Trans-Pacific Partnership

What's so bad about the Trans-Pacific Partnership?

By FRED ELBEL

The Trans-Pacific Partnership (TPP) is a multi-national trade and investment agreement, negotiated in secret meetings dominated by select governments and 500 transnational corporate interests.¹ It has been veiled under media blackout for most of its six-year existence.

Recent revelations expose the Trans-Pacific Partnership as a transnational corporate coup.² Former U.S. Trade Representative Ron Kirk remarked that if the people knew what was in the TPP agreement, it would raise such opposition that it could make the deal impossible to sign.³

OVERVIEW

The Trans-Pacific Partnership is an integral component of President Obama's continuing transformative agenda. It would grant an extensive range of powers to transnational corporations. According to the *New York Times*:

Under the accord, still under negotiation but nearing completion, companies and investors would be empowered to challenge regulations, rules, government actions, and court rulings — federal, state, or local — before tribunals organized under the World Bank or the United Nations... critics, including many Democrats in Congress, argue that the planned deal widens the opening for multinationals to sue in the United States and elsewhere, giving greater priority to protecting corporate interests than promoting free trade and competition that benefits consumers.⁴

The TPP is the largest pending economic treaty in history and includes countries that represent nearly

40 per cent of the world's GDP. Current TPP negotiating members include the United States, Japan, Mexico, Canada, Australia, Malaysia, Chile, Singapore, Peru, Vietnam, New Zealand, and Brunei.^{2,28}



Ron Kirk

The TPP is a "docking" agreement, which means that *any* country in the TPP region (e.g., China) can add themselves just by signing on.⁵ Unlike domestic laws, the TPP has no expiration date. It cannot be amended by Congress, yet as a "living agreement" its terms can be mysteriously altered after implementation.

A PIG IN A POKE

Public input has been excluded from insider TPP negotiations, which have been under way since 2008. Indeed, the TPP document itself is secured as if it were classified. Members of Congress who review the document must agree not to disclose what they have read.

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The standing joke is that just as with Obamacare, we'll have to pass it in order to find out what's in it. Except that the TPP is much too serious to be taken frivolously.

Not surprisingly, as of May 7, 2015, only two Senate Republicans had read the document: Senators Mike Lee (R-UT) and Jeff Sessions (R-AL).^{7,8}

Renowned patriot Jeff Sessions cautions that:

Congress has the responsibility to ensure that any international trade agreement entered into by the United States must serve the national interest, not merely the interests of those crafting the proposal in secret.... The sustained long-term loss of middle class jobs and incomes should compel all lawmakers to apply added scrutiny to a 'fast-track' procedure wherein Congress would yield its legislative powers and allow the White House to implement one of the largest global financial agreements in our history—comprising at least 12 nations and nearly 40 percent of the world's GDP."⁷

AN END RUN TOWARD THE GLOBALIST GOALPOST

The Obama Administration is now attempting to ramrod fast track legislation through Congress so that neither elected officials nor the public will have the ability to review or comment on TPP provisions.

Congress can implement "fast track" by passing Trade Promotion Authority (TPA). TPA was created during the Nixon Administration and was written into the Trade Act of 1974. It was used during formulation of the General Agreement on Tariffs and Trade (GATT), the World Trade Organization (WTO), the U.S.-Canada Free Trade Agreement (CAFTA), and ultimately the North American Free Trade Agreement (NAFTA). As an extreme measure considered antithetical to the U.S. Constitution, it has only been used 16 times.⁹

Trade Promotion Authority is typically granted during the *initial* phases of negotiation and lasts only a few years. The current TPA would last for six years and would allow Obama—or a subsequent president—to arbitrarily place just about anything in *any* trade agreement. Congress would then only be allowed an up or down vote; a Senate Filibuster would not be permitted, nor would the Senate be allowed to amend the agreement. Congress would thus surrender all inherent rights to negotiate and amend the final agreement.⁹

While Article II of the Constitution grants the president powers to negotiate trade agreements, Article 1 Section 8 grants Congress, not the president, plenary power over trade and commerce.¹⁰ Thus, the entire TPA process is suspect as an abdication of congressional responsibility and authority.

Notwithstanding, the Senate caved to President Obama's wishes, passing on May 22, 2015, TPA legislation granting him unilateral fast track authority. It's worth noting that a huge amount of political and financial pressure was exerted on recalcitrant senators to support TPA. \$1,148,971 in legalized bribes was given in the form of campaign donations. Of that, Goldman Sachs donated a whopping \$195,550—more than double the amount of the second largest donor, UPS. In particular, Michael Bennet (D-CO), Patty Murray (D-WA), and Ron Wyden (D-OR) received \$105,900 between the three of them. All are running for re-election in 2016.¹¹ Bennet alone received \$53,700 in corporate campaign donations between January and March 2015.

The House then overwhelmingly rejected the deal by voting down the Trade Adjustment Assistance (TAA) component, which the Senate had incorporated as part of the package. The TAA was concocted in order to assuage workers whose jobs would be destroyed by the TPP. It was, in effect, an overt admission that the TPP would directly harm American workers. On June 18, 2015, the House, in an exercise of abject political chicanery, rammed through TPP without the TAA provision. The House version will then go back to the Senate, which had passed the TAA and TPA together. On June 24, 2015, the Senate approved fast-track Trade Promotion Authority.

It is particularly troubling that Congress would cede full trade authority specifically to President Obama, with a demonstrated track record of unconstitutionally implementing his own interpretation of the law — specifically, regarding immigration. Senator Jeff Sessions warns us that:

The request for fast-track also comes at a time when the Administration has established a recurring pattern of sidestepping the law, the Congress, and the Constitution in order to repeal sovereign protections for U.S. workers in deference to favored financial and political allies.⁷

While TPA section 6(b) would allow Congress to rescind the deal if TPA conditions were violated by the president, it wouldn't work that way in practice. Corporate interests and both political parties support the TPP, thus Congress would ultimately acquiesce to deviations from TPA preconditions. In other words, TPA authorization would virtually guarantee implementation of the TPP's globalist agenda.

Some of the more concerning aspects of the TPP are noted below.

CORPORATE TRIBUNALS TRUMP NATIONAL SOVEREIGNTY

The TPP would establish an entirely separate par-

allel system of justice involving special extra-judicial tribunals. These tribunals would adjudicate claims by foreign investors that their economic interests might be harmed by a signatory nation. Thus, a multinational corporation could sue federal, state, and even *local* officials for impinging on *anticipated, unrealized, and imagined* future corporate profits. In particular, a corporation could sue for economic damages caused by environmental and crucial safety regulations. New York Attorney General Eric T. Schneiderman explains:

To put this in real terms, consider a foreign corporation, located in a country that has signed on to TPP, and which has an investment interest in the Indian Point nuclear power facility in New York's Westchester County. Under TPP, that corporate investor could seek damages from the United States, perhaps hundreds of millions of dollars or more, for actions by the Nuclear Regulatory Commission, the New York State Department of Environmental Conservation, the Westchester County Board of Legislators, or even the local Village Board that lead to a delay in the relicensing or an increase in the operating costs of the facility.¹²

A leaked TPP document publicized by WikiLeaks reveals that

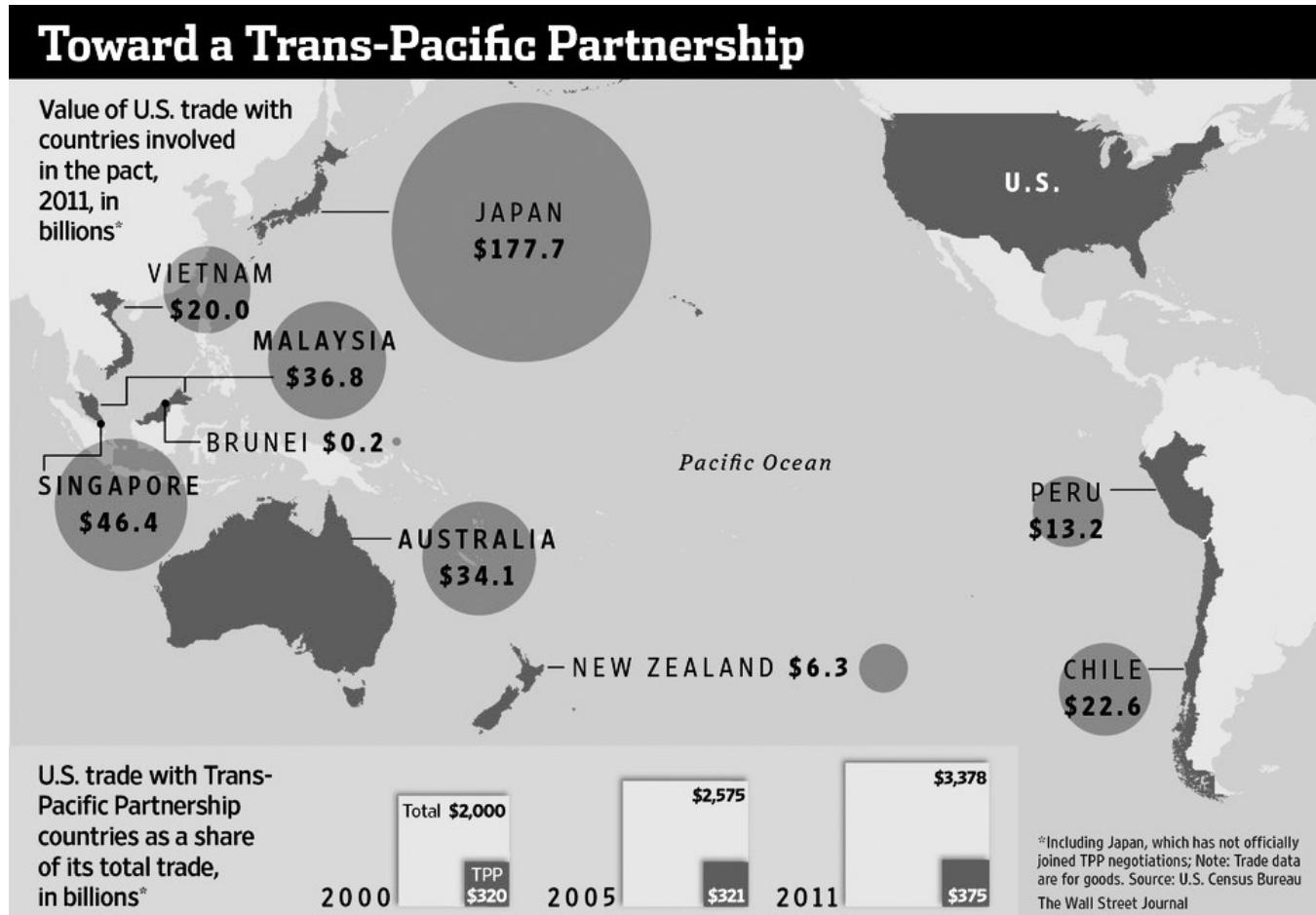
Under the accord, still under negotiation but nearing completion, companies and investors would be empowered to challenge regulations, rules, government actions, and court rulings—federal, state, or local—before tribunals organized under the World Bank or the United Nations.²

The *New York Times* observes,

In all, according to Public Citizen's Global Trade Watch, about 9,000 foreign-owned firms operating in the United States would be empowered to bring cases against governments here. Those are as diverse as timber and mining companies in Australia and investment conglomerates from China whose subsidiaries in Trans-Pacific Partnership countries like Vietnam and New Zealand also have ventures in the United States.

More than 18,000 companies based in the United States would gain new powers to go after the other 11 countries in the accord...

Under the Trans-Pacific Partnership, a mem-



ber nation would be forbidden from favoring “goods produced in its territory.”

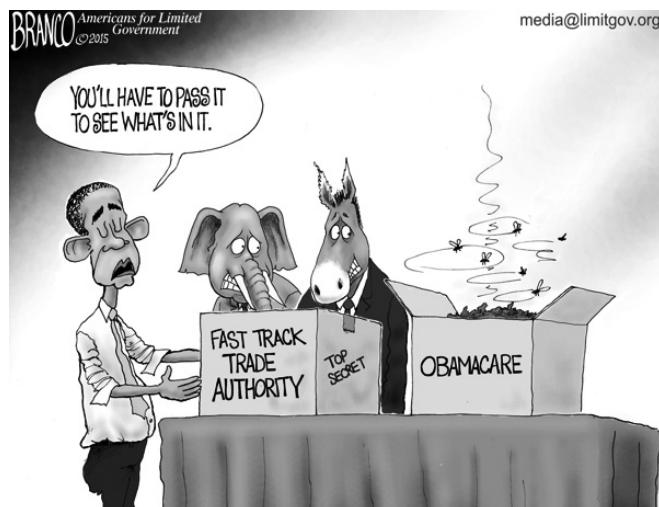
“This is really troubling,” said Senator Charles E. Schumer of New York, the Senate’s No. 3 Democrat. “It seems to indicate that savvy, deep-pocketed foreign conglomerates could challenge a broad range of laws we pass at every level of government, such as made-in-America laws or anti-tobacco laws. I think people on both sides of the aisle will have trouble with this.”²⁴

ECONOMICS

The TPP will encompass nearly 40 percent of world trade, yet 80 percent of that trade is with nations with which we already have trade agreements.²⁶ The TPP is projected to produce only a paltry 0.4 percent increase of U.S. GDP by 2025.¹⁴

Senator Sessions cautions that the TPA would exacerbate the U.S. trade deficit, citing that:

Labor economist Clyde Prestowitz attributes 60 percent of the U.S.’ 5.7 million manufacturing jobs lost over the last decade to import-driven trade imbalances.⁷



Sessions also pointed out that former AT&T CEO Leo Hindery, Jr. reported that since the North American Free Trade Agreement (NAFTA) and South Korea free trade agreements were implemented, “U.S. trade deficits, which drag down economic growth, have soared more than 430 percent with our free-trade partners.”

Hindery explains:

“In the same period, they’ve declined 11 percent with countries that are not free-trade partners,” Hindery wrote, in the part where Sessions cites him, adding: “Obama’s 2011 trade deal with South Korea, which serves as the template for the new Trans-Pacific Partnership, has resulted in a 50 percent jump in

the U.S. trade deficit with South Korea in its first two years. This equates to 50,000 U.S. jobs lost.”⁷

The TPP clearly would lead to even more U.S. job loss. Recognizing this fact, organizations that have zealously supported Obama now oppose him on the TPP, including the AFL-CIO, ACLU, and MoveOn. Labor unions are concerned that passage could encourage additional subsequent trade bills that would decimate American jobs and wages.²²

INTELLECTUAL PROPERTY

The TPP would extend copyright beyond the international standard of 50 years after an author’s death by an additional 20 years, thus effectively precluding works from entering the public domain.¹⁵

Article 16 of the TPP directs signatories to find legal incentives to strong-arm Internet Service Providers (ISPs) into *privately* enforcing TPP copyright regulations. This could easily lead to arbitrary filtering of content, complete blockage of websites, and disclosure of ISP customer identities.¹⁵

The Electronic Frontier Foundation (EFF) has expressed specific concern that the TPP will:

- Place greater liability on Internet intermediaries, as noted above.
- Compel signatory nations to enact laws banning circumvention of digital locks on movies on DVDs, video games, and players, and for embedded software.
- Create new threats for journalists and whistleblowers.
- Enact “Three-Step Test” language that puts restrictions on Fair Use.
- Adopt criminal sanctions for copyright infringement that is done without commercial motivation.¹⁶

The EFF observes that:

[The] TPP raises significant concerns about citizens’ freedom of expression, due process, innovation, the future of the Internet’s global infrastructure, and the right of sovereign nations to develop policies and laws that best meet their domestic priorities. In sum, the TPP puts at risk some of the most fundamental rights that enable access to knowledge for the world’s citizens.¹⁶

IMMIGRATION

The U.S. Constitution gives Congress exclusive authority over immigration, immigrants, and work authorization. Yet TPA legislation relinquishes that authority to the President.

NumbersUSA has pointed out that as a result of fast track trade authority on the TPP, any President could much more easily expand guest worker programs without public debate. Such an expansion actually occurred during five years of fast track authority under President Bush.¹⁷ As a result, Congress strongly and unanimously objected to President Bush including immigration in trade agreements, with a 2003 resolution that began:

Resolved, That it is the sense of the Senate that

- (1) trade agreements are not the appropriate vehicle for enacting immigration-related laws or modifying current immigration policy; and
- (2) future trade agreements to which the United States is a party and the legislation implementing the agreements should not contain immigration-related provisions.¹⁷

Regarding guest workers, *The Hill* recently reported that:

...according to Curtis Ellis of the American Jobs Alliance, the U.S. Trade Representative revealed that “temporary entry” guest worker visas are a “key feature” of the pact. Ellis said that the Obama Administration previously used the U.S.-South Korea trade pact to expand the length of time an L-1 visa holder can work in the U.S. That pact is viewed as a model for negotiating the TPP.¹⁷

Political analyst Dick Morris noted that Obama is trying to circumvent the legislative process via treaty authority that a future president would be unable to change, thus eviscerating the power of the Congress to limit immigration. Morris stated:

I don’t think that people understand that in this deal which is a trade agreement among Australia, Malaysia, Vietnam, Japan, Canada, the United States, Mexico, Peru, and Chile, there’s a provision for free flow of workers, just like in the European Union. What it means is unrestricted immigration. It means literally that Congress would not have the authority to restrict immigration because a treaty supersedes a statute under our Constitution.^{18,26}

AGRICULTURE, ENVIRONMENT, AND HEALTH

In an analysis of the leaked TPP “Investment” chapter,² Public Citizen observes that:

The leaked text would empower foreign firms to directly “sue” signatory governments in extrajudicial investor-state dispute settlement (ISDS) tribunals over domestic policies that

apply equally to domestic and foreign firms that foreign firms claim violate their new substantive investor rights. There they could demand taxpayer compensation for domestic financial, health, environmental, land use, and other policies and government actions they claim undermine TPP foreign investor privileges, such as the “right” to a regulatory framework that conforms to their “expectations.”¹⁹

Thus, the TPP would elevate foreign-owned corporations to the same status as sovereign governments. These corporations would be able to challenge in foreign tribunals any national and local environmental laws and regulations that they deem a threat to their profitability. Such provisions would disadvantage organic farmers and those who have adopted more environmentally sound agricultural practices.²⁰

Similarly, the TPP will limit GMO food labeling and will allow the import of foods and goods that do not meet U.S. safe standards.²⁰ As *U.S. News* reports:

Many jurisdictions have policies to promote opportunity and ameliorate the severity of market forces. These include minimum wage laws, laws requiring employers to offer health insurance, regulations covering product safety, work-place safety, environmental protection, and more. All of these protections are at risk under the TPP. For example, the pact would prevent communities from deciding whether or not they want fracking in their area.¹⁰

ADDITIONAL TPP CONCERN

Critics of the TPP warn that it would result in increased drug prices and could give surgeons unwarranted patent protection for their procedures, thus impeding medical progress.^{13,27}

The TPP could infringe upon Second Amendment rights by banning firearms imports, requiring micro-stamping of ammunition, and imposing outright ammunition bans. It could in essence embed the entire anti-gun UN Arms Trade Treaty. It also has been observed that immigrants allowed in under the TPP would vote predominantly according to an anti-gun agenda.²¹

IT’S REALLY NOT ABOUT TRADE

Although the TPP is touted as a free trade agreement, only 5 out of 29 TPP chapters are actually about trade.²³ In fact most of the “free trade” agenda actually has been implemented. Significant tariffs and trade barriers actually no longer exist.²⁴

The real objective of the TPP is much more expansive. Modern trade agreements have become a preferred

venue for corporate entities to implement global regulations favorable to their interests. The TPP is much more about the global governance and movement of investment capital than the exchange of material goods. As such, the TPP would be better termed an *investment and governance agreement* that establishes a global financial framework as the basis for an overarching “New World Order.”^{25,28}

WAIT—THERE'S MORE!

The TPP is the tip of a massive globalist iceberg composed of multiple interlocking trade agreements. Companion compacts similarly threaten United States sovereignty.

The pending Transatlantic Trade and Investment Partnership (TTIP) is an ambitious agreement that proposes deep and comprehensive integration between the United States and the 28 member states of the European Union.

The Trade in Services Agreement (TiSA) is another secret agreement that establishes labor mobility among more than 50 nations. Indeed, WikiLeaks exposed an entire TiSA annex (“Movement of Natural Persons”) that focuses specifically on deregulating the U.S. work visa system.^{30,31} These three mega-international agreements encompass a staggering three-fourths of the world’s GDP.³²

The Trans-Pacific Partnership and related agreements build upon the globalist agenda of previous initiatives such as GATT, NAFTA, and the WTO. They represent an extraordinary gift to transnational corporatism at the expense of national sovereignty and will change the course of history. Fast-tracking these trade agreements is an integral component of Obama’s agenda to fundamentally transform America, and their implementation would constitute an ominous step toward global corporate governance. They assuredly deserve a full and unfettered debate under the undivided attention of the American public. Unfortunately, it does not appear that such requisite clarity will be sanctioned. ■

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