



The Trans Pacific Partnership Agreement (TPPA) Is it really about trade?

What is the TPPA?

The TPPA developed from an initial trade agreement between four nations known as the P4: Singapore, New Zealand, Brunei and Chile. It was a trade deal only. In 2008, P4 set out to negotiate the inclusion of investment and financial services and asked the United States to join. The US accepted and brought along Australia, Malaysia, Peru and Vietnam to the table. It is the only trade deal the Obama administration is pursuing. In June 2012 Mexico and Canada joined the process with Japan expected to join in 2013.

The United States is now the power behind the deal with New Zealand working closely in support as the official administrator.(1)

Participating Governments have informed their respective constituencies that this 'partnership' is being negotiated to open up access for their products and services to other markets and therefore to create jobs and increase their nation's income. Trading between nations is essential in a global economy and this partnership will 'facilitate' trade. However the TPP is no longer at its core a trade agreement with only 2 of the 26 chapters being contemplated covering traditional trade matters.

What is being negotiated?

Negotiations centre on new rights and privileges for corporations and permanent constraints on Government regulation.

They include new investor safeguards to enable a shift in production and jobs and to assert control over natural resources, and to severely limit the regulation of financial services, land use, food safety, natural resources, energy, tobacco and healthcare (2)

Negotiations are being conducted in conditions of extreme secrecy; secret that is from the public and their elected representatives. These proposals will not withstand public scrutiny. However details are not secret from the major investors and corporations which are driving the negotiations. Over 600 corporate executives have access to and influence over the draft negotiation texts through positions on advisory boards to the office of the U.S. Trade Representative. Through leaked documents and through the persistent investigation by activists and academics we know what investors are seeking.

Most of the discussion is centred on the rules of foreign investment: empowering corporations to sue Governments, opening services to more foreign competition, extending intellectual property rights including the patent rights on medicines, restricting internet downloads, preventing Government 'monopoly' purchase of pharmaceuticals and preventing Government procurement policies which give preference to local firms.

In other words the price for greater access to each country's markets is reduced local controls on foreign investment, the granting to corporations the right to sue Governments, pressure to privatise public services and in general acceding to the demands of Big Pharma, Big Oil, Big Mining and Big Agribusiness

The leaked text

On June 12, 2012, following two years of negotiations, a copy of the investment chapter for the Trans-Pacific Partnership (TPP) was leaked.

Without any oversight by policymakers, the media or the public, the negotiators have agreed to grant expansive new rights to investors and to enable enforcement of these rights through extra judicial investor state tribunals. Signatory countries will be required to provide foreign firms operating within their boundaries greater rights than are accorded to domestic companies. TNC's will be able to side step domestic courts and directly sue Governments in foreign tribunals. This process is known as Investor-State Dispute Resolution (ISDR).

Three-person international tribunals of attorneys from the private sector would hear these cases. The lawyers rotate between serving as "judges"—empowered to order governments to pay corporations unlimited amounts in fines—and representing the corporations that use this system to raid government treasuries. The tribunals empower corporations to sue governments over any action the corporations believe undermine their current or expected future profits or rights under the pact.

Only Australia has announced it will not agree to this parallel corporate tribunal system.

The TPPA is being designed to restrict Governments from passing domestic law which might affect the legitimate business interests of TNC's and *undermine their expected future profits*. This goes much further than protection against seizure of assets. It is designed to protect corporations from domestic laws on environmental protection and consumer and workers rights legislation and health regulations.

There are no provisions for meaningful protection of workers rights and the Treaty will not give unions the right to sue TNC's for breaches of human rights.

Any Labour provisions will be weak and unenforceable.

An investment Treaty

The TPPA is an investment treaty and such treaties allow investors to enforce protection of their interests in the International Centre for the Settlement of Investor Disputes (ICSID), the World Bank body listed as the venue for investor cases in the leaked text.

From the 1950's to 1999 69 cases were filed with the ICSID. By 2012, 385 cases had been filed – an increase of 460% in the last 13 years and the ICSID is only one venue for such cases.

Over US\$719m has been paid out by Governments under U.S. Free Trade Agreements (FTA's) and Bilateral Investment Treaties (BIT's) alone. 70% of cases are challenges to natural resource and environmental policies.

The NAFTA version of this scheme has forced governments to pay more than \$350 million to corporations after suits against toxic bans, land-use policies, forestry rules and other regulation by Governments. (3)

The supremacy of the rights of investors over the rights of Governments to pass domestic laws to protect their citizens, resources and environment is the ultimate power grab by the 1% seeking complete dominance over the other 99% of global citizens.

In legislating to protect and promote the rights of citizens, progressive Governments will inevitably affect the future profits of investors. The TPPA will effectively halt democratic legislation for equitable distribution of natural resources including food and potable water.

This makes the TPPA a very dangerous weapon in the TNC arsenal.

Health legislation to lessen harm from tobacco and alcohol will be open to challenge in foreign tribunals and could be found to be in breach of international obligations to investors. Giant tobacco company Philip Morris is already suing the Australian Government over its tobacco control regulations.

If the TPPA was to be agreed under the current proposals what of future investor claims?

Would the introduction of significant rises in the minimum wage, the strengthening of collective bargaining, constraints on the use of precarious workers or the continuation of industrial disputes be considered as undermining future investor profits and be subject to expensive litigation in foreign tribunals?

Would progressive changes in employment law be considered “ failure to maintain a stable and predictable legal and business framework in line with the investor’s legitimate expectations?”

Too extreme for some policy makers

As already noted, Australia will not allow foreign tribunals to override its domestic legal system. New Zealand has rejected the U.S. proposal to remove its Government drug purchasing and price control authority Pharmac. Every country has rejected the U.S. proposal to extend drug patent monopolies. Many countries have rejected the U.S. proposal to forbid the imposition of capital controls and taxes to limit the power of finance capital.

U.S Congressional representatives are demanding access to the draft text which corporate executives have access to and influence over.

In early July 2012 135 legislators from all 50 U.S. States wrote to the U.S. Trade Representative Ron Kirk saying an investor/State dispute settlement procedure had no place in the TPP.

In a New Zealand led initiative, more than 100 eminent jurists from countries currently or potentially engaged in the TPP negotiations have sent an open letter to the negotiators calling for the right of investors to sue Governments directly to be excluded from the TPPA.

Unions and union centres throughout the Pacific Rim are closely monitoring and publicising developments, campaigning to stop the anti democratic aspects of the TPP and linking up with citizens rights advocates in participating countries.

The IUF calls on affiliates to organise, fight and win the protection of workers rights under any trade and investment treaty and calls for the abandonment of the TPPA in its current form as a financial instrument of powerful global interests.

Organise

To strengthen the progressive political platform by linking up with other unions and political parties to monitor and publicise the threat to democracy and human rights that the TPPA poses in its current form.

To establish alliances with civil society organisations fighting for citizens rights

For food security and sustainable food systems which can produce and process closer to the point of consumption

Fight

For the rights of citizens to elect their own representatives and pass laws in the interests of those who elected them. Demand that universal human rights take precedence over the rights of investors to protect their current and future profits.

For Governments to fulfil their international treaty obligations to ensure citizens have adequate, affordable and safe food and potable water

For decent work and living wages as part of a sustainable global trade and investment system which includes a sustainable food system.

To limit investment in commodities and futures indexes

To restore to national politics the capacity to influence and control the global rules and institutions which have straightjacketed national politics

For public disclosure of the draft texts of the TPPA.

Win

The inclusion of unions in the development of trade and investment treaties

Disclosure and consultation about proposals to restrict political and economic sovereignty

An open parliamentary process and the endorsement by national governments to the provisions of any trade and investment treaties before they are signed.

Stronger enforceable labour standards at the global level.

A reversal of the privatisation of public goods and services.

- (1) Audrey Young 'Trading Exchange' NZ Herald July 7 2012
- (2) Lori Wallach Nafta on Steroids The Nation July 16-23 2012
- (3) Lori Wallach ibid

Further reading;

Trading exchange

www.thenation.com/article/168627/nafta-steroids - United States

<http://www.citizen.org/trade>

union.org.nz/tppa