

**CITIZEN TRADE POLICY COMMISSION
DRAFT AGENDA**

Friday, April 27, 2012 at 9:30 A.M.
Room 220, Burton M. Cross State Office Building
Augusta, Maine

9:30 am Meeting called to order

I. Welcome and introductions

II. Presentation from Bruce Bryant, Northeast Field Representative, Alliance of American Manufacturing on unfair trade practices regarding imported auto parts from China (Scheduled for 10 AM)

III. Presentation from Representative Sharon Treat on updates of the dallas round of TPPA negotiations, update on the newly adoted model for future bilaterlal trade agreements and update on certain international trade licensing issues (Scheduled for 10:30 AM)

IV. Presentation from Don Tardie, Managing Director/ Sales for Maine Woods Company LLC, on the Softwood Lumber Agreement (Scheduled for 11 AM)

V. News articles of interest;

VI. CTPC Assessment: update

VII. Proposed next meeting date and suggestions for agenda topics

Adjourn

April 20, 2012

Announcement of Flawed 2012 Model BIT Shows Agenda Motivating Obama TPP Talks

The Obama administration released the [2012 Model Bilateral Investment Treaty](#) this morning. Here's our response:

Announcement of Flawed Investment Rules Show Agenda Motivating Obama Trade Talks

Statement of Lori Wallach, Public Citizen

Instead of the reforms promised by candidate Obama, the Obama administration's 'new' Model Bilateral Investment Treaty released today is the same in all major respects as the deeply flawed 'old' Model Bilateral Investment Treaty (BIT) and the investment chapters of U.S. free trade agreements.

Like the old U.S. investment model, the new text will allow companies to challenge public interest regulations outside of domestic court systems before tribunals of three private sector trade attorneys operating under minimal to no conflict of interest rules. These arbitrators can order governments to pay corporations unlimited taxpayer-funded compensation for having to comply with policies that affect their future expected profits, and with which domestic investors have to comply.

By revealing a fundamentally unchanged BIT (after pushing three Bush trade deals in 2011 based on the same flawed model), the administration is exposing the anti-public interest agenda motivating the nine-nation Trans-Pacific Partnership trade talks. In those negotiations, countries like Australia (who have been attacked in BITs by Philip Morris over their plain packaging tobacco policies) have criticized the U.S. model of investment rules.

At a time when multinationals like Chevron are using BITs to evade justice and get out of environmental remediation obligations, it is unthinkable that an Obama administration – post BP oil spill, post Wall Street crash – would privilege the rich at the expense of the 99 percent.

For those wishing to see a track changes version of the little that changed in the 2012 Model BIT relative to the 2004 Model BIT, along with some commentary of the shortcomings of both, [click here](#).

Posted by Todd Tucker at 1:47pm in [Inside the Beltway](#) | [Permalink](#)

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Daily News

U.S. Unveils Revised Model BIT; Alters Provisions On Labor, Environment, SOEs

Posted: April 20, 2012

The Obama administration today (April 20) unveiled a revised model bilateral investment treaty (BIT) that includes new provisions designed to further bolster labor rights and the environment, as well as new language related to transparency and state-led economies. The long-awaited revision was released more than three years after the administration initiated its review of the 2004 model BIT in February 2009.

In a fact sheet accompanying the release, the Office of the U.S. Trade Representative explained that the 2012 model BIT "maintains language from the 2004 model BIT, in particular its carefully calibrated balance between providing strong investor protections and preserving the government's ability to regulate in the public interest." At the same time, USTR stressed that the revision makes "several targeted and important changes from the previous model text."

Concerning labor and environmental protections, the revised model BIT appears to provide more binding language compared with its predecessor. On labor rights, for instance, the old model BIT stated that each party "shall strive to ensure" that it does not waive or derogate from its labor laws "in a manner that weakens or reduces adherence to" a list of internationally recognized labor rights in order to encourage investment.

However, that "strive to ensure" language -- which is generally considered by legal experts to be a weaker standard because it only speaks to an intent to achieve a result, not the result itself -- is strengthened in the new model BIT.

The revised model BIT states that each party "shall ensure" that it does not waive or otherwise derogate from its labor laws, where such waiver or derogation would be inconsistent with a set of basic labor rights. Those labor rights are outlined in the new version in slightly altered form compared with the 2004 model BIT. For instance, a new right -- "the elimination of discrimination in respect of employment and occupation" -- is added to the list.

The new model BIT also states that each party "shall ensure" that it does not "fail to effectively enforce its labor laws through a sustained or recurring course of action or inaction" in order to encourage investment in its territory. The 2004 model BIT had no similar language concerning enforcement.

On the environment, the new model BIT appears to strengthen protections in similar ways. It states that each party "shall ensure" that it does not "waive or otherwise derogate from" its environmental laws "in a manner that weakens or reduces the protections afforded in those laws."

That appears stronger than the 2004 model BIT, which stated that the parties "shall strive to ensure" that they do not waive or otherwise derogate from their environmental laws "as an encouragement for the establishment, acquisition expansion, or retention of an investment in its territory."

The new model BIT also commits each party to ensure that it does not "fail to effectively enforce" its environmental laws in order to encourage investment, something not included in the 2004 version.

That said, the 2012 model BIT does include a new paragraph clarifying that a party would not violate its new obligation to effectively enforce its environmental laws "where a course of action or inaction" reflects a "reasonable" exercise of discretion on investigatory and prosecutorial matters, or results from a "bona fide" decision regarding the allocation of government resources.

The 2012 model BIT section on environmental protections also contains new language laying out what constitutes an "environmental law" for the purposes of BIT obligations. It states that this term covers each party's statutes or regulations, or provisions thereof, "the primary purpose of which is the protection of the environment, or the prevention of a danger to human, animal, or plant life or health" through a list of specific means. It also clarifies that this term does not include any statute or regulation "directly related to worker safety or health."

The environmental and labor rights sections also contain stronger consultation provisions. In the old model BIT, a party that considers that its BIT partner is not upholding its obligations may request consultations, and the two

parties "shall consult" on the matter. However, it provided no further details on how and when this would take place.

By contrast, the new sections on environmental and labor rights state explicitly that, if a party makes a written request for consultations concerning any matter arising under that section, the other party "shall respond to a request for consultations within thirty days of receipt of such request."

Finally, the labor and environmental sections of the revised model BIT for the first time refer explicitly to multilateral agreements. For instance, the new model BIT states that the parties recognize that multilateral environmental agreements to which they are both party "play an important role in protecting the environment."

Likewise, it states that the parties to the BIT "reaffirm their respective obligations as members of the International Labor Organization" and the commitments under the 1998 ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up.

The new revision also clarifies how the scope of BIT obligations would apply to state-owned enterprises (SOEs). At issue is the fact that under the old model BIT, key BIT obligations were said to apply to "a state enterprise or other person when it exercises any regulatory, administrative, or other governmental authority delegated to it" by the government of the relevant BIT party.

Business representatives have long worried about this formulation because, in some instances, a government may not explicitly "delegate" authority to an SOE, making it less clear whether SOEs would be subject to the disciplines. They have pushed USTR on this issue in a variety of contexts, including with relation to the U.S. proposal on SOEs in the Trans-Pacific Partnership (TPP) negotiations (*Inside U.S. Trade*, March 25, 2011).

The new model BIT appears to provide more definition for when government authority is "delegated." In particular, it states that government authority that has been delegated "includes a legislative grant, and a government order, directive or other action transferring to the state enterprise or other person, or authorizing the exercise by the state enterprise or other person of, governmental authority."

The 2012 model BIT also includes new language that, according to the USTR press release, is designed to prevent parties from imposing domestic technology requirements such as "requiring the purchase, use or according of a preference to domestically developed technology in order to provide an advantage to a Party's own investors, investments or technology."

This appears to be a reference to Article 8 of the new model BIT, which deals with "performance requirements." In that article, the administration had inserted new language stating that neither party may, in connection with an investment in its territory, impose or enforce any requirement "to purchase, use, or accord a preference to, in its territory, technology of the Party or of persons of the Party" in order to protect its own investors or technology.

Moreover, the new model BIT states that neither party may, in connection with an investment in its territory, impose or enforce any requirement "that prevents the purchase or use of, or the according of a preference to, in its territory, particular technology" so as to protect its own investors or technology.

Again, this new language appears to reflect the increasing attention that this administration is paying to issues like forced technology transfer. USTR is also proposing related provisions in the TPP talks (*Inside U.S. Trade*, March 30). These new provisions in the revised BIT would not apply to government procurement.

Finally, the new model BIT contains several new provisions that appear designed to bolster transparency. For instance, it inserts new language stating that, with respect to "proposed regulations of general application" issued by the government of one of the parties, that party must publish the proposed regulations in a single official journal.

Moreover, it states that parties "should in most cases" publish those proposed regulations "not less than 60 days before the date public comments are due," and "shall include in the publication an explanation of the purpose of and rationale for the proposed regulations."

Finally, the parties must, when adopting final regulations, "address significant, substantive comments received during the comment period and explain substantive revisions that it made to the proposed regulations in its official

journal or in a prominent location on a government Internet side."

Again, this follows the same general track that the U.S. is pursuing in the TPP negotiations. There, the U.S. is putting a lot of emphasis behind the issue of "regulatory coherence," and is pushing TPP partners to ensure they have a mechanism in place to facilitate central coordination of new regulatory measures (*Inside U.S. Trade*, Nov. 4).

Many other sections of the new model BIT are essentially unchanged from the 2004 version, a fact that sparked the ire of the non-governmental group Public Citizen, which immediately issued a press release blasting the revised model BIT for retaining an investor-state dispute settlement mechanism.

"Like the old U.S. investment model, the new text will allow companies to challenge public interest regulations outside of domestic court systems before tribunals of three private sector trade attorneys operating under minimal to no conflict of interest rules," it charged.

"These arbitrators can order governments to pay corporations unlimited taxpayer-funded compensation for having to comply with policies that affect their future expected profits, and with which domestic investors have to comply," it added.

U.S. BIT negotiations opened with China and India have remained stuck at a technical level while the administration's review of the U.S. model BIT was underway.

<http://uk.reuters.com/article/2012/04/20/usa-investment-treaties-idUKL2E8FK7GZ20120420>

UPDATE 2-US resolves 3-yr debate on investment treaty terms

Fri Apr 20, 2012 8:04pm BST

- * Administration says new model will help level playing field
- * U.S. party to 40 investment pacts, out of 3,000 worldwide
- * Critic says new model no improvement over old (Adds detail, quotes throughout)

By [Doug Palmer](#)

WASHINGTON, April 20 (Reuters) - The U.S. government on Friday said it has resolved a three-year internal debate over how strongly to press countries such as [China](#) and India to protect workers' rights and the environment in negotiations on treaties to protect U.S. foreign investment.

The U.S. State Department and the U.S. Trade Representative's office issued a joint statement outlining a so-called "model BIT" (Bilateral Investment Treaty) that will be used as a template in future negotiations.

They said new language "will help achieve several important goals of the Obama Administration (such as) ensuring that U.S. companies benefit from a level playing field in foreign markets, providing effective mechanisms for enforcing the international obligations of our economic partners, and creating stronger labor and environmental protections."

The Emergency Committee for American Trade, a U.S. business group, welcomed the announcement and called for quick resumption of investment talks with China, India, Vietnam and Mauritius that have been on hold.

But the group, whose members range from heavy equipment manufacturer Caterpillar to publisher McGraw-Hill, said the stronger U.S. labor and environment demands in the model BIT "could be counterproductive" because they go much further than what other developed countries demand in their investment pacts.

"ECAT is concerned that these labor and environment provisions set a bad precedent and may well undermine the United States' ability to conclude BITs with developing countries and the very improvements in labor and environmental objectives that increased foreign investment would bring," it said.

The business group added it was "very disappointed that the new 2012 model BIT does not strengthen core protections for U.S. investors overseas."

The United States and other countries negotiate bilateral investment treaties to protect their companies against potentially unfair foreign government actions.

There are some 3,000 BITs in force around the world, of which the United States is party to 40.

Critics say the treaties, which must be approved by the Senate, encourage U.S. companies to move production overseas and allow them too easily to challenge government regulations that could hurt the value of their investments.

One of the most outspoken critics, Lori Wallach, director of Public Citizen's Global Trade Watch, said the new model BIT was basically the same as "the deeply flawed 'old' model."

"At a time when multinationals like Chevron are using BITs to evade justice and get out of environmental remediation obligations, it is unthinkable that an Obama administration - post-BP oil spill, post-Wall Street crash - would privilege the rich at the expense of the 99 percent," Wallach said.

The administration of former President George W. Bush launched BIT negotiations with China and Vietnam in its waning months. Responding to concerns raised by Democrats and labor groups, the incoming Obama administration put those talks on hold and instituted a review of the U.S. model BIT in February 2009.

The U.S. Trade Representative's office, in a Fact Sheet, said the 2012 model BIT expands labor and environmental obligations in "four important ways."

It requires governments not to "waive or derogate" from their own labor and environmental laws to attract investment or to fail to effectively enforce those laws to attract investment.

U.S. BIT partners also must reaffirm their commitment to core International Labor Organization principles, such as the rights of workers to organize and bargain collectively, and recognize the importance of international environmental agreements, such as those protecting endangered species.

The new BIT model also contains "more detailed and extensive consultation procedures (on labor and environment) than those applicable under the 2004 model BIT," USTR said.

The Obama administration also responded to growing concerns about the role of foreign "state-owned enterprises" in international trade by including provisions in the model BIT to help level the playing field for U.S. companies.

(Reporting By Doug Palmer; Editing by [Chizu Nomiya](#), Vicki Allen and Dan Grebler)

Obama administration clears hurdle for China, India investment treaties

<http://thehill.com/blogs/on-the-money/1005-trade/222809-obama-administration-clears-hurdle-for-china-india-investment-treaties>

By Erik Wasson - 04/20/12 12:42 PM ET

The Obama administration on Friday announced that it has completed a controversial review of its approach to bilateral investment treaties (BITs), clearing a major hurdle for potential deals with China, India and Russia.

Investment treaties are a major goal of U.S. business, which argues the treaties smooth the way for expansion overseas by reducing the legal risks that investments can be confiscated by foreign governments or impaired by

corrupt court systems.

The Office of U.S. Trade Representative and Department of State have been reviewing the template under which they negotiate BITs since the early days of the Obama administration.

Labor unions and environmental groups wanted stronger protections in the BITs, and some activists wanted the United States to stop giving foreign companies access to special arbitration panels that can review U.S. policies outside the U.S. court system.

Activists said the BIT could impair the ability of the United States or foreign partners to regulate businesses because those regulations could be rendered null by an obscure arbitration process.

Their demands slowed the model BIT review.

The new model BIT contains beefed up labor and environmental protections and makes the BIT process more transparent, USTR said in a press release. It claims the new model BIT, the first revision since 2004, balances investor protections with the ability of governments to regulate.

At least one activist was not buying the latter claim on Friday.

"Instead of the reforms promised by candidate Obama, the Obama administration's 'new' Model Bilateral Investment Treaty released today is the same in all major respects as the deeply flawed 'old' Model Bilateral Investment Treaty (BIT) and the investment chapters of U.S. free trade agreements," Lori Wallach of Public Citizen said in a emailed statement.

"Like the old U.S. investment model, the new text will allow companies to challenge public interest regulations outside of domestic court systems before tribunals of three private sector trade attorneys operating under minimal to no conflict of interest rules," she said.

The model BIT is not subject to congressional action at this time, but signed BITs must pass the Senate by a two-thirds vote.

BITs with China and India are under preliminary negotiation, while the administration has talked of launching talks with Russia. More than 40 BITs are already in place with U.S. partners.

US revises investment treaty approach

<http://www.ft.com/intl/cms/s/0/50a4f600-8b23-11e1-bc84-00144feab49a.html#axzz1scPhKtIV>

By James Politi in Washington

The Obama administration has laid out its criteria for bilateral investment treaties in a move that could catalyse negotiations on such deals with China and India.

The office of the US trade representative on Friday announced that it had finalised a three-year review of the so-called "model BIT", which America uses as the foundation for agreements on investor protection with other countries.

The last time the US proposed a model BIT was in 2004, under George W. Bush. Almost immediately upon taking office, Barack Obama had sought changes to ensure consistency with the "public interest" and his wider economic agenda.

The US has bilateral investment treaties with some 40 countries, but not with a number of key trading partners, including India and China. Although the US presentation of its model BIT could catalyse discussions with the two large Asian nations, it is unclear whether this will happen this year, given the complex and at times fraught

economic relationships involved. This week, for instance, Tim Geithner, the US Treasury secretary, had to ask Pranab Mukherjee, the Indian finance minister, to offer reassurance that his country was open to foreign capital after the Indian budget included controversial retroactive taxation measures.

BIT deals generally include a number of provisions aimed at guaranteeing market access for foreign investors on level terms with domestic companies, which could limit efforts by China and India to pursue so-called "indigenous innovation" policies that have angered foreign businesses. BITs place limits on expropriation, restrict domestic content targets and export quotas, and offer the right to use international arbitration, rather than domestic courts, in disputes with the government.

The US often takes a hard stance negotiating BITs, insisting that other countries adhere to its model.

In the revised plan presented this week, the US made several changes specifically designed for deals with "state-led economies", including measures to prevent the imposition of domestic technology requirements and allow the participation of foreign investors in setting standards to limit discrimination on the basis of technical regulations. In addition, the new plan by the US includes a series of new labour and environmental standards, including an obligation not to waive labour and environmental laws to encourage investment.

Calman Cohan, president of the Emergency Committee for American Trade, a business group, said he applauded the Obama administration's move as a sign of its "commitment to open markets, eliminate foreign barriers and protect US investment overseas". But Mr Cohan also said that the new language on labour and environmental standards "could be counterproductive" and he was disappointed that some of the "core protections" did not go further.

Meanwhile, Lori Wallach of Public Citizen's Global Trade Watch, which has fought US free trade agreements in the past, said Mr Obama's plan was "the same in all major respects as the deeply flawed old model".

SOFTWOOD LUMBER AGREEMENT

CHRONOLOGICAL

UPDATE

- 1. Current Agreement signed in 2006 by Harper and Bush Governments**
 - **7 Year deal scheduled to end in Sept of 2012.**
 - **US producers complained that Canadian exporters were subsidized by Crown Lands stumpage fees sold at bargain basement prices.**
 - **Canada won the first decision before NAFTA Panel.**
 - **US filed a subsequent petition to World Trade Organization and won.**
 - **Approximately \$5.6Billion levied against the Canadian Producers.**
 - **\$4.5Billion in levies returned back to the same producers.**
 - **SLA extremely important to softwood lumber producers on both sides of the border with the exception Canadian Mills along the Maine and New Hampshire international boundary.**
- 2. August of 2011: USTR announced it was seeking \$500Million in damages from BC Forest Industry before the London Court of International Arbitration. Decision is due this Summer.**
- 3. Two other USTR filed disputes have been won by the US.**
 - **Dispute that Canada failed to calculate volume quotas properly by Provinces. \$68Million export duties levied against the Federal Government.**
 - **Dispute that Provinces of Quebec and Ontario failed to justify market rates for Crown Lands Stumpage creating a breach of the agreement. \$60Million levied against the respective Provinces.**
- 4. SLA extended on Jan 23rd 2012 until Oct 2015.**
 - **Done within days after the Obama Administration rejected the Keystone Pipeline proposal.**

DAT 2012.

Future
Softwood Lumber Agreement
NAFTA
&
Trans-Pacific Partnership

SLA: Issues in need of being addressed in next round of negotiations.

- **Subsidy calculation based on US weighted average stumpage cost by Region less the less the weighted average stumpage rate calculated for all Canadian Provinces by Region.**
 - **Settlements based on level financial injury collected by DOC by region and returned to injured claimants by region.**
 - **Theoretically, no countervailing duties or anti-dumping duties would be collected by the Canadian Government and redistributed back to their mills.**
 - **No more debate on what qualifies for a log under the agreement nor should there be a debate on Crown land Stumpage Values.**
- **All costs associated with Claims Process borne by losing party.**
- **Dispute Resolution Process must be fair, impartial and equitably defined without prejudice before a new signed agreement.**
 - **Independent, Judicially qualified third party must be chosen and mutually agreed to prior to a new agreement.**
 - **Decisions should not violate jurisdictional trade laws.**

NAFTA AND TPP:

- **Should incorporate SLA Dispute Resolution and Claims Process.**

1-2. Reality of ISDS (Final edition of a serial reports): Possible restriction on environment protection worried about even in the US.

The US government seeks for rules favorable to USA to create job opportunities. But, the deep-seated opposition against extreme free trade which only serves corporate benefits is seen even in the US.

We can find an example in the state of Maine. Many residents there are opposing pumping up of groundwater by a multinational mineral water company. People are worried about possible restriction on their right to preserve natural resources of the community, once ISDS takes effect. The citizen's committee on trade policy of the state is the only opposition at the public hearing on TPP held by the Federal Government. The committee is not only against Japan's participation but cautious about the TPP itself. They say TPP will restrict the regulatory right of the state government and the dispute settlement procedure in TPP may seriously hit the state. Therefore, they sense imminent danger of ISDS.

On the other hand, citizens worried about shortage of water by global warming are cautious about appropriation of water by a private corporation. There are five leading civil groups supported by fifteen groups. In 2008 when the multinational planned to expand its operation, the local referendum stopped it with 80% against the plan. And in 2009, two local governments passed local ordinances giving authority to restrict digging for groundwater. Sharon Treat, a state legislator and a member of the committee points out that ISDS would reverse the regulation of the local governments. Chris, the leader of an association to protect life supporting water resources also points out that development of FTA with EU and Switzerland, and expansion of TPP participating countries will spread use of ISDS and thus endanger regional resources.

In response to these progresses, the multinational is trying to roll back. They recognize it will be difficult to use ISDS because of their nationality and now try to pressure the state governor and legislature to enact a state regulation which enables them to demand compensation when their operation is restricted by local governments.

Chris is expressing his wariness that it is a domestic version of ISDS. Corporations already sued some state governments for compensation of tens of billions of US Dollars. Chris emphasized that lobbying and pressures of those corporations with financial power are totally different from citizen's wish asking for the rearing of sustainable agriculture and manufacturing industry.

2-1. Interview with the Maine State Legislators, Sherman, Treat and Lotando (spelling unknown): Interviewed by Hirofumi SENBONGI.

Question: What are activities of the citizen's committee for trade policy like?

Sherman:

Free trade has both positive aspects and negative aspects. We hold the regular meeting every month, discuss the impact of the TPP and Korea/US FTA to citizens of the state of Maine and report to the public.

Treat:

Among other clauses, ISDS is likely to restrict the sovereignty of local governments.

A private company can sue the federal government for abolition of regulations which protects local resources such as groundwater and for damage compensation including potential future profit. It will also be a problem that it is difficult to foresee the settlement which is subject to arbitrators even if the cases are the same. If not actually sued, the legislature may quail.

Lotando:

A Canadian mining company sued the US federal government using ISDS of

NAFTA and complained to the state of California of the restriction of opencast mining. It obviously tells that a trade agreement may make it difficult to preserve ground water.

Why do we need such an international arbitration system, while we have our own legal system in the US? The important is that the state government and local community have the right to decide its own policy.

Question: Why are you critical on the TPP?

Treat:

Corporations want to unify standards for environment and food safety of member countries in TPP Agreement. The state of Maine exports sea urchin to Japan and we are required to keep the sea water clean and preserve sea urchin.

Such a reality peculiar to the region must carefully be considered.

Secret negotiations are also a problem which hides possible impacts to our daily life. Even the state government cannot read the text till all the negotiations are complete. USTR keeps close dialogue with corporate representatives, but hardly has opportunities to listen to the state government.

Therefore, we demand slowdown of the negotiation, release of information to the public and equal opportunities for stakeholders to express opinions.

Question: What about the Korea/US FTA to which you are also cautious?

Treat:

We can share the concern of Korean people. The US demanded transparency in the process of pricing medicines in Korea. If such a system beneficial to pharmaceutical companies is adopted not only in Korea but in the US, citizen's right of access to medicines may be endangered.

Lotando:

The democratic process of FTA negotiations is important, so that we may evaluate the impact to our daily life. And it is also indispensable that the government make efforts to explain the complicated clauses easily understood by as many citizens as possible.

Learn more at:
heifer.org

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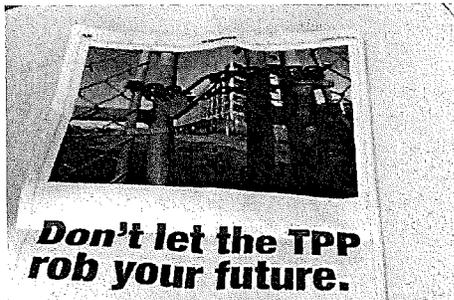
THE WALL STREET JOURNAL

WSJ.com

April 25, 2012, 11:08 AM JST

Lost in Translation: Anti-TPP Campaign Befuddles Washington

Japan's agricultural lobby has taken its campaign against a global free trade agreement to the U.S., buying a full-page advertisement in Tuesday's Washington Post opposing the Trans-Pacific Partnership. The ad is titled "Don't let the TPP rob your future," and features a picture of a padlocked factory on the back page of the newspaper's front section.



Peter Landers/The Wall Street Journal

A photograph of the anti-TPP ad, which ran in the Washington Post on April 24.

For American readers, it must have seemed a strange message. The advertisement doesn't say what the proposed free-trade agreement consists of or how it would "destroy jobs" for Americans. JRT asked a colleague who doesn't cover Asia to review it. The reaction: "What is it about? I have no idea what it means."

That captures the disconnect between the two countries over the issue. In Japan, TPP has become a household phrase, with newspapers, magazines and TV shows prominently featuring the pact. Prime Minister Yoshihiko Noda has made Japan's entry into the agreement a top priority, and is expected to discuss the

matter when he meets American President Barack Obama in Washington next week. While advocates say the agreement would lift Japan's economy overall, it would likely require further opening of Japan's protected farm sectors — hence the advertising campaign.

In the U.S., however, the pact gets virtually no press, and is largely unknown.

For its part, the group taking out the ad, led by Japan's Central Union of Agriculture Co-operatives, seemed a little confused about U.S. developments. It told Japanese media that the Washington Post has a circulation of 670,000, but, alas, the U.S. capital's leading daily long ago fell below that mark. As of last September, its daily circulation was 507,000, according to the U.S. Audit Bureau of Circulations.

[Read this post in Japanese/日本語はこちら](#)»

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Public Health Association
AUSTRALIA

PHAA Issue Brief

Public Health and the Trans Pacific Partnership Agreement

April 2012

PHAA's policy position on trade agreements and health

While trade agreements can contribute to better health (under certain conditions), they also involve significant risks to health that need to be systematically assessed [1]. PHAA's policy on *Trade Agreements and Health* [2] argues that:

- Trade agreements should not limit or override a nation's ability to foster and maintain systems and infrastructure that contribute to health and well-being;
- Policy space should be preserved in trade agreements for governments to regulate to protect public health; and
- A fairer regime of trade regulation which addresses sustainability, economic development and equity (within and between countries) is a necessary condition for global population health improvement.

The Trans Pacific Partnership Agreement (TPPA)

- The TPPA is a regional trade agreement currently being negotiated between Australia, Brunei, Chile, Malaysia, Peru, New Zealand, Singapore, the United States and Vietnam.
- Decisions made in the TPPA negotiations will have global implications. Japan, Canada and Mexico have expressed interest in joining, and the agreement is likely to expand to include further countries (including more developing countries). It will also set a new benchmark for future trade agreements.

Public health issues at stake

Access to affordable medicines: Leaked U.S. proposals for the TPPA [3] would make medicines more expensive by:

- **increasing intellectual property rights** for pharmaceutical companies well beyond the World Trade Organization's TRIPS Agreement. Proposed 'TRIPS-plus' provisions would keep medicines under patent for longer, broaden the application of patenting and delay the introduction of cheaper generic medicines [4, 5]. They would prevent developing countries from using many of the flexibilities available under the TRIPS Agreement.
- **undermining pharmaceutical reimbursement and pricing schemes**, by restricting the use of cost-effectiveness criteria, imposing independent appeals processes and requiring countries to permit advertising of prescription drugs via the internet [5].

Policy space for public health: The TPPA could tie the hands of governments to regulate industry in key areas of public health policy where governments will need to take strong action to address non-communicable diseases. For example:

- a proposed '**investor-state dispute resolution**' provision would enable foreign corporations to challenge governments in international tribunals when they introduce policies and laws that affect the value of their investments. The risks are clearly illustrated by Philip Morris Asia's challenge to the Australian Government's tobacco plain packaging laws through the ISDS clause in an investment treaty between Australia and Hong Kong [6].
- Many other chapters and provisions of the TPPA (e.g. regulatory coherence, transparency, cross-border services and technical barriers to trade chapters) will make it more difficult for governments to introduce policy interventions such as tobacco control policies, nutrition and alcohol labeling and restrictions on advertising of unhealthy goods [7].

The 2009 Report of the UN Special Rapporteur on the Right to Health stated that '**Developed countries should not encourage developing countries and LDCs to enter into TRIPS-plus FTAs and should be mindful of actions which may infringe upon the right to health.**' [8]

THE HILL



Last US sneaker manufacturer wants to maintain balance in new trade pact

By Vicki Needham - 03/10/12 01:51 PM ET

The last U.S. manufacturer of athletic shoes is working with a coalition of lawmakers to convince trade officials to preserve footwear duties in an Asia-Pacific agreement that they say will allow them to continue operating on American soil.

New Balance, which still produces about 25 percent or 7 million pairs of shoes here, and a group of New England lawmakers are insistent that the Trans-Pacific Partnership (TPP) maintain about 20 duties they argue will protect five U.S. factories from closing and moving overseas — three in Maine and two in Massachusetts.

The push comes amid opposition within the footwear industry, which operates largely outside the United States, and wants to see the tariffs on shoes either eliminated or phased-out within the trade agreement.

"We're not asking for special treatment," Matt LeBretton, who heads up the government affairs team at New Balance, told The Hill.

"We want a carve-out of the tariffs for the products we're making here, we aren't asking for special subsidies or tax incentives," LeBretton said.

Eliminating or phasing-out the tariffs would "decimate" what is left of the industry, he said.

LeBretton said the tariffs allow the firm to compete against much cheaper imported shoes, especially from Vietnam, in an already highly competitive industry.

While many shoe manufacturers have already moved their facilities overseas, New Balance, which has been in business for more than 100 years, continues to make shoes in the U.S. and they say they want to stay put.

Their plants employ 1,300 workers.

"We have a commitment to our domestic operations," LeBretton said.

Sen. Susan Collins (R-Maine), an advocate against the tariffs, said the company has "made a real effort" to involve their employees to become more productive and efficient while fighting a rising tide of low-cost imports into the United States.

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"Obviously given that they pay good wages and benefits they're at a competitive disadvantage compared with what they would be paying if they did the work in China," Collins told The Hill.

Nine countries, right now, are part of the ongoing negotiations of the TPP agreement and one of them, Vietnam, is the fastest growing exporter of footwear in the world, a major concern for New Balance, because business costs are appreciable in the United States.

Vietnam pays a tariff on rubber footwear but that could go away under the TPP deal, jeopardizing the future of New Balance's business here.

Still, there are bigger voices arguing against those tariffs, such as the Footwear Distributors and Retailers of America and the American Apparel and Footwear Association, which are working to nix the duties, arguing that U.S. consumers are paying an unnecessary shoe tax on products that, the majority of which, aren't produced here anymore.

"An effective TPP will also benefit American consumers by eliminating duties and holding down prices," Matt Priest, president, Footwear Distributors and Retailers of America, said recently.

He said those tariffs amount to a \$600-million tax that "makes no sense" because 99 percent of all shoes sold here are manufactured outside the United States.

LeBretton called fighting that push against the tariffs a "daunting task" arguing that 1 percent of manufacturers remaining need the protections to continue production.

The fight by New Balance highlights the White House's agenda to bolster manufacturing and keep jobs from leaving the United States.

Still, the Obama administration is in a tough spot and won't likely find it easy to attempt to help a microcosm of an industry that was thriving here before a mass exodus started in the 1980s as foreign countries opened up to U.S. businesses that wanted to establish manufacturing plants within their borders.

That is where a group of lawmakers come into play.

The possibility of the tariffs' elimination has pushed the issue up the agenda for New England lawmakers, who sent a letter to U.S. Trade Representative Ron Kirk in December asking him to maintain the tariffs or risk losing the rest of the shoe-making industry to outsourcing.

Sen. Olympia Snowe (R-Maine) prodded Kirk for a status on the talks over the tariffs during a Senate Finance Committee hearing on Wednesday.

"The concern is that the agreement will not exclude the reductions in imported products from Vietnam which is really the largest producer of rubber footwear and would have a severe impact on an industry and jobs with respect to New Balance," Snowe said.

"It would provide a severe disadvantage to this industry without question since Vietnam pays on average 46 cents an hour, whereas New Balance pays \$10 an hour," he said.

Kirk tried to assure Snowe that the administration was working toward the best possible resolution.

"We have done everything we can or attempting to do in this TPP, whether it's footwear and others, to make sure we have a proper balance, that we continue to give American families the consumptive

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benefits, but we help Americans that are still making products in doing what the president has simply said," Kirk said.

"What's remaining of our textile industry is vibrant. It's fully integrated in many cases," he said.

Snowe didn't sound convinced in a post-hearing release.

"Based on his answer today, he [Kirk] clearly doesn't grasp the gravity of the impact the Trans-Pacific Partnership agreement could have for these workers, their families and the specialized industry as a whole," she said.

"These are precisely the kinds of jobs that we must support, particularly since more than 28,000 jobs in the footwear industry have gone overseas in the past 15 years," she said.

"At a time when so many American manufacturers are struggling, New Balance has provided stability and economic opportunities in my home state of Maine."

Source:

<http://thehill.com/blogs/on-the-money/international-taxes/215307-last-us-shoe-manufacturer-wants-to-maintain-balance-in-new-trade-pact>

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<http://insidetrade.com/201204112395519/WTO-Daily-News/Daily-News/former-ustrs-support-expanding-tpp-membership-differ-on-sequencing/menu-id-948.html>

Former USTRs Support Expanding TPP Membership, Differ On Sequencing

Posted: April 10, 2012

Six former U.S. trade representatives last week argued that expanding the Trans-Pacific Partnership (TPP) beyond the current nine participants is critical to broadening the economic and strategic value of an eventual TPP deal, but they disagreed on whether the U.S. should seek to conclude the negotiations before bringing in new players such as Mexico, Canada and Japan, which have all expressed an interest in potentially joining the talks.

Susan Schwab, who initiated the TPP talks as USTR under President George W. Bush, cautioned against bringing new countries into the negotiations at this stage because it could delay the talks and potentially water down the high standards that the current participants are seeking.

"Negotiating TPP with the original nine as opposed to negotiating with the 12 is a very, very different proposition, so I'm not sure you're not adding three, five or seven years onto the exercise that you wouldn't want to add on," Schwab said during an April 6 event with six former USTRs hosted by the Center for Strategic and International Studies (CSIS).

While the goal of the TPP was to create a high-standard trade agreement that could potentially be expanded into a free trade area of the Asia-Pacific, or even to encompass other regions of the world, this idea is predicated on first negotiating a precedent-setting agreement, according to Schwab. "I'm not sure you can achieve that high bar if Japan is sitting there in the first negotiating exercise," she said.

By contrast, Clayton Yeutter, who served as USTR in the Ronald Reagan administration, said he favored bringing in new countries to the TPP talks at this stage even if it slows down the negotiations to some extent. He downplayed the idea that there is a trade-off between completing the TPP this year and allowing new countries to join, saying that TPP countries are unlikely to meet their goal of concluding the talks this year even if no new countries are added.

Former USTRs Carla Hills and Mickey Kantor, who served under former Presidents George H.W. Bush and Bill Clinton, respectively, also appeared to reject the idea that the U.S. has to choose between bringing in new TPP members and concluding the deal in the near term.

They argued that it is possible to simultaneously move forward on the TPP talks and expand the group's membership by establishing an "open architecture" that would allow any country willing to meet the commitments of TPP to join the agreement, similar to the approach taken with the Information Technology Agreement and the Government Procurement Agreement in the World Trade Organization.

"You don't have to slow it down, you just have to keep the door open," Hills argued.

Still, countries such as Mexico and Japan have expressed a preference for joining the TPP talks while they are still ongoing in order to help shape the negotiations, as opposed to acceding to a completed agreement.

Speaking after the event, Schwab sought to distinguish the situation of Japan from that of Canada and Mexico, which have both communicated their desire to join the TPP and adhere to its emerging high standards.

She said it was possible to envision a scenario where a group of "almost ready" countries, such as Canada and Mexico, could be folded into the TPP negotiations before a deal is concluded, while Japan would probably join later. But she said it was difficult to speculate how this process would play out without knowing the confidential status of the TPP negotiations.

During the event, the debate over new TPP entrants focused largely on Japan's potential participation in the talks. Schwab noted that Tokyo has sensitivities on agriculture and Japan Post, and she also raised doubts that Japan's leaders are truly committed to joining TPP.

That point was echoed by Charlene Barshefsky, who served as USTR under Clinton. Barshefsky said Japanese officials with whom she has consulted have so far only conveyed their general interest in joining TPP but have not been able to point to any specific confidence-building measures Japan would be willing to take by the end of the year to show it is willing to meet the agreement's high standards.

"So until Japan sorts out its own internal situations -- of course, we don't know if they'll have the same prime minister -- then the U.S. should move forward with those that can," Barshefsky said.

Former USTR William Brock, who also served under Reagan, acknowledged that the Japanese government is divided about whether to join TPP. "But there are a lot of people in deep leadership roles that would give a lot to be able to do this and it would then help deal with some domestic issues that ... they have to deal with," he said.

Brock argued that even if the U.S. does not bring Japan into the TPP right away, it needs to send a clearer signal that it wants Japan to join the deal eventually. "We really need that country, and we're not playing any right cards at the moment, and I'm discouraged about it," he said.

Barshefsky agreed that the U.S. needs to clearly indicate to potential TPP members that "we want them in," and then work with each country to discuss areas where they may have difficulties living up to the agreement's high standards and find ways to resolve them.

Yeutter, who is also a former Agriculture secretary, argued that bringing Japan, Mexico and Canada into the TPP would increase the agreement's importance to U.S. agricultural exporters, but he cited several areas in which Japan and Canada need to show progress before they would be in a position to join the talks.

He said Japan needs to ease restrictions on imports of U.S. beef, but added that Tokyo appears to have "awakened" to this reality and may fix the problem soon. Japan currently limits its imports of U.S. beef to that from cattle under 20 months, but has launched a review process to assess whether the risk of consuming beef from U.S. cattle up to 30 months in age is higher than the risk of consuming beef from cattle no older than 20 months (*Inside U.S. Trade*, Dec. 23).

But Yeutter said Japan appears to be moving in the wrong direction on Japan Post, which "could jeopardize" its chance for joining TPP. Yeutter did not elaborate, but U.S. companies late last week objected to a new Japan Post reform bill that is expected to pass through the Japanese Diet later this month (*Inside U.S. Trade*, April 6).

Yeutter said Canada needs to address policies in its dairy and poultry sectors that are opposed by the U.S., Australia and New Zealand before it can join TPP. Canada currently limits foreign access to its dairy and poultry markets through a system of supply management.

While noting it is unlikely that other countries besides Mexico, Canada and Japan would be added in the "first tranche" of new TPP entrants, Yeutter said other potential participants that are attractive for U.S. agriculture exporters are Taiwan, the Philippines, Thailand and Indonesia.

During her remarks, Hills cited four potential risks of keeping the TPP small. First, doing so would not accomplish the administration's goal of bringing together developed and developing countries in Asia into a single trading community, she argued.

Second, it would negatively impact the poorest countries in Asia, such as Cambodia, Laos and Burma, by diverting trade from those nations to TPP members, a point also stressed by Kantor.

Third, completing the TPP with only the current membership would splinter the "ASEAN 10," a group that has been strategically important for the U.S. Finally, it could induce competing trade blocs in the Asia-Pacific region because China would not be included in the TPP, she said.

Kantor argued that the TPP should be expanded to bring in Japan, Canada, Mexico and the ASEAN countries with the goal of eventually including China. But Barshefsky pointed out that Indonesia, an ASEAN member, has shown no interest in participating in the TPP, and therefore it is preferable to move the TPP ahead with countries who are willing to participate.

WTO Orders U.S. to Dump Landmark Obama Youth Anti-Smoking Law

Posted: 04/ 9/2012 2:30 pm

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A landmark U.S. health policy already was being struck down even as protestors surrounded the Supreme Court over the attack on President Obama's healthcare law. Behind closed doors in Geneva, a World Trade Organization (WTO) tribunal issued a final ruling ordering the U.S. to dump a landmark 2009 youth anti-smoking law.

The Obama administration's key health care achievement slammed by the WTO was the [Family Smoking Prevention and Tobacco Control Act \(FSPTCA\)](#), sponsored by Rep. Henry Waxman (D-Calif.). The ruling, issued Wednesday, was on the final U.S. appeal which means that now the U.S. has 60 days to begin to implement the WTO's orders or face trade sanctions.

This outrageous WTO ruling should be a wake up call. Increasingly "trade" agreements are being used to undo important domestic consumer, environmental and health policies. Instead, the Obama administration has intensified its efforts to expand these very rules in a massive Trans-Pacific Partnership (TPP) "free trade" agreement.

The WTO's ruling against banning the sale of flavored cigarettes isn't the only example of its attack on consumer protection and health laws. The U.S. has filed WTO appeals on two other U.S. consumer laws -- U.S. country-of-origin meat labels and the U.S. dolphin-safe tuna label -- both were slammed by lower WTO tribunals in the past six months. Yup, in short order we could see the WTO hating on Flipper, feeding us mystery meat and getting our kids addicted to smoking.

The challenged tobacco control U.S. law was designed to reduce teen smoking by banning "starter flavorings," since tobacco firms had begun marketing flavors like cola, chocolate, strawberry and clove. The 2009 law forced U.S. firms to cease sales of these products, whether imported or domestically produced.

Wednesday, the WTO sided with Indonesia, who claimed that the U.S. ban of their imported clove-flavored cigarettes should not be allowed. A key reason was that the U.S. had not banned all flavored-cigarettes (namely menthols). Thus, they argued, the policy unfairly hit Indonesia. However, data showing that teens are more likely than adults to smoke cloves ([while menthol smokers include vast numbers of adults](#)) was dismissed.

Given these recent WTO rulings spotlighting just how dangerous the existing "trade" agreement model is for an array of non-trade public interest policies, you might expect that the Obama administration would finally start implementing candidate [Obama's 2008 election pledges to renegotiate existing agreements and create a new model](#). Instead, the U.S. is pushing for completion this summer of a nine-nation TPP that contains the same rules. The deal would also empower foreign corporations to privately enforce these rules by suing the U.S. government directly before kangaroo courts, comprised of three private sector lawyers operating under UN and World Bank investor-state arbitration rules.

The American public is [uniquely united](#) against more-of-the-same trade deals. Thus, if only for political expediency, the administration must stand with the thousands of Americans who have signed a [Consumer Rights Pledge](#) calling on the U.S. to not comply with these illegitimate trade pact rulings, and to "knock it off" on the TPP negotiations that would greatly intensify this problem.

This ruling just adds to the growing evidence that today's "trade" agreements are no longer mainly about trade; they're about corporate power and influence. Chevron is using these corporate power grab terms to try to dodge paying \$18 billion to clean up horrific contamination in the Amazon ordered after 18 years of U.S. and Ecuadorian court rulings. Philip Morris is using the system to attack Australian and Uruguayan cigarette plain packaging laws that were designed to discourage smoking.

So what can we do? First, we need to insist that our elected officials stop supporting these corporate power tools branded as trade agreements -- starting with the pernicious TPP proposal. To date, U.S. trade officials have refused even to make the draft TPP text public, even though the 600 official U.S. corporate trade advisers have full access. And, in the short term, we must urge the administration to ignore these WTO rulings.

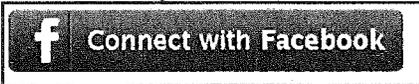
If there is any silver lining to today's ruling, it is that it will confirm the views of growing numbers of consumers, citizens and governments that the WTO must be shrunk or sunk. There is a path forward: we must put the TPP on hold and renegotiate the WTO's mandate. It's time to craft a real 21st century trade policy.

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Subject: NEWS: TPP :IUT: TPP Schedule For 2012 Taking Shape, Starting With Dallas Round In May

TPP Schedule For 2012 Taking Shape, Starting With Dallas Round In May

Posted: March 7, 2012

MELBOURNE – The 2012 schedule for the Trans-Pacific Partnership (TPP) negotiations is starting to take shape, and it appears to reflect a desire by TPP members – especially the United States – to drive ahead the negotiating process as much as possible before the talks could become more complicated by the participation of new members and an intensified presidential election campaign.

The U.S. has been pushing to wrap up as much as possible in the negotiations by summer, before a decision on new participants, but observers here say any real conclusions at that point are simply not possible then given the current state of play. There are also no signs that the talks could completely wrap up by the end of the year, which is the stated goal of TPP members.

After the current TPP round formally concludes here on March 9, TPP members will hold an inter-sessional meeting in Chile next month on intellectual property rights. Then, the twelfth full TPP round of talks will take place in Dallas from May 8-18, sources said, although a U.S. trade official said the exact location has not yet been determined.

The U.S. has also offered to host the formal round of negotiations taking place immediately after Dallas round. The United States appears to be targeting July 4 as the start of this round, which would be the thirteenth formal round of talks.

Having the same host for two consecutive rounds would be a change from the current setup, where various TPP members have alternated as hosts. One reason the U.S. may want to host that is that the host country gets to decide the agenda of a given meeting. The United States is really pressing to drive forward the negotiations over the next several months, sources said, and it will be easier to do so if it can shape the agenda for both the twelfth and thirteenth rounds.

Another possible reason, sources said, is that it is expensive to host a TPP round, and many TPP countries would prefer not to incur that cost.

At the May round in Dallas – where U.S. Trade Representative Ron Kirk formerly served as mayor -- negotiators are expected to discuss what their respective trade ministers can announce when they gather under the auspices of the Asia-Pacific Economic Cooperation (APEC) forum on June 4-5 in Kazan, Russia. For example, they could report on progress made since last November, when TPP countries unveiled an initial TPP framework deal that was very general.

Observers believe that starting perhaps after the Dallas round of talks, and certainly after the July round, it will become increasingly difficult for the United States to make tough political decisions on trade due to the intensifying presidential election campaign. This could be one possible reason why the negotiating schedule is so packed in the near term, they speculated.

Moreover, they believe the United States wants to wrap up as much of the talks as it can before Japan, Canada and Mexico – which all have expressed interest in joining the talks – could realistically be in a position to do so. TPP members now say any new participant must accept whatever current members have already agreed to at the point that new participant joins. TPP members are adamant that they do not want to “reopen” negotiated text.

Most observers believe that trade ministers meeting in early June will not be in a position to announce that any new countries will join the talks at a specific date. Such an announcement, if it comes at all, is more likely to come from TPP leaders themselves when they meet in early September, again under the auspices of APEC.

This would give current TPP members more time to work through the tricky issue of new countries joining and more time to advance the negotiations before any new countries could possibly join, these observers said.

It is still not assured that any new countries will join the talks this year. However, observers agreed that Mexico, Canada and Japan are all mounting aggressive campaigns to convince TPP members to let them join while the talks

are ongoing. As there are no signs that the negotiations can wrap up this year, it may become awkward for TPP members to continue to deliberate on the possibility of new entrants much beyond September, which is a convenient date for an announcement anyway.

Assuming Japan signals that it actually would be willing to offer up reforms in its agricultural sector in the TPP added complication when it comes to Japan, however, is its political situation. Japanese Prime Minister Yoshihiko Noda, a strong proponent of Japan joining the TPP, also wants to advance an unpopular increase in Japan's consumption tax, which one observer said here is meant to raise money to provide relief to Japanese people who suffered from the tsunami and nuclear crisis last year.

The consumption tax issue is likely to come to a head in June, when it will become apparent that the Japanese Diet will not agree to an increase. At that point, many political analysts expect Noda to dissolve the Diet and call for new elections. Those new elections, in turn, would take place in August or September, and Noda may not be reelected.

Thus, just when the stars could be aligning for Japan to join the talks, Japan could be thrown into political turmoil, or elect a new prime minister who is less enthusiastic about the TPP talks or who would want to again review Japan's stance on TPP. One observer said that, in that scenario, TPP members could decide to just let Canada and Mexico join.

Opinions differ across TPP members on the issue of Japan. For instance, Australia – which has started bilateral trade negotiations with Japan only to see them stall due to Japan's refusal to make agricultural concessions – is extremely wary of Japan now joining TPP due to this experience. It would prefer Japan to conclude its bilateral talks with Australia, and then join, sources said.

New Zealand, on the other hand, is thrilled by the prospect that Japan could join the TPP talks. It sees that as the only way it could possibly achieve a free trade agreement with Japan, which has little interest in the New Zealand market. New Zealand wants an FTA with Japan to gain better access to that lucrative market after having unilaterally opened its market to Japan.

That said, observers here agree that the United States will essentially make the decisions when it comes to whether and when new countries join.

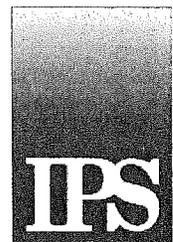
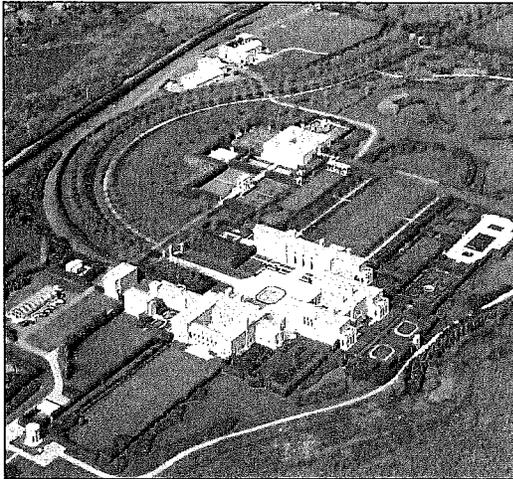
If TPP leaders do make an announcement in September on new countries joining, it could be convenient timing. This is because the Office of the U.S. Trade Representative, following the requirements of a lapsed fast-track law, is expected to formally notify Congress 90 days in advance of any new countries joining the talks.

Issuing such a 90-day notification in September could be convenient because, for the balance of 2012, little is expected to take place in the TPP talks anyway due to the U.S. election campaign. Under this scenario, therefore, the 90-day layover between announcement and the actual joining of new members would not keep any new TPP countries from missing even more of the ongoing talks, because the talks would have dramatically slowed down anyway.

Updated – November 2011

Mining for Profits in International Tribunals

How Transnational Corporations Use Trade and Investment Treaties as Powerful Tools in Disputes Over Oil, Mining, and Gas



By Sarah Anderson,
Manuel Pérez-Rocha,
Rebecca Dreyfus,
and J. Alejandro Artiga-Purcell

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Key Findings

Investor-state lawsuits related to oil, gas, and mining disputes are on the rise – particularly in Latin America

- Transnational corporations are increasingly turning to international arbitration tribunals to resolve disputes over natural resource rights. At the most frequently used tribunal, the International Center for Settlement of Investment Disputes (ICSID), there are 137 pending cases. Forty-three of these cases are related to oil, mining, or gas.¹
- By contrast, in 2000, there were only three pending ICSID cases related to oil, mining, or gas. There were only 7 such cases filed during the entire decades of the 1980s and 1990s.
- The 43 current extractive industries cases include: 14 related to oil, 10 related to gas, 14 related to mining (including 4 over gold), and another 5 related to combination oil/gas projects.

Latin American governments are being particularly targeted

- Latin American governments make up about 10 percent of the 157 ICSID member governments. And yet they are the targets of 68 (50 percent) of all ICSID cases and 25 (nearly two-thirds) of the 43 current extractive industries cases.

Regional breakdown of all ICSID cases related to oil, mining, and gas:

- Latin America: 25 (58%)
- Africa: 8 (19%)
- Eastern Europe: 5 (12%)
- Central Asia: 4 (9%)
- North America: 1 (2%) (the case is against Canada)

The increase in investor-state lawsuits related to extractive industries has coincided with an increase in commodity prices

- The price of oil rose steadily throughout the past decade, before plunging in 2008. However, by September 2011, it had rebounded to \$100.8 per barrel, up from \$25 in January 2000.²
- The price of gold has quintupled, from \$282 per ounce in January 2000 to a record breaking \$1,900 per ounce in September of 2011.³
- The price of gas rose from \$86 per thousand cubic meters in January 2000 to roughly \$140 (in the U.S. domestic market) in September 2011. In May, 2011 it had reached 257\$ USD.⁴

The potential economic impact of investor-state lawsuits on Latin American countries is significant

- In 2009, the international gold mining firms Pacific Rim and Commerce Group each sued the Salvadoran government, demanding \$77 million and \$100 million respectively (the equivalent of nearly 1% of El Salvador's GDP). Although ICSID dismissed the Commerce Group case, El Salvador still had to pay \$800,000 in legal fees.
- In March 2010, Chevron won about \$700 million in a suit against Ecuador, the equivalent of 1.3% of that nation's GDP.
- The increase in investor-state lawsuits and the economic costs they incur on Latin American countries may prevent the creation of future environmentally and socially responsible legislation.

II. International Arbitration Tribunals and the Trade and Investment Treaties They Enforce

In past centuries, disputes over foreign investments were resolved either through the host country's domestic judicial system or through government-to-government processes. In Latin America, there was a particularly strong sentiment among governments that it would be an infringement on national sovereignty to take such matters out of the hands of national authorities.

In 1868, Argentine jurist Carlos Calvo formulated the "Calvo Doctrine," which became influential throughout the region. It prevented foreign investors from claiming more rights and privileges than those granted to national citizens, and barred foreign governments from breaking a sovereign state's laws to protect its citizen's private claim.⁵ It also required foreign investors to file any dispute arising in a host country with that country's legal system, therefore subjecting the investors to domestic law.

In the past three decades, most countries in the region have shifted away from the Calvo Doctrine. This shift has coincided with increased pressure by economic powers like the U.S. and the European Union, as well as international institutions like the World Bank and International Monetary Fund (IMF) which have enforced a neoliberal agenda and openly advocated for Latin America to open its borders to free trade.⁶ As a result, almost every government in the region—with a few exceptions—has accepted the argument that they would attract increased amounts of foreign investment if they allowed investors from other countries to bypass domestic courts and seek recourse through international dispute settlement mechanisms.⁷ However, there is no evidence that providing investors with this supranational power has actually resulted in in-

creased investment inflows to a particular country. In fact, the developing countries that have been the largest recipients of foreign investment (China, India, Brazil) have not signed such deals with the United States. Nevertheless, most countries in the world are now obliged to provide such sweeping foreign investor rights through an expanding web of international arbitration tribunals, bilateral investment treaties (BITs), and free trade agreements (FTAs).

International Center for Settlement of Investment Disputes (ICSID)

Foreign investors often have a choice of venue for international arbitration. This report focuses primarily on the International Center for Settlement of Investment Disputes (ICSID), which is associated with the World Bank.⁸ ICSID is the most frequently used tribunal and it is the only one that publishes a registry of its cases. Other tribunals, such as the UN Commission on International Trade Law (UNCITRAL), have resisted even this small measure of transparency.

Private foreign investors can bring claims to ICSID against national governments, demanding compensation for actions that significantly diminish the value of their investments. Created in 1966, ICSID was almost dormant for the first 30 years of its existence. What brought it to life was the explosion of bilateral investment treaties (BITs). Worldwide, the number of signed BITs went from 1,000 in 1995 to more than 2,750 today.⁹ Beginning with the 1994 North American Free Trade Agreement (NAFTA), free trade agreements signed by the United States have also included "investor-state" dispute settlement in their investment chapters.¹⁰

BITs and U.S. FTAs grant broad new rights to transnational corporations. Here are some of the main elements of a typical agreement, which have become highly controversial:

1. Investor-State Dispute Resolution

Private foreign investors can bypass domestic courts to sue governments directly in international tribunals.

2. Restrictions on “Indirect” Expropriation

Whereas expropriation in the past applied to physical takings of property, current rules also protect investors from “indirect” expropriation, interpreted to mean regulations and other government actions that significantly reduce the value of a foreign investment. Hence, corporations can sue over environmental, health, and other public interest laws developed through a democratic process. While the tribunals cannot force a government to repeal such laws, the threat of massive damages awards can put a “chilling effect” on responsible policy-making.

3. “Fair and Equitable Treatment” Standards

These terms have no definable meaning and are inherently subjective, allowing arbitrators to apply their own interpretations to government actions in countries with diverse histories, cultures and values systems.

4. National Treatment and Most Favored Nation Treatment

Governments must treat foreign investors and their investments at least as favorably as domestic investors and those from any third country. While this is touted as a basic principle of fairness, it strips the power of governments to pursue national development strategies used in the past by nearly every successful economy. Moreover, a regulatory action that applies to all corporations but has a disproportionate impact on a foreign investor could be targeted as a national treatment violation.

5. Ban on Capital Controls

Governments are banned from applying restrictions on the flows of capital, even though such controls helped some countries escape the worst of the global financial crisis of the late-1990s. Even the IMF has stopped demanding that governments lift controls on capital flows.

6. Limits on Performance Requirements

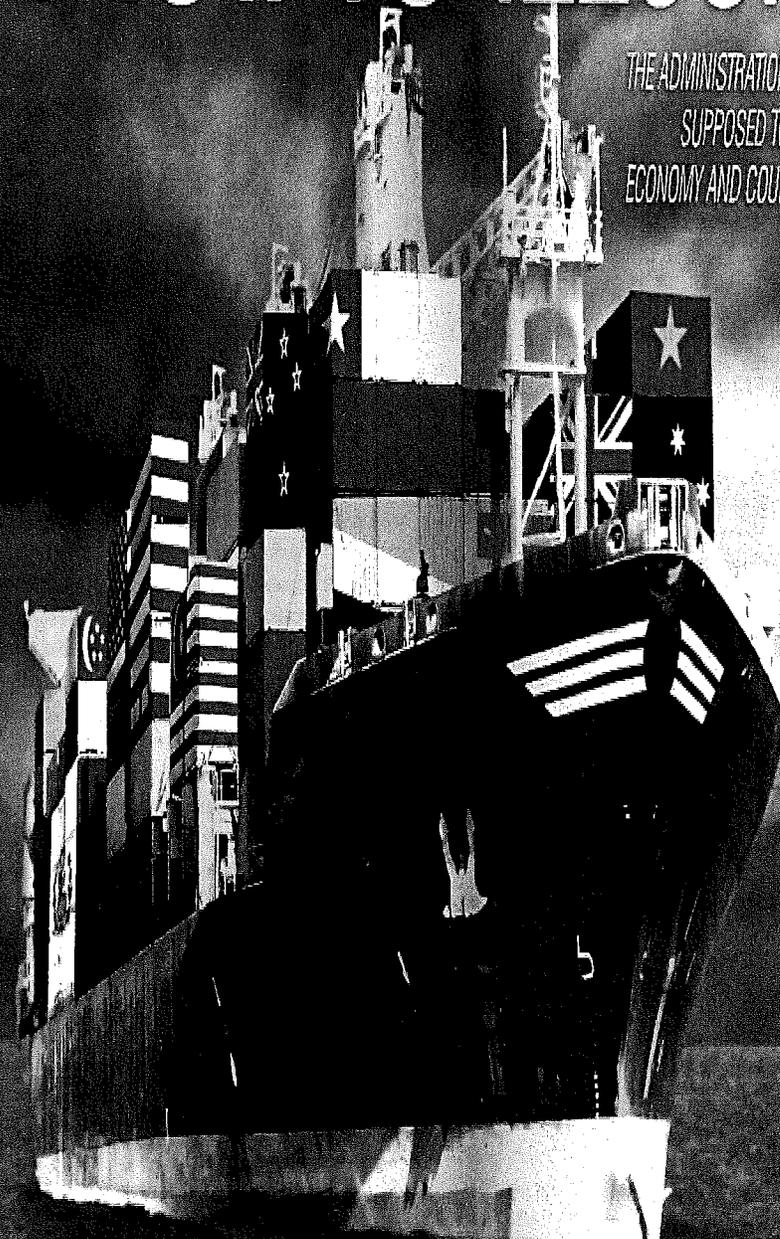
Governments must surrender the authority to require that foreign investors use a certain percentage of local inputs in production, transfer technology, and other conditions used in the past as responsible economic development tools.

ZOOM IN CLOSE-UP

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PACIFIC ILLUSIONS

THE ADMINISTRATION'S LATEST TRADE DEAL IS SUPPOSED TO REVIVE THE U.S. EXPORT ECONOMY AND COUNTER CHINESE INFLUENCE. IT DOES NEITHER.



This special report was made possible through the generous support of the Alliance for American Manufacturing and the H. Stokely Carmichael Brothers Fund. The views expressed in these articles are not necessarily those of the organization.

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its allies” in a region characterized by competing territorial claims, uncertain energy supplies, and North Korea’s nuclear threats.

In closing, however, he stressed that neither the Pivot nor the TPP is aimed at any particular country—which, of course, meant that it is. The country is China. But these initiatives are also about responding to the pleas of Asian friends, the importuning of U.S. global corporations, papering over inconsistent goals, denying American commercial decline, and clinging to the quasi-American empire.

Obama accurately posed the challenges. But do these twin policies accurately

define American interests? Are they plausible strategies for achieving them? These key questions have received surprisingly little attention.

As it has evolved so far at least, the TPP is anchored in the same orthodox free-trade philosophy that has inspired every U.S. trade negotiation and agreement since the end of World War II. It is also following the same negotiation process as all the old deals. Indeed, the agenda and initial text were largely lifted from the failed Asia-Pacific Economic Cooperation trade agreement of the 1990s and the more recent U.S.–Korea Free Trade Agreement. These texts have been broadened a bit to try to cover some new topics like state-owned enterprises, but essentially they are no different from what has gone before both in substance and procedure. We can’t know the result yet, but in the past, the U.S. trade imbalance has widened after each new agreement.

A New Sun

The foreign minister of a Southeast Asian country once told me that China is like a new sun entering the American solar system. All the planets, he said, are now shifting their orbital patterns, and the Asian planets especially are entering into orbit around the Chinese sun.

He was correct, and this fact has important implications for both the planets and the suns. This same foreign minister made the point that China’s is a hierarchical worldview in which each country and person has an assigned position that is either

The Pacific Pivot

BY CLYDE PRESTOWITZ

On November 12, 2011, I listened as President Barack Obama told business leaders attending the Summit of the Asia-Pacific Economic Cooperation forum in Honolulu that “we’ve turned our attention back to the Asia Pacific region” and announced two vehicles for that return. These were the Trans-Pacific Partnership (TPP) Free Trade Agreement, now under negotiation and to be concluded by the end of this year, and the Pivot to Asia, meaning a redeployment of American priorities and military forces away from Europe and the Middle East to Asia.

The president said that Asia will be central to America’s future prosperity and that it was imperative to correct unsustainable trade and financial imbalances while continuing to expand economic ties. This would require that all countries play by the same rules appropriate to the current global economy. The TPP, he said, would be a template for a “21st-century agreement” that would eventually be open to all the countries of the region. He emphasized that this kind of agreement can thrive only in an environment of security and stability, and he underscored that the Pivot to Asia “will allow America to keep its commitments to

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Clyde Prestowitz is president of the Economic Strategy Institute. He served as counselor to the secretary of commerce in the Reagan administration and in that capacity led negotiations with Japan, China, and Korea. He also served as vice chair of President Clinton’s Commission on Trade and Investment in the Asia Pacific Region as well as on the advisory board of the Export/Import Bank. He blogs at Foreignpolicy.com.

up or down. In this hierarchy, he said, my country's position is definitely down, and we therefore prefer not to be controlled by China. On the other hand, he added, there are nice economic benefits in China's orbit. So, we'd like to be in that orbit but with U.S. gravity keeping it wide and loose.

Just so. The rest of Asia is growing, thanks to its Chinese connections, but also fears being overwhelmed. This concern of smaller Asian nations has been exacerbated by the recent rapid displacement of U.S.-made products and technologies in world markets. Despite keeping several of its 11 aircraft carriers and more than 100,000 troops in the region and being the biggest buyer of Asia's exports, America is said somehow to be ignoring Asia. Thus some governments, such as Singapore, Malaysia, and Vietnam, call for the U.S. to demonstrate renewed commitment by entering into more free-trade agreements and security arrangements. This is partly sincere but is also partly special pleading aimed at allowing them to continue their free ride on America's unilateral security commitments and open markets.

These countries, observing America's mounting trade deficits with Asia, also fear a possible American shift toward protectionism. They hope to use free-trade agreements to lock in their access to the U.S. market. As for the United States, it has long treated the Pacific Ocean as an American lake and taken on unilateral responsibility for defending its Asian allies while patrolling the Chinese coast and keeping China confined within its own shores.

Anxious to keep the planets in proper orbit around the American sun, the U.S. foreign-policy establishment insists that there can be only one solar system and argues that China must become a "responsible stakeholder" in this American system, implying that China is somehow not yet fully civilized and that America must be both mentor and disciplinarian as it brings the Chinese celestial body into orbit around itself.

Thus the logic of the new Pacific initiative: a free-trade agreement that includes many of the Asia-Pacific nations along with the United States, but one that is too demanding for a developing and mercantilist nation like China to enter yet. The military Pivot, meanwhile, has America taking on responsibility for defending Asian claims disputed by China; our enhanced role keeps pace with the modernization of China's forces and maintains U.S. hegemony until such time as China can be declared fully civilized, if ever. Unfortunately, the logic falls apart when the details of the TPP are measured against actual Asian economic practices and geopolitical threats.

STEEL TRAP

The two landmark bridges of America's West Coast—the Golden Gate and the San Francisco-Oakland Bay Bridge—were built in the 1930s out of American-made steel. Today, the new Bay Bridge that workers are assembling to replace the quake-weakened original is made of steel from China.

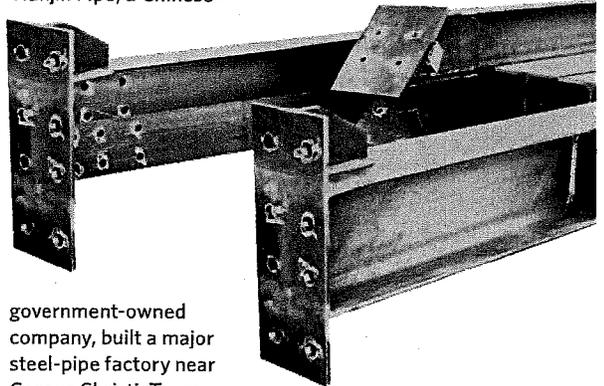
If we factor in America's far higher rates of productivity and the cost of shipping steel from China, U.S.-made steel costs no more than its Chinese counterpart. The Chinese price advantage is entirely the consequence of that nation's mercantilist policies—that is, of the huge subsidies that the Chinese government gives to those export industries, such as steel, that it designates "national champions." Indeed, a large and growing number of Chinese manufacturers are actually state-owned enterprises.

Which is one reason why United Steelworkers President Leo Gerard is apprehensive about the proposed Trans-Pacific Partnership (TPP), which would extend free-trade privileges to Vietnam—like China, a communist autocracy whose major manufacturing exporters also routinely receive governmental subsidies and are often state-owned enterprises as well.

China was admitted to the World Trade Organization in 2001 on the condition that the government would scale back its ownership of and subsidies to exporting enterprises. Instead, the number and scale of those enterprises has grown. "Even when we

strike deals with countries that are supposed to follow these rules, like China, they don't follow them," Gerard says. "Vietnam has the same system as China." As Scott Paul, the executive director of the Alliance for American Manufacturing, puts it, "Throwing the gates of free trade open to state-owned enterprises is an oxymoron."

Even if the TPP penalizes signatory nations that export products of state-owned enterprises, as the Steelworkers urge, there remains the problem of state-owned enterprises investing directly in the United States. Over the past couple of years, Tianjin Pipe, a Chinese-



government-owned company, built a major steel-pipe factory near Corpus Christi, Texas. The Chinese government paid for the cost of constructing the factory—a massive subsidy that gives Tianjin a considerable competitive advantage over companies such as U.S. Steel, which can claim no such subsidy from Uncle Sam.

Labor activists and domestic steel-industry officials are concerned that the TPP could open the door to Asian state-owned enterprises setting up shop in the United States, particularly as Asian nations accumulate fortunes that they seek to

invest. More broadly, union leaders know that America's previous trade deals have resulted in diminishing jobs and declining incomes for American workers. "We've never had a trade deal that's created a net increase in jobs in America," Gerard says.

The Steelworkers president is heartened by the Obama administration's new emphasis on boosting domestic manufacturing. "I have nothing but positive comments for the president for his in-shoring campaign," Gerard says. But his enthusiasm is tempered by the push for a new trade agreement. "It will take a lot of magic to create

a deal that will actually do what the previous deals just promised," Gerard says. "We'll judge the deal when it emerges: Will it create jobs for manufacturing workers, or will it just give the multinationals more protection?"

—HAROLD MEYERSON

AUTO-DESTRUCTION

As trade agreements go, the proposed Trans-Pacific Partnership (TPP) is distinctly beta. Once enacted, its terms are hard to change, but with the consent of the initial signatory governments, any other nation in the region can join.

That's precisely what worries the U.S. auto industry and the United Auto Workers. Their fear is that Japan could join the TPP. Indeed, even as the nine nations continue negotiating the terms of the deal, Japan has already signaled that it would like to sign on. This February, Japanese trade officials met with their American counterparts

investment laws that effectively bar foreign manufacturers from opening plants in Japan, prohibitions on existing auto dealerships selling foreign cars, and a series of technical regulations that also keep imports out.

"If Japan is serious about joining," says Matt Blunt, the former governor of Missouri who is now the president of the American Automotive Policy Council, which was established and is funded by the Detroit Big Three, "it needs to demonstrate it is serious about opening the marketplace." Blunt notes that auto manufacturers' frustration with Japan is hardly limited to America. "Anybody that wants to sell its products in foreign markets has had a difficult time selling in Japan," he says. "Korea has announced it will cease trying to sell its cars in Japan."

Should the nine nations now negotiating the TPP let Japan enter the process, the decision will surely make those negotiations both more complicated and more difficult. As a member of the World Trade Organization, Japan has long been pledged to follow free-trade rules yet has managed to do so without opening its home market to imports. Should it join the TPP and still maintain its closed economy, Japan will make the accord even more dangerous to the American economy.

—HAROLD MEYERSON



to seek approval to join the process.

The problem, as the auto industry both here and in other nations sees it, is that the Japanese economy is the most closed economy of any advanced nation. Only 4.5 percent of the cars sold in Japan are manufactured abroad, whereas in the U.S. and other wealthy nations, the figure averages roughly 40 percent. Of the 30 nations in the Organization for Economic Cooperation and Development, Japan ranks dead last in auto imports by a very wide margin.

Japan excludes foreign cars not through tariffs but through every other means imaginable—

The Japanese Role Model

The call for a 21st-century trade agreement also grows out of long-standing U.S. frustration with most of its late-20th-century trade relationships in Asia. This goes back to the U.S. postwar occupation of Japan. Then, U.S. leaders advised Japan to produce labor-intensive goods like clothing, because Japan's plentiful supply of inexpensive labor would give it a cost advantage in those kinds of items. American free-trade doctrine held that countries should not protect or subsidize favorite industries but should rather specialize in producing what they could do best and cheapest while trading for the rest.

The Japanese rejected this advice. As former Ministry of International Trade and Industry Vice Minister Naohiro Amaya once told me, "We Japanese did the opposite of what [the American authorities] told us." Thus, Japan rejected direct foreign investment, imposed high tariffs and other protective barriers, compelled a high rate of savings, and channeled the savings through the state-controlled banking system into capital-intensive industries with large economies of scale and rising technology input such as steel, shipbuilding, autos, and later semiconductors and consumer electronics, to name a few. Japan further intervened regularly in currency markets to keep the yen cheap versus the dollar as both a subsidy to Japanese exports and an extra tariff on imports. It also provided a wide range of special loan and investment facilities along with outright subsidies to promote investment in and exports by the targeted industries.

This was an export-led mercantilist growth model. Unlike the Anglo-American model in which market outcomes are ends in themselves, this model saw the market as a means to an end, as a tool that could be sharpened if it was not producing the desired result. It was also a tool that aimed to produce chronic trade surpluses and accumulation of dollar reserves.

Japan soon became a model for Asia. Singapore's first prime minister, Lee Kuan Yew, advised his people to learn from Japan. They did, and so did the people of Korea, Taiwan, Malaysia, Hong Kong, and Thailand, which became known as the Asian Tigers as they duplicated Japan's success. Then in 1992, China's Deng Xiaoping declared that "to get rich is glorious," and China became the last Tiger or perhaps the first Dragon.

What cannot be overemphasized about this progression is the fact that these countries all adopted an economic-development philosophy that is the opposite of America's and of the free-trade doctrine on which the World Trade Organization (WTO) and its conception of globalization are based. While operating within a structure that presumes free trade is always a win-win proposition, most East Asian nations have embraced neo-mercantilism, which understands globalization frequently to be a zero-sum proposition (win-lose).

While producing miracles in Asia, this circumstance resulted in an unbalanced form of globalization in which the U.S. market was mainly open while Asian markets were relatively protected, and often-subsidized Asian products flooded U.S. markets. After more than 100 years of trade surpluses, the United States went into constant deficit in 1976. By 1981, when I became one of the main U.S. trade negotiators, the deficit was \$16 billion (\$11 billion with Japan). I was told that the deficit was unsustainable and that it was my job to fix it. By 1987, the U.S. textile, steel, auto, semiconductor, machine tool, and consumer electronics industries, among others, had all been savaged and laid off millions of workers as the U.S. trade deficit grew to \$161 billion (\$60 billion with Japan). After a dip following Japan's U.S.-forced yen

reevaluation in 1986–1987, the U.S. trade deficit hit \$230 billion in 1998. By the end of last year, it was \$558 billion, of which \$295 billion was with China and more than \$400 billion was with all of Asia.

Behind these statistics is the loss of entire U.S. production industries such as consumer electronics and the loss of millions of jobs and billions in investment (the \$558 billion deficit of 2011 represents a loss of six million to nine million jobs). These alarming trends led to virtually constant negotiations to open Asian markets and stop “unfair” trade. Trade talks were also initiated as a way to reward allies and entice doubters and adversaries toward our model. What these talks did not do was reverse Asian neo-mercantilism.

Negotiating American Commercial Decline

Between 1960 and today, there have been four full-fledged rounds of global negotiations under the aegis first of the General Agreement on Tariffs and Trade (GATT) and then of the WTO that engaged the United States and the Asia-Pacific countries. In addition, there was a continuing series of talks with Japan under rubrics such as the Market Oriented Sector Specific Initiative (MOSS, ridiculed as More of the Same Stuff), the Semiconductor Negotiations, the Nippon Telegraph and Telephone talks, and more. There was the creation of the Asia-Pacific Economic Cooperation association, founded in the early 1990s to spread liberal democratic ideals within the Pacific Rim through trade and investment. There were the negotiations both to bring China into the WTO and for America to grant it permanent “most favored nation” treatment. The North American Free Trade Agreement and bilateral free-trade agreements with Peru, Chile, Singapore, Australia, and Korea are also part of this saga of trade deals that only widened trade imbalances.

Each of these projects had its causes, purposes, and dynamics, but certain critical patterns repeated. The premise was that all participants embraced the same free-trade philosophy and rules and that if the rules were set properly, the results would automatically be satisfactory for all. The fundamental difference in philosophy between laissez-faire, free-trade America and export-driven Asia was never directly confronted. One reason for this was that free trade was a kind of religion of U.S. policymakers, for whom any management of results was original sin. Another was that America was long considered economically invulnerable. Yet another was that the pur-

pose of the deals was usually more to cultivate geopolitical allies, to stimulate development of struggling neighbors, or to facilitate U.S. investment abroad. But the agreements were always sold to the U.S. Congress and public as arrangements that would increase U.S. exports, reduce trade deficits, and create jobs.

They never did. Rather, the trade deficit relentlessly rose, offshoring of U.S.-based production and jobs accelerated, and trade became a drag on growth of U.S. gross domestic product as well as a cause of rising income inequality. As economic strategy, the trade deals and their logic were unsuccessful, or irrelevant, or both.

Enter China

Nothing illustrates this folly better than the case of China. By the turn of the century, negotiations to bring China into the WTO had been going on for more than a decade and were now coming to conclusion. The big question was whether the United States would accord China the same permanent most-favored-nation (rebranded as PNTR, or permanent normal trade relations) treatment it accorded other members of the WTO. Some analysts warned that the then-\$68 billion trade deficit with China would grow dramatically. But their testimony was drowned out by that of laissez-faire economists, CEOs, trade negotiators, think-tank heads, and political leaders, all of whom emphasized that China was no Japan; the Chinese actually welcomed foreign participation in their economy. The China lobby further argued that America’s exports to China were bound to increase more rapidly than China’s to America because China would be dramatically reducing its tariffs and trade barriers, while America would be making no cuts at all.

That, of course, turned out to be utter nonsense. By the time China joined the WTO in 2001, its trade surplus with the United States had jumped to \$83 billion. As noted above, by the end of 2011, it had climbed to \$295 billion despite an endless series of “strategic and economic dialogues” and cabinet-level trade and development discussions reminiscent of the Japan experience. The reality is that U.S.–Asia trade imbalances tend to grow and accelerate regardless of negotiations and deals—or more likely because of them.

But since the charade of shared principles means that failure to fulfill the rosy forecasts cannot be attributed to systemic differences, it has to be blamed on flawed agreements, which then requires negotiation of new agreements covering more items such as protection of intellectual

THE TRANS-PACIFIC PARTNERSHIP FOLLOWS THE FREE-TRADE ORTHODOXY OF OTHER RECENT DEALS SUCH AS NAFTA. WITH EACH SUCCEEDING DEAL, OUR TRADE DEFICIT WIDENS.

**THE LOGIC OF
THE OBAMA
PIVOT TO THE
PACIFIC FALLS
APART WHEN
MEASURED
AGAINST THE
REALITY OF
ASIAN ECONOMIC
MERCANTILISM
AND ACTUAL
GEOPOLITICAL
THREATS.**

property, banking regulations, or other elements that might possibly serve as market barriers. Thus have talks and deals proliferated, providing few jobs for America aside from lifetime employment for its trade negotiators.

Why U.S. Trade Policy Fails

There are, however, two clear purposes that all the deals have served. The first is the geopolitical grand strategy objectives of the United States. By making the United States the market of last resort, the trade agreements have helped persuade allies to accept U.S. hegemony. The second purpose served is that of U.S. businesses that profit immensely from outsourcing and offshoring to Asia but that need the security provided by Uncle Sam to do so. These realities reveal the flaws in U.S. trade efforts—misplaced priorities, a false doctrine, and false assumptions.

Most misplaced has been the geopolitical priority with its subordination of long-term economic interests to short-term political/military objectives. Washington continually makes concessions, refrains from insisting on application of the GATT/WTO rules, or backs away from taking actions to counter mercantilism on national-security grounds. In the 1980s, the Reagan administration declined to invoke GATT rules against European subsidization of the Airbus, because Secretary of State George Shultz said doing so would shatter the North Atlantic Treaty Organization. Today, Washington declines to respond to China's blatant currency manipulation. Why? It thinks it needs the Chinese to help with problems like Iran and North Korea. It doesn't understand that erosion of U.S. wealth-producing capacity is the most important national-security threat.

A corollary is the false premise that mercantilists who intervene to distort markets should not face retaliation because they are only hurting themselves and will eventually see that and abandon their policies. Studies have shown that the Airbus subsidies helped rather than hurt the European Union economy. The Airbus killed off all the U.S. commercial aircraft makers except Boeing and cost the U.S. economy many thousands of jobs that won't be recovered even if Europe stops the subsidies. All the evidence of the past 200 years suggests that mercantilism works and that mercantilists win.

Keys to the Kingdom

The trade deals that the U.S. has been negotiating do not reach the most important elements

of Asian mercantilism. For starters, because of foreign-currency intervention policies, the dollar tends to be chronically overvalued versus the currencies of most Asian countries. Although the WTO vaguely calls for not using currency policy to offset tariff reductions, the truth is that currency policy is not seriously covered by any international trade agreement. Thus currency manipulation can be and is used to keep markets protected in the face of apparent market-opening agreements.

A second major element is a set of investment packages aimed at inducing the offshoring of production and research-and-development facilities. China, Singapore, Malaysia, and many others offer big tax holidays, free land, cut-rate utilities, free worker training, sweetheart loans, and big capital grants to companies as enticements to invest. Nor are the Asian countries alone. Others such as France, Ireland, and Israel play the same game. In the United States, some of the individual states do this, but their resources and authority (they can't grant holidays on federal taxes) are limited, and Washington doesn't play. So it often happens that businesses whose U.S. operating costs are internationally competitive will nevertheless offshore production in order to get the incentives. These packages are not covered in any of the free-trade agreements.

A third element is antitrust or competition policy. The biggest barrier to getting into many markets is control of distribution chains by powerful cartels that often have cozy ties to governments. Take autos. In America, foreign automakers can sign up any Detroit auto company dealer to sell its cars as well. Not so in Japan or Korea. Again, antitrust is not covered by any of the free-trade deals.

Fourth are "buy national" and indigenous technology-development policies aimed at giving advantages to domestically based production and making market access conditional on developing designated technologies in the market. WTO rules on this apply unevenly, and many countries in Asia exert pressures that favor those producing and developing locally. General Electric, for instance, recently transferred its avionics business into a Chinese joint venture to ensure access to China's state-controlled aircraft market. Even when banned by agreements, these policies operate in practice because countries with strong bureaucracies wielding broad discretionary authority can easily intimidate companies.

Value-added taxes, which tax transactions at each stage of production and distribution, are

common in most countries and are rebated for exports while being added to imports. They thus constitute a kind of subsidy for exports and an additional tariff on imports. Because it has no value-added tax, the United States is particularly disadvantaged in international trade.

There is also the implicit economic nationalism of public exhortation that plays to cultural pride. The leaders of Asian countries constantly preach the importance of making things domestically, attracting investment, developing indigenous technology, buying locally, and contributing to the national welfare. This is somewhat intangible and yet very powerful. It is, of course, not covered in agreements and probably can't be. But it is a game that the United States simply doesn't play and should.

Right Impulse, Wrong Strategy

America needs to try something new. The Obama administration is right to be seeking a comprehensive 21st-century U.S. trade and globalization policy. Such an effort should begin with a reassessment of national security and geopolitical priorities. It should recognize that the decline of U.S. influence in Asia is not due to lack of military power and presence but rather to eroding competitiveness. Regaining economic strength has become a matter of the highest geopolitical priority. We can no longer subordinate trade to national-security considerations, because trade *is* national security.

A 21st-century treaty would include provisions to prevent or counter currency manipulation. Measures could range from emergency tariffs to surcharges on foreign buying of U.S. Treasury securities to application or development of alternative international currencies. The point is to do something beyond whining.

Similarly, a 21st-century deal would include some disciplines on investment incentive packages that countries use to encourage offshoring. These are nothing more than indirect export subsidies and a way to circumvent the WTO prohibition of direct export subsidies.

In the same manner, any new deal should include strong anti-cartel provisions that would be adjudicated and enforced by impartial institutions and would measure actual market access to previously closed systems.

A 21st-century agreement would include strong penalties for violations of market-access commitments. Even the existence of five-year industry-planning schemes, for example, should trigger investigation of market-access impact.

MICROELECTRONICS: CHINA IN THE CHIPS

Many American fans of Apple products have been appalled to learn both of dismal working conditions in the plants of Apple's Chinese contractors and the fact that the facilities that produce iPhones and iPads no longer have counterparts in the United States. Steve Jobs famously—or infamously—told President Barack Obama, “Those jobs are not coming back.”

Could the Trans-Pacific Partnership change that? If anything, the TPP will only accelerate the outsourcing process. Member countries are far more likely to serve as export platforms both to the emerging markets of East and South Asia and to the U.S. than as importers of U.S.-made goods.

“Consumer electronics was one of the worst-hit industries by NAFTA, with manufacturers taking advantage of its investment provisions to move production to Mexico,” says Celeste Drake, a trade specialist at the AFL-CIO. “Now it's gone to China, and there are no guarantees that what's left in the U.S. won't go to Malaysia or Vietnam or other low-wage countries in the agreement.”

But even the one large sector of microelectronics that still has a strong manufacturing presence in the U.S., the semiconductor industry, is backing the TPP. Firms like Intel, Micron, and Advanced Micro Devices control half the globe's \$300 billion market, and two-thirds of their capacity is still in the U.S. Intel even plans to add more than 1,000 jobs next year after completing a new \$5.2 billion chip plant in Arizona,

which Obama toured the day after his State of the Union address.

Makers of the advanced computer chips that power consumer electronics have traditionally supported a tough U.S. trade policy. Semiconductor producers benefitted from trade negotiations during the Reagan years that pushed back against Japanese mercantilism and preserved a dynamic domestic industry. A rare U.S. industrial policy, the SEMATECH collaborative, also helped.

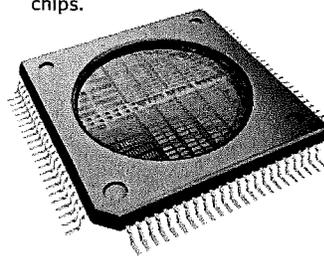
Yet the industry today wants to expand in Asia to be close to assemblers like Apple and to tap into the burgeoning Chinese market. Chip makers covet the investment guarantees and government assurances against work stoppages in the proposed deal. More significantly, the industry is desperate to impose on China the TPP's promised protections for intellectual property and encryption coding, which safeguard the most expensive chips. The Chinese are notorious for stealing trade secrets through reverse engineering.

The Semiconductor Industries Association (SIA) believes that China will eventually sign on to an agreement initially negotiated with weak partners like Vietnam. “They want to grow their own domestic market,” says Ian Steff, a vice president at SIA. “The only way they can do that is by adapting some of these international practices, like not forcing people to turn over this technology.”

Yet it is hard to imagine a serial currency manipulator and World Trade Organization rule

viator like China following this wishful script. China and other mercantilist host governments typically demand technology transfer to build homegrown firms in key industries; where technology isn't transferred, it's often stolen.

Domestic capacity in semiconductors has national-security implications. No nation wants missiles or telecommunications dependent on foreign-made chips.



Companies in China have been importing scrap computers, stripping out the computer chips and circuit boards, and exporting refurbished chips to the U.S. market. In 2010, federal investigators busted the Clearwater, Florida-based VisionTech for selling \$16 million of chips reimported from China to more than 1,000 customers, including the Department of Defense.

It's likely these early-stage companies will eventually copy the technology transferred to China or other East Asian nations through the computer-chip plants facilitated by the TPP. Eventually, some will emerge as powerhouses in the global industry. Then we may find ourselves decrying our military's dependence on Chinese chips—and not the other way around.

—MERRILL GOOZNER

**WHAT THREAT
IS THE PIVOT
MEANT TO
COUNTER? IS
CHINA GOING
TO INVAD
AMERICA?
PATROL OUR
COASTLINES?
INVAD JAPAN
AND KOREA?
NO, NO, AND NO.**

Finally, the primary goal of any 21st-century deal must be to reduce the U.S. trade deficit, to increase production in and exports from America in a measurable way, to increase the flow of technology and investment to America, and to increase U.S. competitiveness. It needs to be results-oriented, not just based on nominal compliance with processes.

The TPP and the National Interest

How does the TPP measure up? Poorly is the answer. For starters, it is more of a geopolitical effort than a trade/globalization effort. At a White House meeting last year, I asked why we were doing a TPP in view of the fact that we already have free-trade agreements with four (Peru, Chile, Australia, Singapore) of the eight other countries included in the current talks and that those four plus the United States account for more than 85 percent of the trade at stake in the TPP. The reply was that we needed to demonstrate our commitment and engagement in Asia. There was no mention of creating jobs or contesting mercantilist policies that disadvantage our economy.

The countries currently participating are an unlikely group, with mostly small economies excepting the United States. They are playing a charade in talking free trade but not practicing it in the sense that American leaders mean the term. Australia, New Zealand, America, Peru, and Chile largely share a free-trade philosophy, but the likes of Singapore and Malaysia embrace strategic industrial policy and export-led growth, and Vietnam is dominated by state-owned enterprises.

The negotiating agenda is a list of familiar tunes: better intellectual-property protection, further tariff reduction, government procurement, rules of origin, etc., ad nauseam. Nothing on currencies, investment incentives, antitrust, pressure tactics, or anything else that might impede the continued practice of mercantilism under the facade of a free-trade agreement. The chapter on labor practices is likely to be minimal, while the capital rights will help dismantle important regulatory protections. There is no way that this deal could serve as a meaningful template and docking agreement for creating a truly integrated 21st-century free-trade area around the Pacific Rim. Nor is there any apparent economic benefit to the United States. There may be benefits for the U.S. companies seeking to invest and produce in Asia, but is that in the American national interest?

Pivot or Pirouette

The TPP also fails as geopolitics. What exactly is the threat the Pivot is meant to counter? Is China going to invade America? Is it going to patrol our coastlines as we patrol its shores? Is it going to invade Japan and Korea? No, no, and no. What about North Korea: Is it going to invade us? Can its bombs reach us? No, and no. Might it invade South Korea or shoot a bomb at Japan? Barely possible, but we already have troops and weapons in place to deal with that. Moreover, North Korea is surrounded by powerhouses like Russia, China, South Korea, and Japan. So why the need for a flexing of U.S. muscles?

One answer is that China is modernizing its forces and that while they may not threaten America directly, they have threatened certain claims of countries friendly to us, like the Philippines. We therefore need to support our friends. Maybe, but the rights and wrongs of claims over reefs in the Pacific are unclear. We need to be careful, and, anyhow, nothing is preventing our friends from allying to resist Chinese pressure—except, of course, one thing. They all are doing business like crazy in China and don't want to risk antagonizing it. So they find it convenient to urge Uncle Sam to increase its security presence while they concentrate on getting rich. Out of habit, pride, and the priority given to geopolitics, America's knee-jerk reaction is to saddle up.

It's a bad response. For starters, it puts us in a no-win position. China is growing and has a rising stream of wealth and capabilities. It will easily be able to increase and modernize its forces. Conversely, we must reduce military spending. Why give China reason to think we are challenging it to an arms race while our position weakens and theirs strengthens? We could well wind up doing a pirouette rather than a pivot, simulating a get-tough policy with little to back it up. But more important, America's main job now must be to invest and make more in America. The Pivot not only distracts from that, it is like writing a military insurance policy against the risks of offshoring for all the companies moving production and jobs to Asia. Why do that when we want them to produce and hire in America? By taking full responsibility for Asian security, we are subsidizing the very mercantilists whose competitive inroads we're trying to reverse.

It's clear that America does need a new 21st-century set of rules for trade and globalization as well as new national-security policies and priorities. It's also clear that the combination of the TPP and the Pivot are not that. Sadly, they look suspiciously like more of the same old stuff. ▣

The Myth of the Level Playing Field

BY JEFF FAUX

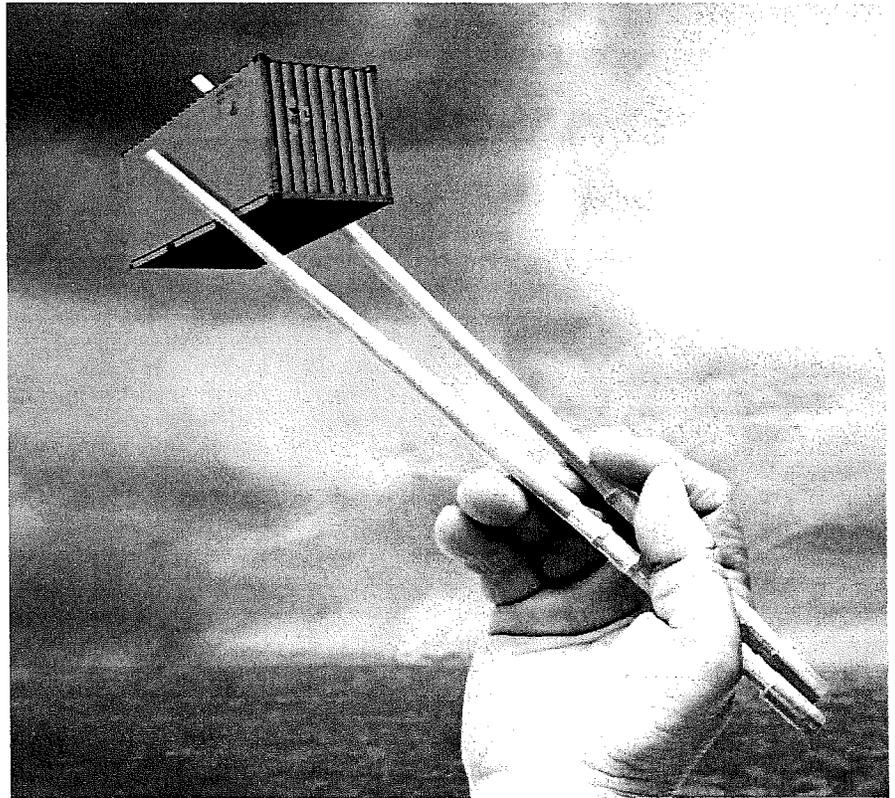
"Our workers are the most productive on Earth, and if the playing field is level, I promise you: America will always win." —BARACK OBAMA, STATE OF THE UNION ADDRESS, JANUARY 24, 2012

The Trans-Pacific Partnership (TPP) is the latest act in the tragic farce of American trade policy. Earlier versions included the 1993 North American Free Trade Agreement (NAFTA), the U.S.-designed World Trade Organization, the opening of the U.S. market to China, and the signing of more than a dozen additional bilateral free-trade deals, including last year's agreements with South Korea, Colombia, and Panama.

The script does not change. The president, congressional committee chairs, and lobbyists representing U.S. importers and foreign exporters announce that the proposed trade deal will create millions of new high-paying jobs for Americans. They assure the public that American workers will be protected from unfair competition from countries that exploit labor and/or subsidize exports. Editorials denounce opponents as protectionist ignoramuses.

The agreement is approved with the votes of Republicans and centrist Democrats. The trade deficit grows. Our foreign debt worsens. More U.S. jobs are offshored—not just low-wage jobs but engineering, research, and other high-wage occupations that can be performed anywhere in the world with a computer. As the bargaining position of American workers weakens, wages stagnate and fall. Then, bemoaning the loss of good jobs, our elites fly off to negotiate the next trade deal—promising that this one will be different, for sure.

The classical 19th-century argument for free trade was that it provides cheaper goods to consumers of both of the trading partners. But in order for the logic to work, economists had to make the heroic assumption of permanent full employment between the trading partners. Since joblessness is a chronic condition of the modern world, the argument is obviously disconnected



from reality. So, our governing class has come up with another rationalization. It goes like this: American workers are the world's most efficient. Therefore, opening up more national markets to global competition benefits them, so long as the playing field is "level."

Barack Obama's reference to the level playing field in his 2012 State of the Union echoed George W. Bush, who proclaimed in his 2006 State of the Union, *"With open markets and a level playing field, no one can outproduce or outcompete the American worker."*

Bush in turn channeled Bill Clinton's argument for NAFTA back in 1993: *"The North American Free Trade Agreement is an essential part of the economic strategy of this country: expanding markets abroad and providing a level playing field for American workers to compete and win in the global economy."*

The boast that American workers are naturally superior to other workers and would therefore "win" in any fair competition is problematic at best and at worst, a pander to our national delusion of exceptionalism. Yet it has been useful for bullying progressives and even some trade unionists—intimidated by the threat of being dismissed as "protectionists"—into endorsing free-trade agreements in exchange for language promising that workers' rights will be strengthened and enforced.

But even if Americans are the world-champion workers, it still leaves open the question of what we mean by fair competition. Ideally, it would require the same relationship among worker

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Jeff Faux, founder of the Economic Policy Institute and now its distinguished fellow, is the author of *The Global Class War*. His book *The Servant Economy* (Wiley) will be published in June.

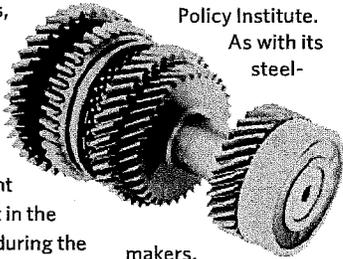
PARTS LESS THAN THE WHOLE

As bad as things were for U.S. automakers in the years leading up to the government's 2009 bailout of General Motors and Chrysler, they were worse for auto-parts manufacturers, which make up the largest segment of the U.S. auto industry. Fully 75 percent of the jobs lost in the auto industry during the past decade were lost by auto-parts workers, who saw their numbers decline from 857,000 to 467,000. More alarming still, while the domestic auto assemblers have clearly, if incompletely, recovered since the 2009 bailout, the same can't be said of domestic parts suppliers. Employment in domestic auto assembly rose by 3.3 percent between 2009 and 2010 but only by 0.1 percent in auto parts, chiefly because the auto-parts industry, even more than auto assembly, has been offshored—primarily, to China.

America's auto-parts annual trade deficit with China has increased tenfold during the past decade—from

roughly \$1 billion to \$10 billion. During this time, yearly Chinese government subsidies to the auto-parts industry have risen from virtually nothing to \$8.7 billion, according to a study from the Economic Policy Institute.

As with its steel-



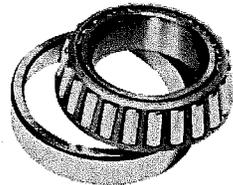
makers, the Chinese government has identified its auto assembly and auto-parts exporters as national champions, eligible for a vast array of government funding programs.

As Chinese wages rise, a number of manufacturing sectors currently located in China have commenced moving to other Asian nations with lower pay scales. That's already happening in such labor-intensive industries as textiles, which have seen considerable migration to Bangladesh and Cambodia. Auto-parts factories are considerably smaller than auto assembly plants and are already spreading across some of the East Asian nations included in the proposed Trans-Pacific Partnership (TPP).

Trade agreements stipulate the percentage of a product that has to be made within a nation for that country to be able to claim duty-free, or reduced-tariff, entry into another nation where the product can be sold. Under the North American Free

Trade Agreement, a car nominally assembled in Mexico is required to have 62.5 percent of its value produced in Mexico for it to be sold in the U.S. without tariffs. The recently ratified U.S.-Korea trade pact has just a 35 percent threshold, which is the level that has also been proposed for the TPP.

But the TPP is an agreement among nine nations, not two. A car with parts made in Vietnam that come to 25 percent of its value and parts made in New Zealand that come to an additional 10 percent of its value could be sold with no added tariff in the U.S., even if the other 65 percent of



the car's value comes from state-subsidized Chinese auto-parts makers. In other words, the TPP's domestic content standard for autos could be a back door to Chinese auto parts continuing to flood the U.S. market—and continuing to eviscerate the domestic supply chains of the U.S. auto industry.

A better deal would raise the standard of domestic content well above the 35 percent mark. Over time, that might lead parts manufacturers to open plants again in the United States.

—HAROLD MEYERSON

productivity, worker wages, and working conditions in every nation. Below-average wages could exist only under conditions of below-average efficiency. Subsidies, industrial policies, access to training, and similar assistance would have to be equalized as well.

Short of this ideal, which the U.S. itself does not reach (wages and conditions of work in Mississippi are lower than they are in Michigan), a reasonable standard would require that the rights of workers in trade agreements roughly parallel the rights of investors. In every trade agreement since NAFTA, investor privileges have been specified in detail. They override national law and carry heavy penalties for violation. Private corporations can sue governments and have their cases arbitrated by panels of experts drawn from an international pool of corporate-friendly economists and lawyers.

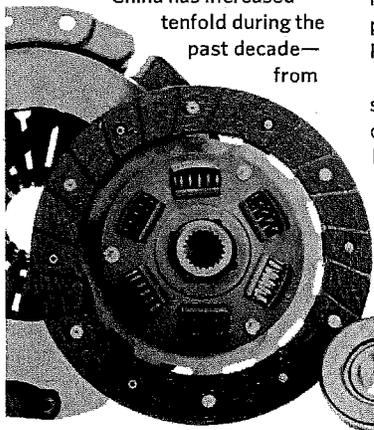
In contrast, the language of worker rights is vague and passive. Standards and enforcement depend on national law and practice. Neither labor unions nor any other nongovernment entity has the right to sue over violations. In 20 years, no serious complaint of violations of even these weak labor standards has been successfully pursued to the point of penalties.

A Fig Leaf

In September 2011, anticipating the TPP negotiations, the leaders of the trade-union federations of Australia, Chile, Malaysia, New Zealand, Peru, Singapore, and the United States outlined their conception of what a level playing field for workers should look like. It was, as one U.S. trade unionist put it, "hardly revolutionary"—it fell short of giving workers parity with investors. Still, it called for more-enforceable protections against oppression of labor unions and workplace discrimination, and it would somewhat reduce the playing field's tilt toward corporate investors.

The TPP is still being negotiated—in secret. But all of the signals tell us that its final version will not even remotely reach the modified standard of the trade-union proposal.

In November 2011, the Office of the U.S. Trade Representative reported that the participating governments have already agreed to "provide substantial legal protections for investors and investments of each TPP country in the other TPP countries ... a minimum standard of treatment, rules on expropriation, and prohibitions on specific performance requirements" as well as NAFTA-type provisions that allow individual companies to sue to overturn national laws that conflict with the privileges given to the firms



under the treaty. As in previous trade deals, the major bone of contention is the U.S. insistence on enforceable protections—not for American workers but for patents and copyrights and other corporate intellectual property.

In January 2012, the process of negotiating a labor chapter was begun with the U.S. submitting a draft proposal. It is based on the language of the labor provision of the 2007 agreement with Peru, which congressional Democrats and the Bush administration agreed to in May of that year. The Peru model was followed in last year's trade deals with South Korea, Colombia, and Panama.

On paper, the Peru labor chapter was a modest improvement over the NAFTA template, in that it committed both countries to the International Labour Organization's (ILO) 1998 Declaration of the Fundamental Principles and Rights at Work—the right to join a union and collective bargaining, the abolition of forced and child labor, and a prohibition against workplace discrimination.

However, the ILO also has a list of conventions, which define the rules that make the principles enforceable. Thus, for example, the principles call on countries to “respect” workers’ rights to join a union, while the conventions specify that it should be a union of their choice and deny governments the power to interfere with or arbitrarily dissolve them. Given that in many countries, governments control trade unions for the benefit of employers, this is a critical distinction.

The ILO conventions are specifically excluded from the U.S. draft of the TPP. Sources inside the administration insist that its draft improves on the Peru system. According to the industry newsletter *Inside U.S. Trade*, the proposal states that TPP countries “should take measures to reduce trade in products made through forced or child labor” and should apply their national worker protections to free-trade and export-processing zones.

Like the Peru model, however, it relies on the individual governments to protect their workers from exploitation. Unfortunately, for many governments in less developed countries and investors in developed countries, exploiting labor is the point—cheap workers represent these nations’ comparative advantage. As then-Peruvian President Alan Garcia told a cheering Chamber of Commerce the night that the U.S.-Peru trade deal was signed: “Come and open your factories in my country so we can sell your own products back to the U.S.”

Owen Herrstadt, trade and globalization director of the machinists’ union, asks, “If under these labor chapters, workers can still be intimi-

dated, fired, or even murdered for trying to form a labor union, how effective can they be?” The answer is, hardly effective at all. Almost 20 years after NAFTA, companies violate Mexico’s labor laws with impunity, and the government still suppresses efforts to organize unions that are independent of management. After seven years of the Central America Free Trade Agreement, workers joining an independent union in Guatemala, El Salvador, or Honduras still risk their life. After two years of the Peru agreement, that country’s government collaborates in the exploitation of workers on the farms from where half of America’s asparagus comes. The Peruvian government has not only failed to live up to its promise to strengthen Peru’s laws protecting labor; it has weakened them.

Moreover, even the tiny improvement of the United States’ TPP labor proposal over the Peru agreement will certainly be watered down in the negotiations. None of the other governments are enthusiastic. Countries like Malaysia and Singapore are hostile, and the inclusion of Vietnam, where unions are an arm of the government and labor oppression is rampant, and Brunei, which has a large number of mistreated foreign workers and is ruled by a 600-year-old autocratic sultanate, mocks the assumption that governments will take labor-protection rules seriously.

As for the U.S. negotiators, there is little evidence that they will use the enormous leverage of the American market to make significant progress in leveling the playing field for labor. Congressional Republicans are already complaining that Obama’s draft is too strong. Even before the negotiations begin, administration officials are signaling their TPP counterparts that they are willing to back off. Deputy National Security Adviser Michael Froman assured *Inside U.S. Trade* in January that the Obama team would push for “a high standard labor agreement” but then suggested that labor protections were not that important because the benefits of free trade to American workers would go far beyond whatever the content of the labor chapter turned out to be.

Given that with every trade agreement, imports grow faster than exports, more U.S. jobs are shipped overseas, and American wages drop to meet the increased global competition, the argument is transparently absurd. It reveals that for the U.S. governing class, the notion of a level playing field for American workers is still largely a fig leaf to justify the true economic purpose of U.S. trade policy—profit opportunities for multinational investors.

**THE TPP
WILL HELP
ACCELERATE
THE EVOLUTION
OF A TWO-TIER
WAGE SYSTEM
—WHEREBY
YOUNGER
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LESS—INTO
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**GLOBALIZATION,
OF COURSE,
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TO DEAL WITH IT.**

Downward Wage Pressure

With the world's huge and growing labor supply, there will continue to be more workers looking for jobs than there are jobs looking for workers. So the boss almost always has the bargaining advantage that can turn into exploitation and abuse. A global economy needs worker protections at least as much as a national economy.

Twenty years ago, when the exposure of American workers to a deregulated, dog-eat-dog global labor market began, one might have been excused for thinking that the principal model for the developing world was the United States and to some extent Western Europe. Therefore, free trade would produce Western-style democracy and elevate the political power of workers in our trading partners. But today the model is China, whose comparative advantage lies not just in lower wages but also in the authoritarian deployment of its massive labor force.

The New York Times recently described how the Chinese contractor that assembles iPhones for Apple responded to a last-minute decision to change the screen: "A foreman immediately roused 8,000 workers inside the company's dormitories. ... Each employee was given a biscuit and a cup of tea, guided to a workstation and within half an hour started a 12-hour shift fitting glass screens into beveled frames. Within 96 hours, the plant was producing over 10,000 iPhones a day."

This is what a competitive labor market looks like in the global economy. So the impact of TPP on labor markets and conditions is all too predictable.

The offshoring of work will accelerate. Vietnam—where wages are lower than China—will take from what little is left of the bottom end of U.S. manufacturing. Malaysia and Singapore will pull from somewhat higher up the value-added ladder. While the populations and economic potential of the nations thus far in the TPP seem modest, the experience with NAFTA demonstrated how easy it will be for other nations to use TPP as a disguised export platform for selling to the U.S. Last year's trade deals opened up this loophole further, allowing up to 65 percent of the content of South Korea's auto exports to the U.S. to come from China and other nations (and probably North Korea). The TPP will have a similar clause. Given that all of the TPP partners have strong economic ties to China, Japan, and Indonesia, the new trade deal will become a channel for imported components originating in those larger countries as well.

To keep their jobs, American industrial workers will take cuts in pay and see middle-class

benefits like pensions and health care disappear. The TPP will help accelerate the evolution of a two-tier wage system—whereby younger workers get hired for less—into three tiers and more. Because labor markets are connected, the downward pressure in manufacturing wages will spread to other sectors as well, and from private to public employment.

Wage depression also will expand out to workers in the large, extended labor force in countries with which we already have free-trade agreements. Among those dragged down in this quickening race to the bottom will be workers in Mexico, where lack of job opportunities is a major factor in the vicious internal drug wars that have already claimed some 50,000 lives in the last five years. As hard times there get harder, social instability is bound to spill over our borders in some form.

Pursuing worker rights and protections in a brutally competitive global marketplace is a noble and worthy cause. But the last 20 years have shown us that it cannot be achieved with marginal feel-good addendums to trade agreements whose transparent purpose is to build a 21st-century world economy on the model of 19th-century *laissez-faire*. The false promise of a global, level playing field is not just a "second best" policy solution in an imperfect world. It is counterproductive; it encourages Americans to accept trade policies that undermine their living standards on the basis of an economic fairy tale—that the benefits of unregulated markets are so large that workers do not need protection.

Globalization, of course, will not go away. But the interests of American workers require an entirely new strategy to deal with it. For starters, we need to freeze all efforts to expand trade—including the TPP negotiations—until we have a clear and credible investment strategy that makes American goods and services globally competitive while generating higher wages and living standards at home. If this requires what *The Wall Street Journal* calls "protectionism," so be it. To build a realistic strategy, American policymakers need to distinguish between the interests of multinational corporations with American names, and American workers and businesses that want to produce in the United States. Finally, the United States should not enter any new agreements that do not provide for enforceable rights for workers that are at least as strong as those for investors and should renegotiate existing ones that do not. Then, and only then: Let the trade competition begin. ■

A Stealth Attack on Democratic Governance

BY LORI WALLACH

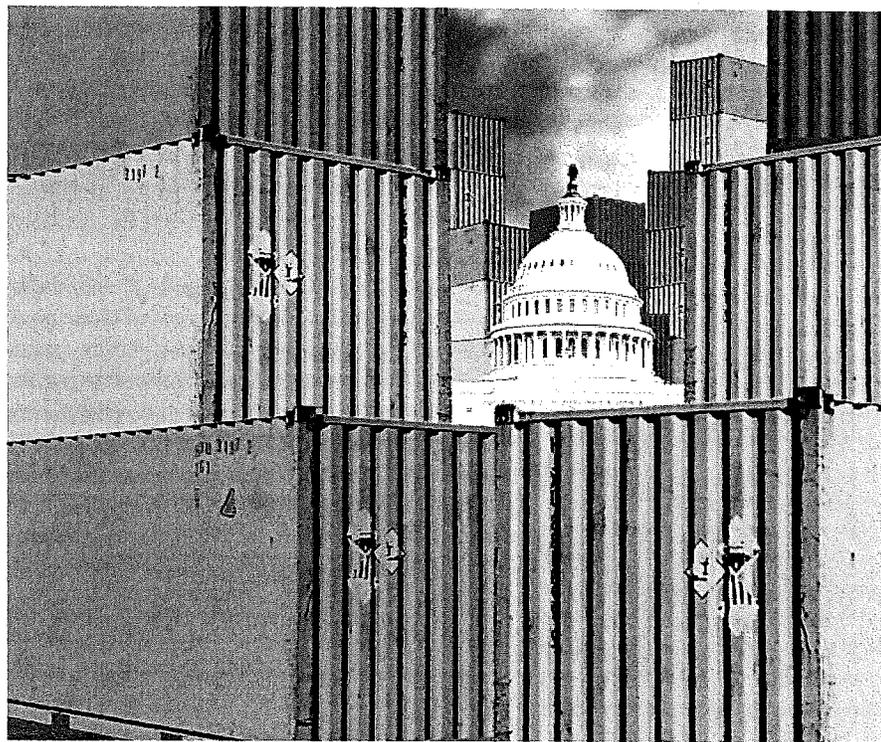
It takes quite a “trade” agreement to undermine financial regulation, increase drug prices, flood us with unsafe imported food and products, ban Buy America policies aimed at recovery and redevelopment, and empower corporations to attack our environmental and health safeguards before tribunals of corporate lawyers. Trade, in fact, is the least of the Trans-Pacific Partnership (TPP).

Backdoor deregulation and imposition of new corporate investor and patent rights via trade negotiation began in the 1990s with the World Trade Organization (WTO) and North American Free Trade Agreement (NAFTA). But the TPP now threatens a slow-motion stealth attack against a century of progressive domestic policy. At stake is nothing less than a democratic society’s ability to regulate a market economy in the broad public interest.

Under the framework now being negotiated, U.S. states and the federal government would be obliged to bring our existing and future policies into compliance with expansive norms set forth in 26 proposed TPP chapters. These include domestic policy on financial, health-care, energy, telecommunications, and other service-sector regulation; patents and copyrights; food and product standards; land use and natural resources; professional licensing and immigration; and government procurement.

The obligation that signatory countries “ensure conformity of their laws, regulations and administrative procedures” to these terms would be strongly enforced, including by our own government. Failure to do so would subject the U.S. to lawsuits before dispute-resolution tribunals empowered to authorize trade sanctions against the U.S. until our policies are changed. Attacks against our non-trade laws could also be launched by any “investor” that happens to be incorporated in one of these countries. The TPP is being designed so that other nations—China, Japan, you name it—could join in the future.

We know this much only thanks to a combination of text leaks and grilling of negotiators. As trade lawyer Gary Horlick, a former U.S. trade official with four decades in the game, recently noted at a conference on global business: “This is



the least transparent trade negotiation I have ever seen.” In fact, a recent text leak revealed that the parties were required to sign a memorandum of understanding that forbids the release of negotiating documents for four years *after* a deal is done or abandoned.

Such an extreme proposal could only get this far under cover of unprecedented secrecy. Executive-branch trade officials and corporate allies are making important policy decisions that could affect us all in myriad ways, without public access to any documents or details or input from members of Congress serving on key committees whose jurisdiction is directly implicated. The involved governments have ignored a global “release the texts” campaign led by unions and civil-society groups. This is especially appalling for the Obama administration, given its stated priority of enhancing government transparency. The opaque process has contributed to a near-total absence of press coverage.

Meanwhile, more than 600 business representatives serving as official U.S. trade advisers have full access to an array of draft texts and an inside role in the process. The strategy is to squelch informed debate until a deal is signed and any alterations become difficult.

The implications for the principle and practice of democratic governance are dire. Not only would a vast array of decisions affecting our daily lives be made in venues where we have no role, but even if the U.S. wanted to make changes to the adopted pact it would require consent by all signatory countries. Thus, accompanying the imposition of specific retrograde policies would be an

ART BY JOHN RITTER
(SOURCE PHOTO: KARA / FOTOLIA)

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Lori Wallach is the director
of Public Citizen’s Global
Trade Watch.

unprecedented shift of power toward locking in corporate rule insulated against the normal means of democratic accountability such as elections, advocacy, and public protest.

If this description of the proposed TPP sounds far-fetched, consider the consequences of trade pacts sold under the appealing brands of “trade expansion” and “free trade.” Canada is threatening key aspects of the Dodd-Frank financial-reregulation package as violating NAFTA. The European Commission staff contends that the proposed financial-transaction tax conflicts with European WTO commitments. Billions in U.S. stimulus money leaked offshore because of limits on Buy America procurement preferences already established in past trade pacts. Last year alone, the WTO struck down U.S. dolphin-safe tuna and country-of-origin meat labeling as well as the ban on candy-flavored cigarettes, which is aimed at curbing youth smoking, as violating U.S. trade obligations.

Now, the TPP threatens to combine the most damaging elements of past pacts and expand on them. With the later addition of Japan, China, Russia, Indonesia, and other Pacific Rim nations, it could encompass many of the world’s largest nations. This is precisely the vision that TPP former U.S. trade officials and corporate lobbyists presented to the Obama transition team in their ultimately successful push to get the new administration engaged in these talks.

Not surprisingly, the idea for a Pacific region NAFTA-on-steroids originated in the alliance between the George W. Bush administration and U.S.-based multinationals eager to increase offshoring while rolling back domestic consumer-safety, financial, environmental, and other safeguards. After a pause (ostensibly premised on Obama’s establishing his own trade policy), the new administration renewed negotiations. The operating text, though, is the one drafted by Bush officials, which shouldn’t come as a surprise since so many of the career trade officials were involved with NAFTA and the original TPP negotiations.

The fact that the TPP is not mainly about trade or the countries now at the negotiating table is also demonstrated by the fact that the U.S. already has bilateral free-trade agreements with four of the nations engaged in the process (Australia, Singapore, Chile, and Peru) making up about 80 percent of all TPP nations’ combined gross domestic product. These existing deals eliminate most traditional trade barriers, like tariffs. Given the limited opportunity for expanded U.S. exports, it is worth examining more closely who stands to benefit from the TPP.

Investor Rules to Facilitate Offshoring and Undermine Domestic Law

Past U.S.-sponsored agreements have included a set of extreme foreign-investor rights, and U.S. negotiators are looking to use TPP to expand these terms. This package includes many special protections that incentivize offshoring of U.S. jobs, by eliminating risks typically associated with relocating to developing countries with rock-bottom wages.

Under the U.S. investment model for free-trade agreements, relocating firms are guaranteed a “minimum standard of treatment” that extends beyond being treated the same as local firms. They also are granted new rights to obtain compensation from host governments for loss of “expected future profits” due to health, environmental, zoning, labor, or other policies. Compensation can be obtained for indirect or “regulatory” takings, a concept championed by conservatives but generally not recognized under the robust property rights provided by U.S. law.

The U.S. proposes that this chapter also forbid host countries from limiting capital transfers. This removes a prospective complication for U.S. firms considering relocation and poses a risk to global financial stability. In an era when even the International Monetary Fund has reversed its traditional opposition to capital controls, imposing such limits via a trade pact is both disingenuous and reckless policy.

The chapter also would establish new rights for foreign investors to acquire land, natural resources, factories, and more. All performance requirements, including domestic content rules, would be forbidden. This ban on signatory countries using this key industrial policy tool would be absolute, not just applied to investors from those nations.

These extraordinary rights would also be provided to foreign firms investing in the U.S., including subsidiaries of, say, Chinese firms incorporated in Vietnam. This raises concerns about our ability to determine what sorts of investment from what sorts of countries are best for the U.S., and to regulate foreign firms operating here so that they conduct business on equal terms with domestic firms.

Most stunningly, these new rights in a public treaty could be privately enforceable. The U.S. is pushing for inclusion of “investor state” enforcement. This little-known mechanism allows foreign firms to bypass domestic court systems and directly sue governments for cash damages (our tax dollars) over alleged violations of their new rights before U.N. and World Bank tribunals. These bodies would be staffed by private-sector attorneys who rotate between serving as

“judges” and bringing cases for corporations.

Conservative critics of the International Criminal Court’s jurisdiction in human-rights cases have been curiously silent about this more substantial assault on our sovereignty and judicial system. The scope of domestic policies that would be exposed to such attacks is vast, including government procurement decisions, regulatory permits, intellectual-property rights, and regulation of financial instruments such as derivatives.

Avoiding domestic courts not only eliminates major risks for firms seeking to relocate but inclusion of this regime in past pacts is establishing an alarming two-track system of justice. Chevron is now asking one of these corporate tribunals to invalidate 18 years of U.S. and Ecuadorian court judgments that resulted in the company being ordered to pay for the cleanup of horrific Amazonian toxic contamination. In other trade courts, Philip Morris International is attacking Australian and Uruguayan cigarette plain-packaging policy.

Under similar NAFTA provisions, more than \$350 million has been paid to investors by governments in disputes over such issues as toxic-waste-dump permits, logging rules, and bans on toxic substances. Currently, there are more than \$12 billion in pending corporate attacks on environmental, transportation, and public-health policy under existing U.S. free-trade agreements—and the proposed TPP would create vast new opportunities for litigation. Even when governments win, they waste scarce budgetary resources defending national policies against these corporate attacks.

Buy America Procurement Banned

The pact’s procurement chapter would require that all firms operating in any signatory country be provided equal access to U.S. government procurement contracts over a certain dollar threshold. These rules constrain how our national and state governments may use our tax dollars in local construction projects and purchase of goods. They also limit what specifications governments can require for goods and services and the qualifications for bidding companies. Requiring that electricity come from renewable sources or that uniforms meet sweat-free standards could be forbidden. Rules excluding firms that refuse to meet prevailing wage requirements or that are based in countries with terrible human- or labor-rights records could be challenged.

Effectively, these rules eliminate important policy tools for job creation, development of green-economy capacity, and the building of demand for preferred business practices. Even in strictly commercial terms, this is lunacy. The U.S. pro-

urement market in 2010 was more than seven times that of all the TPP countries combined. Thus, in exchange for opportunities for some large U.S. firms to bid on a smaller pool of foreign contracts, we would be trading away the ability to ensure that billions in U.S. government expenditures are channeled back into our economy to create jobs and foster our own cutting-edge industries.

Backdoor Financial Deregulation

U.S. trade officials engaged in the TPP are seeking to extend older trade deals’ ban on capital controls, even as Massachusetts Representative Barney Frank, the ranking Democrat on the Financial Services Committee, has demanded a review of whether the past pacts require changes. U.S. negotiators are also pushing for additional limits on domestic financial regulation. These constraints would undermine policies being implemented by many countries to get banks, insurance, and securities firms under control.

This includes a prohibition on bans of risky services and financial products. The provision would enable litigants to challenge purely domestic policies that set limits on financial firms’ size, the types of services a firm may offer, and the legal entity through which a service or product may be provided. This would, for instance, foreclose many policy tools aimed at dealing with “too big to fail” banks and shadow banks, limiting risk via firewalls or requiring derivatives only be sold on exchanges. These would be absolute bans on certain forms of regulation that countries would be forbidden to “adopt or maintain,” not requirements to treat domestic and foreign firms the same.

Higher Medicine Prices

The notion that any free-trade agreement would expand monopoly rights for “rent seeking” (excess profits) would induce Adam Smith and David Ricardo to rot in their graves.

But that’s exactly what our current trade policy does, and the TPP is poised to go further. According to a study conducted by the University of Minnesota, U.S. drug prices increased \$6 billion when WTO patent rules required the U.S. to change its patent term from 17 to 20 years. The TPP would be even more of a gift to drug companies at the expense of consumers and taxpayers.

Leaked negotiating texts show that the TPP would extend monopoly controls over drug-safety testing data, which could cut off millions of people from access to life-saving drugs. (Even when a patent monopoly ends, lower-cost generics cannot be marketed because the safety data is withheld.) A majority

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of target TPP countries are developing nations with significant HIV/AIDS rates, so this is a particularly depraved proposal. Thanks to a leak, we know that U.S. negotiators are proposing to roll back even the modest trade-pact access to medicine reforms obtained during the George W. Bush administration.

The U.S. proposal could also undermine the drug formularies of Australia, New Zealand, and other countries that have successfully controlled drug costs. This could also boomerang home. State officials participating in the development of formulary rules for Medicare and Medicaid have reacted with alarm about how this proposal could undermine hard-won gains in the epic health-care reform battle.

And There's More ...

Even given the lack of access to actual negotiating texts, we know that the scope of domestic-policy space that could be foreclosed by this deal is immense.

The pact's coverage of the service sector would include basically anything you can't drop on your foot, from an education to health care. The rules would not be limited to *trade* in services but would limit how we can regulate foreign-owned service firms operating here, including critical sectors like health, energy, education, water, and transportation. Even local land use and zoning policy is implicated.

These rules would even cover the movement of natural persons across borders to deliver a service, otherwise known as immigration and visa policy. Some past U.S. trade deals have guaranteed specific numbers of U.S. work visas. Other countries are demanding the same in the TPP. Whatever your views of these issues, it's a bad idea to make immigration policy behind closed doors as the byproduct of a trade pact whose terms cannot be altered without consent of all parties.

Several chapters impose limits on product environmental, health, and safety standards. The U.S. has proposed a new "regulatory coherence" chapter that would require each signatory country to establish an agency to do cost-benefit analysis of regulation. Constraints on food and product safety and inspection are also being negotiated, including a requirement that the U.S. accept imported food that does not meet our safety laws.

Consider seafood, much of which is imported from TPP target countries. Before WTO and NAFTA, half of the seafood consumed here was imported. Today that figure is 84 percent, while the Food and Drug Administration tests only 0.1 percent of it. Democratic Representative Rosa DeLauro of Con-

necticut uncovered that, even with lax inspection, last year the FDA issued numerous import alerts for Vietnamese seafood detained for misbranding, E. coli, antibiotic residues, microbial contamination, and other serious safety problems. The TPP could undercut even our current safety rules.

The same provisions deemed to be a threat to Internet freedom and innovation found in the discredited Stop Online Piracy Act are lurking in the TPP. This includes a requirement that each country establish large mandatory fines for unintentional, noncommercial, small-scale copying of Internet content protected by copyright. Also forbidden would be circumvention of digital locks, even for lawful uses such as playing a DVD that you purchased and run using Linux. As well as exposing us all to personal liability, these measures could stifle competition, given the threat of multimillion-dollar lawsuits.

Why Obama, Why Now?

All this invites the obvious question: Why are Obama trade negotiators pushing this deal now? Certainly the White House policy team does not want international preemption of the domestic agenda it is fighting to enact. Nor must the Chicago re-election campaign team be celebrating a deal that will infuriate its base while benefitting only Obama's most implacable corporate opponents.

The hopeful explanation is ignorance made possible by the elite fealty to a failed conception of free trade and the extraordinary secrecy that has forestalled the external alarms that might otherwise sound. Those in the U.S. government positioned to know the expansive non-trade policy implications are also those who support this approach, including many Clinton-era retreads connected to the passage of NAFTA.

Yet if these talks result in the adoption of a final agreement based on the framework now under negotiation, it could commit our country to a devastating future path.

The only good news is that past attempts to use the Trojan Horse of trade negotiation to impose and lock in massive deregulation have been foiled. Citizen activism and publicity derailed the proposed Free Trade Area of the Americas in 2005, the aborted Multilateral Agreement on Investment in 1998, and the original attempt to negotiate a free-trade area for Asia-Pacific Economic Cooperation nations, many of which are parties to the TPP. Now, as then, the public, policymakers, and the press can help derail these deceptive attempts to undermine democracy by awakening to the threat before it is too late. ☐

Not a Great Deal for Asia

BY KEVIN P. GALLAGHER

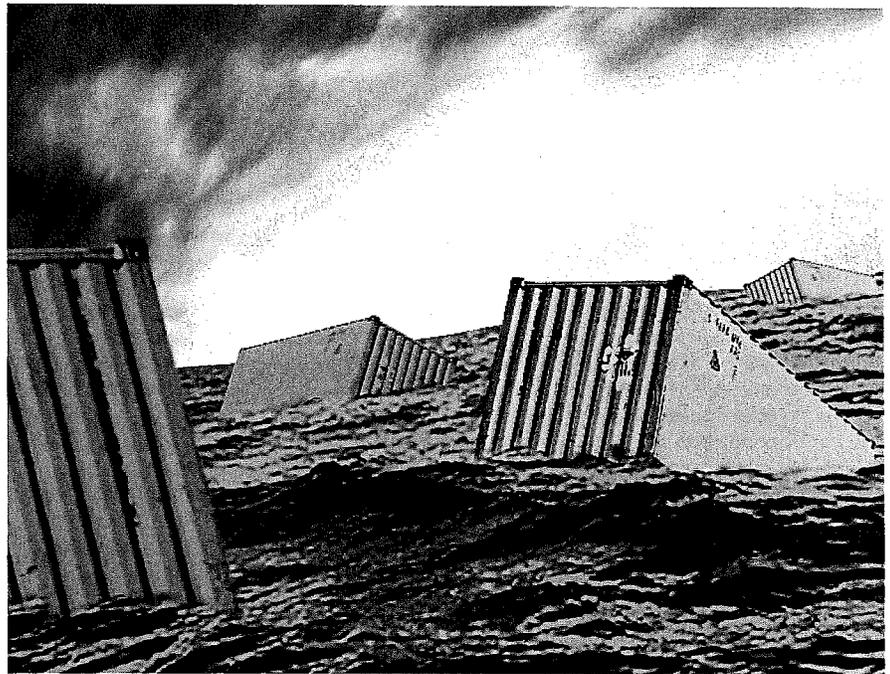
The Trans-Pacific Partnership is best understood as President Barack Obama's extension of the Bush-era doctrine of "competitive liberalization." Frustrated with pushback at the World Trade Organization by nations like China, Brazil, India, and South Africa, the United States seeks a coalition of the willing to import a commercial framework that rewards private firms at the expense of the common good. That policy regime is ailing in the U.S. and gets worse when exported.

The Trans-Pacific Partnership (TPP) certainly isn't about raising standards of living. The most ambitious estimates of the gains from the TPP suggest that participating nations will gain a mere one-tenth of 1 percent of the gross domestic product. Sixty percent of the projected gains go to Vietnam and the United States, and the other 20 percent goes to Malaysia—largely because the U.S. already has trade pacts with the other proposed big players in the TPP.

However, the proposed deal is far from popular in Asia. In exchange for the small portions of trade and growth that will go to some big exporters and foreign investors, each TPP nation will have to give up many of the policies they use to make trade and foreign investment work for employment, growth, and financial stability.

Two of the more strategic globalizers in recent years, the Vietnamese and Malaysian governments, played an important role in inserting their nations in the global economy and spreading the gains across their societies. Vietnam, a key destination for foreign firms to locate and re-export, has been able to translate that investment into employment and growth while also shielding itself from financial shocks. A major study by the Singapore-based Institute for South Asian Studies found that Vietnam's attraction of foreign investment has increased both savings and capital formation, strongly contributing to the country's China-like per-capita growth rates of well over 5 percent per year.

Unlike the United States, Vietnam has accomplished broadly distributed growth by such strategies as requiring joint ventures or local content standards that link food-processing industries to local farmers and connect global automotive and



motorcycle industries with domestic providers of inputs. The institute's analysis of foreign investment in Vietnam showed that these policies helped Vietnam's rural society diversify into manufacturing and expanded employment and livelihoods.

Similar policies have helped fuel Malaysia's industrial growth. Both Vietnam and Malaysia have prudently regulated cross-border financial flows to make sure investors don't desert their nations with the whims of speculative global capital markets. In the wake of the East Asian financial crisis of the late 1990s, Malaysia put restrictions on transfers of capital out of the country. Though laissez-faire advocates attacked the controls at the time, these policies, according to the U.S. National Bureau of Economic Research, helped Malaysia recover from the crisis better than many other nations in the region. Standard & Poor's found that similar measures in Vietnam helped cushion that country from the 2008 global financial crisis.

Vietnam and Malaysia, in sum, have a managed form of globalization that the TPP would undermine. Both countries have made themselves attractive to U.S. investors and exporters through government policies that have led them into global markets, spread the benefits of integration, and maintained financial stability. Yet the investment and financial-services provisions in the TPP would restrict the ability of these nations to use joint ventures, local content rules, and regulation of cross-border financial flows to spread benefits, stimulate local manufacturing, promote employment, and provide financial stability.

It may be difficult to grasp that the TPP could harm the broader economic interests of both the U.S. and smaller Asian nations. But if balanced development requires a managed form of

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BLOCKING OUT THE SUN

First Solar lives up to its name. The firm, based in Tempe, Arizona, is the largest solar-cell producer in the U.S. and one of the largest in the world. But after a decade in which production surged 20 percent or more every year, sales growth of First Solar's thin-film cells is slowing, and the company has begun layoffs among its 1,200 U.S. manufacturing workers in California and Ohio.

The reason? It's the same one that led seven domestic manufacturers last October to file a trade complaint against China for dumping solar cells on the U.S. market. The International Trade Commission (ITC) earlier this year unanimously ruled that

are actively opposing anti-dumping duties on the Chinese. "Rather than being in the panel-manufacturing business, which is a commodity, we're in the systems-installation business and looking at the U.S., India, and the Middle East as our primary markets," says Alan Bernheimer, a firm spokesperson.

The same thing is happening in wind-turbine and wind-tower production. The ITC in February determined that four domestic wind-tower makers are losing sales to China and Vietnam because those nations' companies dump products in the U.S. "at less than fair value." Another wind-industry producer—American Superconductor of Massachusetts—saw sales collapse after its major Chinese customer stole the secrets to its software and electrical systems.

While a booming installation business for these technologies in the U.S. would be good—they are relatively well-paying jobs in the building trades, fabrication, and sales—it makes no sense to abandon the highest value-added segment of the business—the actual production of solar cells and wind turbines and their components, both hardware and software.

Failure to develop industrial and trade policies to retain the manufacturing side of these green-technology businesses will leave the U.S. energy sector dependent on foreign firms, which will ultimately reap the reward from owning the intellectual property that comes from being on the cutting edge. It also abandons any hope of turning green tech into a thriving

export sector, which would help meet President Barack Obama's goal of doubling exports over the next five years.

Far from helping, the TPP will simply make it easier for Vietnamese, Malaysian, and Chinese companies to pursue their strategic goals. "It's common in China trade cases to see them try to circumvent the trade remedies—like by claiming a false country of origin like Malaysia or Vietnam," according to Tim Brightbill, an attorney who represents the solar companies in the trade case.

"It's a fool's game," says Rob Scott, a trade economist at the Economic Policy Institute. "If those countries are going to have preferential tariffs, China will simply ship products to them to take advantage of it." Although Chinese firms now produce more than half of all global solar cells, Malaysia is nominally the No. 1 exporter to the U.S.

An investigation in 2010 by the Senate Finance Subcommittee on International Trade chaired by Senator Ron Wyden, a Democrat from Oregon (SolarWorld, the lead plaintiff in the trade case, manufactures in Hillsboro, a suburb of Portland), found that Chinese manufacturers across numerous industries circumvented anti-dumping duties by using transshipment platforms in other countries. Demonstrating Wyden's point, Shenzhen Sunpower of Shenzhen, China, in its Internet advertising, offers "third-country certificates of origin" from Taiwan, Malaysia, Indonesia, Bangladesh, Thailand, Vietnam, and Sri Lanka, the report said.

—MERRILL GOOZNER

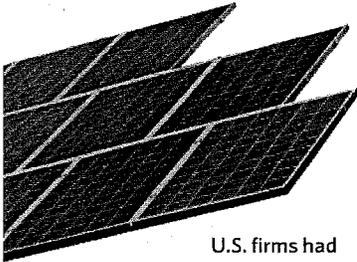
capitalism, then a trade deal like the TPP, which strengthens investors and weakens governments, can harm Asians and Americans alike.

Look no further than Mexico, where the NAFTA agreement brought the opposite of what treaty-less Vietnam and Malaysia have achieved. As my own research with Tim Wise from Tufts University and Mexican economist Eduardo Zepeda has shown, that agreement has produced slow growth, weak domestic investment, anemic job creation, and increased economic vulnerability. All the while, foreign firms have been suing Mexico over government policies in the same private tribunals that are proposed under the TPP.

Before launching the TPP, the Obama administration named a panel of experts to report to the U.S. Department of State's Advisory Committee on Economic Policy. We were to make recommendations to the administration regarding how to revamp the investment provisions in NAFTA-like deals. (I had the privilege of serving on the panel.) While the full panel could not agree on comprehensive recommendations, I joined a number of the experts to put together a document on changing U.S. trade agreements to enhance employment, democracy, and development. Among other things, we recommended that future deals replace the investor-led dispute system with the "state to state" process analogous to the rest of the treaty and the World Trade Organization's procedures; strengthen provisions to ensure that treaties protect the environment and workers' rights; and provide mechanisms to enable nations to regulate foreign capital.

In January 2011, more than 250 economists from across the globe told the Obama administration that trade deals that required nations to rip open their financial systems for footloose finance were out of step with economic research and a threat to financial stability both in the U.S. and in countries with which it trades. More than 100 economists exclusively from TPP countries echoed these concerns in a March 2012 letter urging TPP negotiators in Australia to leave nations with the policy space to deploy regulations on cross-border capital in the TPP.

In launching his Pacific initiative, President Obama promised to move away from the old model of U.S. trade deals toward one that "addresses new and emerging trade issues and 21st-century challenges." Addressing employment generation, equitable growth, and financial stability should top the list of those challenges, but in the proposed TPP, the means don't serve the proclaimed ends. The agreement grants too many rights to footloose firms and investors at the expense of the majority. ■



U.S. firms had been injured by the massive state subsidies by the Chinese government.

Tellingly, First Solar didn't sign the complaint. While it rhetorically backs a "level playing field" in trade, its plant in Malaysia (it also has one on the drawing boards for Vietnam) will benefit from the tariff-free trade provisions of the proposed Trans-Pacific Partnership (TPP). Both Malaysia and Vietnam could become export platforms for the booming part of First Solar's business—installation, which already accounts for 40 percent of its orders and accounted for three-quarters of the company's growth last year.

Installers, who benefit from cheap cells,