

## TransPacific Partnership Will Undermine Democracy, Empower Transnational Corporations

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*By Margaret Flowers and Kevin Zeese, Truthout | News Analysis*

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**The leaders of the member nations of the Trans-Pacific Partnership (TPP) pose for a group photo, November, 2010. (Photo: **Gobierno de Chile**; Edited: **JR / TO**)**

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*Our country's democratic values could be under threat if President Obama fast tracks the Trans-Pacific Partnership.*

On critical issues, the massive Trans-Pacific Partnership (TPP) being negotiated in secret by the Obama administration will **undermine democracy** in the United States and around the world and further empower transnational corporations. It will circumvent protections for health care, wages, labor rights, consumers' rights and the environment, and decrease regulation of big finance and risky investment practices. The only way this treaty, which will be very

unpopular with the American people once they are aware of it, can be approved if the Obama administration avoids the democratic process by using an authority known as "Fast Track," which limits the constitutional checks and balances of Congress.

If the TPP is approved, the sovereignty of the United States and other member nations will be dissipated by trade tribunals that favor corporate power and force national laws to be subservient to corporate interests.

### **Circumventing the Checks and Balances of US Democracy**

President **Nixon first developed the idea of "Fast Track"** in 1973 as a way to secure Congressional approval of trade agreements, and it has been a key to passing many unpopular agreements such as the World Trade Organization (WTO) and NAFTA. As people have caught on to the offshoring of jobs and other detrimental consequences of these agreements, civil society now understands how important it is to not allow a president to circumvent the democratic role of Congress. Fast Track expired in 2007, so President Obama must have it re-instated in order to pass the TPP. His administration is moving to have Fast Track approved and hopes it will happen by this summer.

Under Fast Track, the president was allowed to negotiate and sign trade agreements with whatever countries the executive branch selected - all before Congress voted on the agreement. Fast Track meant that the Congressional committee

processes were circumvented and the executive branch was empowered to write lengthy implementing legislation for each trade pact without Congress. These executive-only authored bills required US law to conform to the trade agreement. For example, **Glass-Steagall** had to be repealed under President Clinton to conform to the WTO. And, Fast Track empowered the president to submit the executive-branch written bill for a mandatory vote within a set number of days, with all amendments forbidden, normal Senate rules waived, and debate limited in both chambers of Congress. Fast Track clearly undermined democracy.

Indeed, Fast Track turned the US Constitution on its head. Under Article I Section 8, Congress has exclusive authority "to regulate commerce with foreign nations" and to "lay and collect taxes [and] duties." Under the Constitution, the president is empowered to negotiate treaties, but Congress must vote to approve them. Thus, Fast Track took constitutional power from Congress and prevented the checks and balances needed to prevent an imperial presidency.

For most of the history of the United States, treaties and trade agreements went through the normal congressional process described in the Constitution. Fast Track is a relatively new concept that coincides with an era of increasing presidential power, which includes the power to declare war and to murder US citizens without warning or judicial oversight. If Congress had reviewed agreements such as the WTO and

NAFTA beforehand and civil society had been able to participate in a democratic process, would the United States have made the mistake of passing these laws that have so injured our economy and others?

Fast Track is very unpopular, so now President Obama and others who advocate for it do not use the term. Instead they call it by the euphemism "Trade Promotion Authority." But changing the name does not change what it is - a method of ceding the constitutional power of Congress and undermining the checks and balances built into the constitutional framework.

Congress needs to consider what agreements such as the TPP will do to jobs, trade balances and the environment. Since Nixon, Fast Track has been used by presidents to go way beyond trade and tariffs. These **agreements have been used to change US law** by establishing "rules related to domestic environmental, health, safety and essential-service regulations, including deregulation of financial services; establishment of immigration policies; creation of limits on local development and land-use policy; extension of domestic patent terms; establishment of new rights and greater protections for foreign investors operating within the United States that extend beyond US law; and even limitation of how domestic procurement dollars may be spent." Thus, not only has the constitutional power of Congress to regulate commerce with foreign nations been undermined, but a whole host of domestic laws have been rewritten to satisfy

international trade.

### **The TPP Undermines US Law, Prevents Progressive Policy Around the World**

The TPP is much broader than the usual trade agreement and will impact many aspects of society from the Internet to health care to regulation of risky bank speculation. For this reason alone, it is especially important to have a transparent, public debate on the agreement. The TPP contains 26 chapters, but only five of them concern traditional trade issues. The TPP has been negotiated in secret except for over **600 corporate representatives** who have been advising the US trade representative on its language. In Washington, DC **K Street lobby firms have been getting involved** in the process, including pushing for Fast Track. Many of those corporations that have failed to get what they want from Congress are now getting their way through the secret back door of the TPP.

Though the TPP negotiations are being conducted in secrecy, portions of the text have been leaked.

Here is what is known about some of the **key issues that the TPP will affect**:

#### **Prevent Buy America Manufacturing Preferences:**

The TPP's procurement chapter **ends 'Buy America' preferences** by requiring that all firms operating in any signatory country are provided equal access to US government procurement contracts over a certain dollar threshold, the same access that domestic firms have. To implement this, the United States would agree to waive "Buy America" procurement

policies.

### **Undermine Environmental Laws and**

**Regulations:** Similarly, governments who are seeking to encourage localization and green manufacturing through procurement preferences will be stopped. A recent example involved Ontario, Canada, which has employed a renewable energy program that requires energy generators to source solar cells and wind turbines from local businesses so as to cultivate a robust supply of green goods, services and jobs. The program has earned acclaim for its early success in generating 4,600 megawatts of renewable energy and 20,000 green jobs. But, the WTO ruled that this violated WTO rules. In another case, a US company Lone Pine Resources is suing the Canadian government under NAFTA for more than \$250 million due to lost profits from Quebec's moratorium on fracking, which prevents Lone Pine from fracking under the St. Lawrence River. This is **not an isolated incident:**

. . . corporations such as Chevron, Exxon Mobil, Dow Chemical, and Cargill have launched 450 investor-state cases against 89 governments, including the United States. Over \$700 million has been paid to corporations under US free trade agreements and bilateral investment treaties, about 70 percent of which are from challenges to natural resource and environment policies.

Corporations have launched attacks on a range of public interest and environmental regulations, including bans or phase-outs of toxic chemicals, timber regulations, permitting rules for mines,

green jobs and renewable energy programs, and more.

**Undermine Internet Freedom:** The **Electronic Freedom Foundation** (EFF) argues that the intellectual property chapter (see the **February 2011 draft US TPP IP Rights Chapter [PDF]**) would have extensive negative ramifications for users' freedom of speech, right to privacy and due process, and hinder peoples' abilities to innovate. Its provision on copyrights will adversely affect the creator's ability to create content, the ability of technology companies to make innovative products, and the ability of users to use content in new ways. EFF summarizes the attack on Internet freedom by the TPP, writing:

In short, countries would have to abandon any efforts to learn from the mistakes of the US and its experience with the DMCA over the last 12 years, and adopt many of the most controversial aspects of US copyright law in their entirety. At the same time, the US IP chapter does not export the limitations and exceptions in the US copyright regime like fair use, which have enabled freedom of expression and technological innovation to flourish in the US. It includes only a placeholder for exceptions and limitations. This raises serious concerns about other countries' sovereignty and the ability of national governments to set laws and policies to meet their domestic priorities.

**Destroy Food and Agriculture:** **Agriculture trade rules** have both undermined US producers' ability to earn a fair price for their crops at home and in the global marketplace. Multinational



grain-trading and food-processing firms have made enormous profits, while farmers on both ends have been hurt. The results are that hunger is projected to increase, along with illicit drug cultivation, and undocumented migration. **Dairy farmers fear the TPP could decimate the US dairy industry** and have urged Congress to refuse to Fast Track it. Failure to establish new agriculture terms would intensify the race to the bottom in commodity prices, pitting farmer against farmer and nation against nation to see who can produce food the cheapest, regardless of labor, environment or food-safety standards. Regarding food safety, current trade agreements contain language requiring the United States to accept imported food that does not meet our domestic safety standards and limiting inspection of imported foods and products. The TPP is expected to continue these practices.

**Prevent Health, Safety, Environment, Consumer and Labor Laws:** **According to leaked documents, the TPP contains provisions** with special rights for corporations. The provisions protect investors by providing them with compensation for loss of "expected future profits" from health, labor, environmental and other laws. The negative effect is that nations will not pass laws that threaten corporate profits in order to avoid lawsuits and heavy fines. Court cases in which corporations are suing governments over laws and regulations that cause loss of expected profit will be tried before a trade tribunal of three judges. These judges can include

corporate lawyers on temporary leave from their corporate job while they serve as judges. **Global Trade Watch reports** that under previous trade agreements "Over \$3 billion has been paid to foreign investors under US trade and investment pacts, while over \$14 billion in claims are pending under such deals, primarily targeting environmental, energy, and public health policies." The right to sue governments will create a hurdle for governments considering actions to protect workers, consumers, health and the environment.

**Privatize Health Care and Make it Unaffordable:** **Leaked documents show** that the US Trade Representative is pressuring TPP member countries to expand pharmaceutical monopoly protections, which essentially trade away access to medicines. In a recent letter, **Doctors Without Borders wrote** that the TPP will be "the most harmful trade deal ever for access to medicines in developing countries." The TPP does this damage by inflating pharmaceutical prices through lengthy patent protections, as Doctors Without Borders writes:

One proposed TPP provision would require governments to grant new 20-year patents for modifications of existing medicines, such as a new forms, uses or methods, even without improvement of therapeutic efficacy for patients. Another provision would make it more expensive and cumbersome to challenge undeserved or invalid patents; and yet another would add additional years to a patent term to compensate

for administrative processes. Taken together, these and other provisions will add up to more years of high-priced medicines at the expense of people needing treatment waiting longer for access to affordable generics.

There is also concern that the TPP will force public health systems to open up their medication programs to pharmaceutical corporations giving them greater access and greater control over the price of medications, effectively destroying the ability of the public health system to negotiate for a low price. The same may occur with public health systems in the US such as **Medicare, Medicaid, Tricare and the Veterans Health Administration**, making medications more expensive and potentially out of reach for their patient populations.

In addition, countries that provide health care through a national public health program, rather than a market-based system dominated by for-profit insurance, are threatened by provisions that oppose state-owned enterprises. Corporations view state provision of services as unfair competition and therefore a violation of free trade. This will make it more difficult for the United States to adopt a single-payer health system, and it will make it more difficult for countries with such systems to protect them from privatization and health insurance domination.

**Prevent Public Banks and Banking Regulation:**

These same provisions about state-owned enterprises will affect **public banking** too. North Dakota is the only state in the US to have a public

state bank, although over a dozen states and cities are considering them. Public banks are used to hold taxes that are collected, administer payroll for public employees and provide loans for public projects. The advantage is that all public dollars are managed in a public institution rather than having to pay fees and interest to a private bank. But the TPP would consider public banks to have unfair advantages and therefore violate free trade. And trade agreements protect big finance by (1) preventing regulation of the finance industry by locking in a model of extreme financial service deregulation; and (2) allowing capital to move in and out of countries without restrictions. This prevents countries from controlling the flow of capital, which has many negative consequences. Over 100 economists wrote trade representatives urging them to ensure that the TPP, unlike other trade agreements, will allow governments to control and regulate capital without the threat of investor lawsuits, writing:

Authoritative research published by the National Bureau of Economic Research, the International Monetary Fund, and other institutions has found that limits on short-term capital flows can stem the development of dangerous asset bubbles and currency appreciations, grant nations more autonomy in monetary policy-making, and protect nations from the dangers of abrupt capital flight.

*See 102 Economists Issue Statement on Capital Controls and TPP*

Thus, the TPP and other corporate trade

agreements will undermine the ability of governments to regulate health, safety, labor, environment and finance. The 600 corporate advisers to the TPP see this as an opportunity to do an end-run around laws and policies that they have been unable to put into effect through the normal democratic process. This is why the TPP is being called a **global corporate coup** that makes corporations more powerful than governments.

### **Corporate Trade Agreements Hurt the US Economy**

The evidence is stark that so-called 'free' trade agreements, really corporate trade agreements, are bad for the US economy.

**Newly-released government trade data** for 2012 show job-eroding US trade deficits have ballooned in countries with which the US has a corporate trade agreement and have declined in the rest of the world. The numbers are stark. In countries where the US has a trade agreement, the trade deficit has grown by more than 440 percent, while in countries where there is no agreement, the deficit has declined by 7 percent. In fact, **the aggregate US trade deficit** with trade-agreement partners is more than five times higher than it was before the deals went into effect, while the aggregate deficit with non-trade-agreement countries has actually fallen slightly.

And, this means a tremendous loss of jobs. Using the Obama administration's net exports-to-jobs **ratio**, the FTA trade deficit surge means the loss of nearly one million American jobs.

We should have learned this lesson from NAFTA

because what we are seeing with corporate trade agreements since NAFTA is more of the same.

Under NAFTA, the US deficit with Canada ballooned and the small US surplus with Mexico turned into a \$100 billion-plus deficit. **As a result of NAFTA, the United States lost 692,000 jobs** according to the Economic Policy Institute.

But, instead of **learning from NAFTA**, President Obama pushed a trade agreement with South Korea, promising it would result in economic benefits for the United States. One year has now passed since the Korean trade agreement was put into effect and the US ended up with the same result as it experienced with NAFTA. **Eyes on Trade reports:**

**US goods exports to Korea have dropped 9** percent (a \$3.2 billion decrease) since the Korea FTA took effect, in comparison to the same months in the year before FTA implementation. US imports from Korea have climbed 2 percent (an \$800 million increase). The US trade deficit with Korea has swelled 30 percent (a \$4 billion increase). The January data from the US International Trade Commission show that the US trade deficit with Korea skyrocketed 81 percent above December's level, topping \$2.4 billion – the largest monthly US trade deficit with Korea on record. The ballooning trade deficit indicates the loss of tens of thousands of US jobs." Exports are not as robust as advocates of trade agreements would like to believe. Between 2002 and 2012, US exports to trade-agreement partner countries grew annually at a rate of only 4.8

percent, while exports to non-trade-agreement countries grew at 6.6 percent per year on average. This has only **worsened with the passage of the Central America Free Trade Agreement (CAFTA)** in 2005, which nearly doubled the number of trade-agreement countries. Since then, average US export growth to non-trade-agreement countries has topped average export growth to trade-agreement partners by 46 percent.

Advocates for corporate trade agreements **manipulate statistics in order to make a false claim of economic benefit** from the agreements. They create obvious falsehoods by not counting many major trade agreements put in place before 2003. This would exclude big agreements like NAFTA, count "re-exports" - goods made elsewhere that are shipped through the United States en route to a final destination, omit imports in their calculations so people do not see the trade imbalance, and not correct for inflation in order to exaggerate exports.

Sadly, rather than being honest about the failure of corporate trade, the Obama administration works overtime to mislead the public. The recently released **2012 annual trade report** leaves out critical details from the very beginning. **Eyes on Trade analyzes** the Obama report:

Take the first sentence: 'Trade is helping to drive the success of President Obama's strategy to grow the US economy and support jobs for more Americans.' Almost makes you forget that **last year's non-oil trade deficit rose to a five-year high**, implying the loss of millions of jobs, doesn't it?

How about the second sentence: 'The Obama Administration's trade policy helps US exporters gain access to billions of customers beyond our borders to support economic growth in the United States and in markets worldwide.' That's an interesting way to frame a year whose sluggish two percent export growth rate put us **18 years behind schedule** in achieving Obama's export-doubling goal."

### **Time for a Democratic Revolt Against the TPP**

A unique feature of the TPP is that it contains a "docking agreement." This means that other countries can sign onto the agreement after it has been negotiated as long as they are willing to accept the previously negotiated terms. The US started the negotiations with allies such as Australia and New Zealand and a number of small countries such as Vietnam, Brunei, Malaysia, Chile and Peru. Larger countries are able to force smaller, more desperate countries to accept terms that are detrimental to them. As more countries sign on, the TPP could become an agreement that defines global trade.

The TPP has gone through 16 rounds of negotiations in almost total secrecy. Some portions of the text have been leaked, but most remain secret. Throughout the process more than 600 corporate advisers have been working with the US Trade Representative in shaping the proposals and specific language of the text. Civil society has only been marginally involved, not provided drafts and ushered into **stakeholder**



meetings where they can ask questions but only receive vague answers.

Despite this effort at secrecy, civil society groups have been getting organized to oppose the TPP, stop Fast Track and prevent the **global corporate coup**. More than 400 organizations, including our own organization, **It's Our Economy**, representing a diverse range of issues including labor, environment, public health, farmers, Internet freedom, banking regulation, human rights, faith, Native American and much more, have signed on to a **letter to Congress** emphasizing how the TPP negotiations have been "inconsistent with democratic principles," opposing Fast Track and outlining expectations of how key issues should be addressed in 21st century trade agreements.

**Citizens Trade Campaign summarizes writing:**

"The letter includes eight broad categories that the TPP, a Trans-Atlantic Free Trade Agreement and any other US trade pact must address in order to improve quality of life for Americans and people throughout the world: (1) prioritization of human and labor rights; (2) respect for local development goals and the procurement policies that deliver on them; (3) no elevation of corporations to equal terms with governments; (4) protection of food sovereignty; (5) maintaining access to affordable medication; (6) safeguards against currency manipulation; (7) space for robust financial regulations and public services; and (8) improved consumer and environmental standards."

On February 27, the AFL-CIO released an

**executive council statement** questioning the TPP saying "The United States cannot afford another trade agreement that hollows out our industrial base and adds to our substantial trade deficit." The executive council of the AFL-CIO went on to say, "We do not need another trade deal that simply boosts corporate profits by encouraging offshoring good jobs while undermining wages, benefits and worker rights. We must do better." Americans have clearly learned the lessons of previous trade agreements - they only work for the transnational corporations and oligarchs around the world, they undermine workers, and spur lower wages and environmental destruction.

**Arthur Stamoulis of Citizens Trade Campaign summarizes the antidemocratic actions of the Obama** administration with regard to the TPP saying, "This is a rollback in transparency, and an extremely undemocratic way to craft policy that is likely to influence jobs, health care costs, financial regulations, consumer safety, the environment and more for decades to come. The only way to prevent the public from being saddled with a bad agreement is for Congress to exert its authority."

The **TPP is the battleground for defining democracy** in the 21<sup>st</sup> century and setting up the rules for international commerce in the era of transnational corporate power. No matter what issues you are concerned about, if the TPP becomes law, it will undermine national sovereignty and hopes for progressive policies that put the people's needs before corporate profits. The time is now to get active, work to oppose the

antidemocratic Fast Track approach in Congress and say "no" to the democracy-undermining Trans-Pacific Partnership. This is a trade agreement that will be opposed by most Americans and a battle on which the people can prevail, but only if they know it exists.

*For more information and to get involved, visit:*

[The Citizens Trade Campaign](#)

[Public Citizen's Global Trade Watch](#)

[Eyes on Trade](#)

[Flush The TPP](#)

*You can [listen to our interview](#) with Arthur Stamoulis of [Citizens Trade Campaign](#) and Ben Beachy of [Eyes on Trade](#) on the TransPacific Partnership versus Democracy on [Clearing the FOG](#).*

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