

NOTES

1. What agreements are on the table?

Comprehensive Economic Trade Agreement (CETA) European Union & Canada.

- Consolidated text : <http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/text-texte/toc-tdm.aspx?lang=eng>.
- Analysis: *Making Sense of the CETA*, Canadian Centre for Policy Alternatives
<https://www.policyalternatives.ca/publications/reports/making-sense-ceta>

Trans Pacific Partnership (TPP) U.S., Canada & 10 Pacific Rim countries.

- Some draft chapters available at: <https://wikileaks.org/tpp-ip2/pressrelease/>

Transatlantic Trade and Investment Partnership (TTIP) European Union & U.S.

Foreign Investment Protection Agreement (FIPA) Canada & China, and 27 others

- Text: <http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/fipa-apie/china-text-chine.aspx?lang=eng>.....

Trade in Services Agreement (TISA) 23 governments including Canada.

- Analysis: “PSI Special Report”. <http://www.world-psi.org/en/psi-special-report-really-good-friends-transnational-corporations-agreement>

See also Page 5 for a full list of Canada’s agreements

2. What critiques are common to all of these agreements?

- **Negotiations are secret** - most are ‘treaties’ that do not need full government approval. The public’s sources are very occasional leaks.
- **Investor state dispute settlement agreements** - make it possible for corporations from another country to legally challenge the laws and policy of our governments, if our policies threaten to reduce expected profits. These agreements are creating level of legal and policy decision making that is beyond both our democratic process and our legal system.
- **Pressure to privatize our public services** - to open public services like water, electricity, education, child care, health and financial to international competition.
- Not about fair trade
- Chill on local control
- Health care & public health
- Environment protections

3. What’s wrong with Investor State Dispute Settlement (ISDS) agreements?

- They create a growing, interconnected web of private courts for corporations & investors. Disputes are heard by a panel of (usually 3) unelected, appointed individuals who have no relationship to the courts in any country.

- They establish when and how companies can sue governments for environmental, human rights, public health, etc. policies that might interfere with actual or anticipated profits
- They erode the sovereignty of all levels of government

4. Investor-State Litigation

- Canada is the top target of NAFTA **investor-state litigation**. Canadian taxpayers have paid or settled \$160-million in NAFTA claims. And we are looking down the road at \$2.5-billion in current NAFTA claims, including:
 - Eli Lilly suing because Canada’s courts did not approve two drugs
 - Ethyl Corp suing over Canadian ban on dangerous gasoline additive
 - Sun Belt Water suing over BC moratorium on exports of bulk water
 - Lone Pine suing over Quebec’s moratorium on fracking
- Most claims are related to environmental or public health legislation:
 - Philip Morris Asia tobacco company sued the Australian government for damages over public health legislation that required a warning message on cigarette packages.
 - Infinito Gold (Calgary) is suing Costa Rica for \$1 billion because of public opposition and a national ban on open pit mining.
 - Swedish energy company Vattenfall is suing Germany for \$US 4.6 billion because of Germany’s decision to shut down older nuclear reactors In 2012 a tribunal awarded Occidental Petroleum \$1.8 billion plus \$589 million in compound interest from the government of Ecuador after that country legally terminated its contract.

Canada has had to pay foreign investors under NAFTA’s Chapter 11:

1. Ethyl Corp. (1997)

Amount awarded: US\$13 million, out-of-court settlement.

What happened: The U.S. chemical company challenged a Canada-wide ban on import and trade of the gasoline additive MMT, a suspected neurotoxin. Following a preliminary judgement against Canada, the government repealed the ban, issued an apology and paid a settlement.

2. S.D. Meyers (1998)

Amount awarded: CDN\$6.05 million, plus interest and compensation.

What happened: The U.S. waste disposal firm challenged a temporary Canadian ban on the export of toxic PCB wastes, something the country was obliged to do under an international environmental treaty. The tribunal ruled that Canada violated standards of treatment under NAFTA.

3. Pope and Talbot (1998)

Amount awarded: CDN\$870,000.

What happened: The U.S. lumber company challenged Canada’s lumber export rules implemented under the Canada-U.S. softwood lumber agreement. The tribunal ruled Canada violated NAFTA’s minimum standards of treatment.

4. Murphy Oil & Exxon Mobile’s Canadian subsidiary (2007)

Amount awarded: \$17.3 million plus on-going damages because the government’s violating guidelines remain in effect.

What happened: The oil investors argued that Canada’s guidelines requiring energy

companies to invest in research and development in Newfoundland and Labrador are inconsistent with NAFTA rules. The tribunal ruled in favour of the investors and Canada is liable to pay damages.

5. AbitibiBowater (2009)

Amount awarded: CDN\$130 million in settlement — the largest NAFTA-related settlement to date.

What happened: The pulp and paper company closed its last mill in Newfoundland and Labrador in 2008 and the provincial government enacted legislation to return its timber and water rights to the Crown and expropriate some of its lands and assets associated with water and hydroelectric rights. Abitibi was to be paid fair market value for the assets. The company launched a NAFTA claim and the government decided to settle without going to court.

6. St. Marys (2011)

Amount awarded: \$15 million.

What happened: The company alleges its Canadian subsidiary was the victim of political interference when it tried to open a quarry near Hamilton, Ont., after residents grew concerned about the groundwater. The provincial government issued a zoning order preventing the site from being converted into a quarry and the company claimed that was unfair and discriminatory. The parties reached a settlement in 2013 that saw the company withdraw the claim in exchange for compensation from the Ontario government.

7. Bilcon (2015)

TBA Seeking award: \$300 million

What happened: The company sought to develop a mining and marine terminal project in Canada, but a joint federal and provincial environmental review panel rejected the company's environmental impact study, citing among other things the project's inconsistency with "core community values." Bilcon could have appealed the decision in Canada's domestic courts but instead sued Canada under NAFTA's ISDS process. Regardless of previous statements that state that the ISDS process is not meant to appeal domestic administrative or judicial decisions, this one did precisely that. Their decision was based on their assessment that the joint environmental review panel's decision went beyond its scope by taking into account the local "economy, life style, social traditions, and quality of life." As the dissenting arbitrator in *Bilcon* stated, the decision represents "a remarkable step backwards in environmental protection."

Source: [Canadian Centre for Policy Alternatives](#).

Making Sense of the TPP: Don't Confuse Trade With Trade Deals

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After years of negotiating, the Trans-Pacific Partnership, a 30-chapter, 12-country trade agreement that's been in the works for years, was signed yesterday by participating countries.

Trade negotiators from the U.S., Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam resolved long-standing differences on tariffs, dispute procedures, labor and environmental rights, intellectual property/patents, and much more, and agreed to the accord. That step alone does not make it the law governing trade practices between these nations; their governments, as well as our own, of course, must now ratify the treaty.

But what does this all mean? The deal has been negotiated in secret so we've largely had to rely on what negotiators tell us about it, and since the negotiators are tasked by their governments with selling the deal, such information tends to be pretty one-sided. Will it really herald "a wide range of change in the years ahead" for "consumers across the country," as the *New York Times* writes **this morning**?

I haven't seen it either, but I strongly doubt it. Trade and globalization have historically been a big, economic game-changer, reaping benefits for consumers and macro-economies from vastly increased supply chains. Trade deals, on the other hand, are nothing more than rules of the road for how trade is conducted between partner countries. Some of those rules are handshakes between investors across borders; other measures, often in opposition to the investor-favored ones, have the potential to benefit consumers, workers, and the environment.

What matters is the balance between those two forces (not, as many of the media stories tell it, whether we beat China to organizing the Pacific Rim). Historically, the investor class has called the tune, pushing patent protections, intellectual property rights, investment protections, and dispute settlement structures that protect multinationals from prosecution and allow them extra-national privileges. The U.S. negotiators tell us this time is different, and from what we've seen, the TPP includes more in the way of labor and environmental rights, along with consumer protections. Whether they are enforced is thus a critical matter.

And at least one important piece is missing: rules against currency manipulation (though we're learning about a side deal on that as well -- read on).

As I point out below, few know yet what's really in the deal, which should be public in around a month. The fact that it has been negotiated in secret has led to a general sense of distrust around the process. Add to that the fact that while we all benefit from global trade, many have lost good jobs to globalization, and many live in communities that have been crippled by the loss of industry. They and their political representatives are naturally skeptical of trade deals.

So, with the caveat that I've seen nothing more than a few leaks, let me at least try to answer some questions you might be pondering in as balanced a way as I can.

What happens now?

As with past trade agreements, because Congress gave President Obama "fast track authority" back in June, there will eventually be an up or down, majority vote on the treaty -- no amendments, no filibusters. But there's an important new wrinkle this time around.

The TPP is a bigger deal than past agreements, which typically involve one or two other countries. Trade officials talk about it as the "last trade agreement," meaning that instead of negotiating future agreements, countries will be able to join onto the TPP. Thus, when fast track was passed, the administration agreed that once the President announces his intention to sign it, 90 days must pass before he does so, including 60 days when the heretofore secret agreement will be public for all to read (though you'll really need a trade lawyer to make sense of the language and references to past agreements).

Why have the negotiations been secret?

As suggested above, the secrecy of the negotiations have created a great deal of distrust with a skeptical public, especially when it's **come out** that those who have made it to the bargaining table have tended to come from the multinational corporate sector more than the working class. That said, there's a logic to the secrecy. A 12-way negotiation is extremely hard already; if interest groups were banging on the process at every turn, the negotiation stage would never end.

Is the deal as great as the White House says it is?

The thing you should know about trade agreements is that advocates oversell them and opponents exaggerate their downsides. And this problem gets amped up when few on either side have access to the actual terms of the deal.

From what I've seen so far, the language in this deal looks like that of past deals, including ones I've worked on myself. Like I said, they're rules of the road and it would be awfully dangerous to drive down a road where motorists didn't agree to follow conventions. Similarly, trade proceeds more smoothly when agreements on the terms are explicit.

Things like "rules of origin" (defining the standards by which a good can be said to originate in a partner country and thus receive tariff benefits), allowable tariffs, how disagreements will be settled, investor protections, patent rules -- that's the stuff of trade agreements. Note that a lot of that -- patents, for example -- are not "free trade" at all. In fact, TPP's likely expansion of patent rules on medicines has been a sticking point in the negotiations, as U.S. patent protections have not only led to higher drug prices here, but have also restricted access to needed medicines in the developing world.

In that sense, I greet claims that the TPP will boost American growth and jobs with a healthy dose of skepticism. We already trade pretty freely with most of these countries, and tariffs are low enough already that taking them down further will yield marginal, non-measurable gains given all the other moving parts in the international trade equation.

In this regard, trade itself matters more than trade agreements, and trade has benefits and costs. TPP proponents correctly note that trade increases the supply of goods and thus lowers consumer prices. It's also true that there's a wage premium associated with jobs in the export sector.

Conversely, TPP opponents are on solid ground when noting that what really matters for the American workforce are net exports (exports minus imports). We've run large trade deficits in this country for decades, and they are one channel through which globalization has been a factor in rising inequality, wage stagnation, and the loss of manufacturing jobs.

There's no reason to believe the TPP alone will change these fundamental benefits and costs of trade.

So why sign the deal? What's in it for working people here and abroad?

If it's not about growth and jobs, what is it about?

Like I said, rules of the trade road, and here, the Obama administration claims some real advances in important areas including labor and environmental rights.

For example, **they claim** that the parties to the TPP agree to "freedom of association and the right to collective bargaining; elimination of forced labour; abolition of child labour and a prohibition on the worst forms of child labour; and elimination of discrimination in employment. They also agree to have laws governing minimum wages, hours of work, and occupational safety and health." (Apparently, they've also agreed to the un-American spelling of 'labor!')

OK, but will they enforce these rights? Countries like Mexico and Vietnam have terrible records on labor, consistently oppressing independent unions. I spoke to Rep. Sandy Levin (D-MI) about this -- a trusted voice on trade issues -- and he believes the deal contains language such that if Vietnam did not have independent unions in five years, some of the benefits of the deal would be withdrawn. He was less sanguine about Mexico.

Basically, we can write down all kinds of good ideas -- progressive rules of the road -- but if we fail to enforce them, which implies holding other parties' feet to the fire as well, they won't matter. As Senator Elizabeth Warren has **pointed out**, our enforcement record has not been admirable.

What's all this about blocking China from co-opting the region?

The other big reason for the deal, according to the administration, is to keep China from organizing trade in the region. But frankly, I think "Who would you rather have writing the rules, us or the Chinese?" isn't the right question. That is, the answer is surely "us," but who is "us?"

From the perspective of low- and middle-income people, what matters is who's at the negotiating table. Workers from signatory countries, particularly emerging economies, have less to worry about in this context from China than from representatives of corporations, those working to expand patents, and similar stakeholders trying to protect and expand market share at the expense of the less advantaged.

It is thus worrisome that, according to the **Washington Post**, 85 percent of those on U.S. advisory committees came from private industry and trade associations.

The TPP's Investor State Dispute Settlement (ISDS) provisions, which can enable multinational corporations to circumvent countries' court systems and challenge laws in front of international panels of arbitrators, are also worrisome. Interestingly, the deal appears to prohibit big tobacco from using ISDS to prevent cigarette regulations. The Obama administration correctly points out that we've never lost an ISDS case, so they're downplaying such concerns. But the tobacco exclusion is telling: surely there are other industries in which an ISDS mechanism can present a threat to the hard-won environment and/or labor rights in member countries.

Will the Congress ratify the deal?

Not unlike the way Speaker Boehner has passed important legislation with mostly Democrats, the Obama administration has leaned on Republicans for support on fast track and the TPP. They should be able to do so again when the vote to ratify comes to the floor, probably sometime early next year (remember, they only need majorities).

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In the meantime, it will be essential to review the TPP when it becomes public and, while the agreement itself cannot be changed, Congress can insist on side deals. A key area here is currency manipulation, a tactic that has cost us many manufacturing jobs in the past. Reports tell of "Finance Ministers' plan" on currency outside the deal. The problem, according to Rep. Levin, who described this effort as "entirely unsatisfactory," is that there's no way to enforce rules on currency -- to mete out sufficient consequences for manipulators -- through this channel.

End of the day, it's extremely hard to know the impact of the TPP. Team Obama has fought for some important improvements that could boost labor and environmental standards but it really all comes down to whether the member countries enforce them, and, given our relative size and power, whether we make sure they do so -- and take action if they don't.

The politics are already **getting tricky**, but I suspect the deal will pass. Both the administration and powerful interests want it in place. In the meantime, don't believe the hype, and stay tuned for the public release.

*This post originally appeared at Jared Bernstein's **On The Economy** blog.*