



## Trans Pacific Partnership trade negotiations: Press Backgrounder

*“The trade ministers get together to set the rules of trade. They don't worry about the environment; that's somebody else's agenda. Trade above all -- that's the way they approach it. And as a result of that, we get a trade agenda that puts environmental and other concerns below.”--Joseph Stiglitz, winner of the Nobel Prize, Economics, 2001, [interview PBS The Ascent of Money](#)*

### **A roadmap to a giant trade deal**

The United States is pushing for a TPP deal that not only integrates the trade policies of Pacific nations, but also [deregulates their economies in many areas](#). The U.S. negotiating agenda, with its [laissez-faire](#) approach, will have the general effect of subordinating the role of governments in environmental protection to corporate profits.

Currently, Singapore, Malaysia, Chile, New Zealand, Brunei, Australia, Peru, Vietnam, Canada, Mexico, Japan and the United States are participating in the talks. South Korea and others may seek to “dock onto” the agreement in the very near future. [As Professor Robert Stumberg, of Georgetown University Law Center says](#), “It's part of the roadmap to coming up with a bigger trading bloc that is not the World Trade Organization.”

As a consequence, the TPP has the potential to be the most expansive regional trade agreement ever entered into by the United States and its trading partners, in terms of its future geographic and economic reach. That might be a good thing in theory. But as the agreement has shaped up, it is not good for workers and the environment.

“The Trans-Pacific Partnership could end up hurting the broader economic interests of both the U.S. and smaller Asian nations,” [writes Kevin Gallagher](#), an economist who teaches at Boston University in [a story for the American Prospect](#). “In exchange for the small portions of trade and growth that will go to some big exporters and foreign investors, each TPP nation,” he explains, “will have to give up many of the policies they use to make trade and foreign investment work for employment, growth and financial stability.”

Given that the TPP could be one of the world's biggest trade deals, one would think it would be subject of intense public debate. But instead, the talks are being held [behind closed doors](#) and civil society has been excluded from the most recent negotiations. The TPP [negotiating text is kept secret](#) from the public and press, although a few chapters have been leaked.

### **TPP chapters on environment, investment and regulatory coherence**

The environment chapter must include enforceable obligations to implement domestic environmental laws and abide by global environmental agreements. On that point, the U.S. delegation agrees with environmentalists because Democrats in Congress insist on it, but other negotiating parties strongly resist. There is a growing probability that U.S. negotiators will cave on the one item on their negotiating agenda that could be good for the environment.

In the view of Friends of the Earth U.S., other elements of the U.S. Trade Representative's agenda for the TPP must be rejected altogether given the language in leaked negotiating documents, including an investment chapter that would authorize foreign investors to seek awards of money damages from international tribunals in compensation for the cost of complying with environmental and other public interest regulations. One hundred thirty state legislators from 50 states and Puerto Rico agree. In a letter sent to U.S. trade negotiators, the legislators said that the leaked TPP investment chapter is based on a U.S. model that "has proven to be extremely problematic, undermining legislative, administrative, and judicial decisions and threatening the system of federalism established by the U.S. Constitution."

As another example, the leaked text of the chapter on regulatory coherence would encourage business-friendly, cost-benefit analysis before environmental or other regulations are promulgated. Cost-benefit analysis, when used in a reductionist manner as contemplated in the TPP, essentially prevents regulators from implementing the "precautionary principle" in environmental policymaking.

### **TPP chapters on procurement, services, technical barriers and sanitary measures**

Most of the chapters have not been leaked. But Friends of the Earth is concerned that within the secret texts on government procurement, services, technical barriers to trade, and sanitary measures lurk serious environmental concerns.

The TPP government procurement chapter raises concern because governments are beginning to build environmental and other social criteria into their purchasing decisions that might run afoul of international trade rules. International rules on government procurement often seek to confine public purchasing decisions to economic and engineering criteria such as price and performance, thus precluding green purchasing policies by government.

A TPP services chapter could cover a range of environmentally sensitive sectors including transportation, water, sanitation, energy, pipelines, and other public utilities. The uncertainty about how the TPP services chapter would affect water policy is particularly vexing, given that water is essential to human, animal and plant life – it's not simply another commodity to be traded in the global marketplace.

Friends of the Earth has no confirmation that TPP provisions on technical barriers to trade will not mimic or exceed World Trade Organization standards that have been used to successfully challenge U.S. dolphin-safe tuna labeling law and other product labeling measures, as well as chilling legislative initiatives in the U.S. to reform its totally inadequate system of toxic chemicals regulation..

Similarly, a TPP chapter on sanitary measures might be used to challenge food safety laws based on the precautionary principle such as pesticide residue, chemical additives or genetic modification.

### **On the ground impacts: what's potentially in store for the environment**

Looked at another way, the TPP could impact a range of environmental issues: For example:

Friends of the Earth has no assurance that clean air and water regulations will not be threatened by the TPP. To the contrary, [the U.S. - Korea trade agreement](#), for example [requires that auto emissions standards be relaxed](#) for U.S. auto exports to [South Korea](#). And, challenges to water pollution measures are a frequent issue in international investment litigation, including suits brought under NAFTA and [CAFTA](#).

[Mining, oil drilling](#), and infrastructure construction are all frequent topics of litigation under international investment agreements and might be covered by TPP provisions on trade in services as well as the chapter on investment. Land use regulations and smart growth policies also have been challenged under international investment agreements.

Agriculture and investment provisions of the TPP would likely encourage deforestation to make way for massive palm oil plantations and other forms of corporate farming. Climate measures are also at risk. A wide array of energy policies could be subject to challenge under the TPP investment chapter – even decisions to thwart foreign oil pipeline investments in the U.S. like Keystone XL. In the same way, efforts to block fossil fuel export terminals in the U.S. might be challenged before business-friendly tribunals at the World Bank or the Permanent Court of Arbitration at The Hague.

### **Trade policies: it's about so much more than trade**

The root problem is that the bulk of the TPP text has far less to do with trade policy per se and much more to do with limiting the role of government as it regulates global corporations.

[Prior to 1994, trade agreements](#) dealt primarily with issues of discrimination against foreign imports in the form of tariffs, quotas, customs duties and other “at the border” measures. And, like most international agreements they were enforced primarily by diplomatic suasion.

The post-1994 agreements, starting with the NAFTA and WTO agreements up to and including the TPP, deal not only with “at the border” discrimination, but also impose rules related to government regulation, taxation, purchasing and economic development policies that are regarded as non-tariff barriers to trade by the drafters of the agreements.

These TPP rules related to non-tariff barriers to trade seek to encourage international commerce by promoting deregulation, [expansion of property rights](#), and principles of what might be described as market fundamentalism. In other words, the agreements regulate governments – [based on the assumption that government stands in the way of global prosperity that will result from relatively unfettered markets and capital accumulation](#).

For example, a [leaked version](#) of the [TPP chapter on intellectual property](#) provides international legal protections for patents on plants and animals, giving corporations monopolies over the use of parts of the genetic code that are part of our natural and human heritage. What does that have to do with any common sense definition of trade policy?

In addition, the TPP and other post-1994 agreements can be effectively enforced through retaliatory trade sanctions or in the case of investment chapters by uncapped awards of money damages.

For example, La Oroya, Peru is [one of ten most polluted places](#) on earth. Renco, a U.S. company, has repeatedly failed to meet its contractual and legal deadlines to clean up the [pollution caused by its metallic smelter](#) at La Oroya. [Renco has sued Peru](#) before an international investment tribunal, [seeking \\$800 million in damages](#) for the cost of complying with Peru's environmental and mining laws.

In short, the TPP like other post-1994 trade agreements is intended to perform a function that is fundamentally constitutional in nature: it limits the powers of government in environmental and other policy areas.

We don't need a constitution for the Pacific economy of the kind contemplated by the TPP. And, we have a good chance to "derail" it, if public opinion forces the [release of the secret negotiating text](#) – then the public and parliaments of the region can make an informed choice about its merits.

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