



The Trans-Pacific Partnership is great for elites. Is it good for anyone else?

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In 2011, Australia enacted a tough new anti-smoking law that requires cigarette companies to distribute their wares in plain green packages. Anti-smoking activists see Australia's law as a model for the world. They hope that replacing logos with graphic health warnings will make them less appealing to consumers, especially minors.

Naturally, tobacco companies hated the law. And they found a surprising way to fight back: they persuaded governments in Ukraine and Honduras to file complaints with the World Trade Organization, alleging that the new regulations violated global trade rules.

The case is ongoing, and we don't know how the WTO will rule. But this dispute comes up over and over again in debates about the Trans-Pacific Partnership, a massive new trade deal that is expected to be completed in the next few months. The Obama administration says the deal will expand global trade and bolster America's leadership in Asia. But critics say the treaty will lead to a lot more disputes like the one in Australia, where powerful interest groups try to use trade rules to overrule democratically elected governments.

The TPP covers a bewildering range of topics. In addition to conventional trade issues like tariff rates, it includes language on labor rights, environmental laws, copyright and patent protections, e-commerce, state-owned enterprises, corruption, and government procurement.

Trade deals like the TPP have grown so complex because the global trade community has figured out how to solve a problem that has bedeviled philosophers and political leaders for centuries: how to craft international agreements with teeth. The WTO's dispute-settlement process, which serves as a model for the TPP, puts pressure on countries to actually keep the promises they make in trade deals. That's why everyone with an agenda — wealthy investors,

drug companies, labor unions, environmental groups, and so on — is scrambling to get on the bandwagon.

But the complex, secretive, and anti-democratic way the TPP is being crafted rubs a lot of people the wrong way. The agreement will have profound and long-lasting effects on countries that sign on, yet voters in those countries won't even be allowed to see the text until negotiations are over and it's too late to make changes. No wonder so many groups — the AFL-CIO, civil liberties groups like the Electronic Frontier Foundation, and even the free traders at the Cato Institute — have been raising concerns about it.

The Roquefort war

Most people weren't paying attention when the World Trade Organization came into existence on January 1, 1995. But French cheese producers certainly noticed in 1999, when the United States suddenly slapped a 100 percent duty on Roquefort cheese. Other European delicacies, including Dijon mustard, French chocolate, and truffles, were also targeted in the US action.

The higher tariffs were authorized as part of the WTO's dispute process. Since the 1980s, Europe has banned the sale of hormone-treated beef, which is common in the United States. In a 1996 WTO complaint, the US charged that this law violated the EU's trade commitments. The WTO panel agreed with the United States, and authorized the United States to retaliate by slapping higher taxes on selected European products.

Like all WTO sanctions, the goal of these higher duties was to pressure European decision-makers to change the law. But the move also precipitated anger against the United States and the WTO. Shortly after the Roquefort tax went into effect, a French sheep farmer named José Bové retaliated by vandalizing a McDonald's that was under construction near his farm. The protest earned him a short prison sentence, but it also made him a global icon in the fight against the WTO.

The EU's hormone-beef case and Australia's cigarette labeling case are colorful disputes that have naturally gotten a lot of attention from the press. But it's important to note that they're not typical WTO cases. Most WTO disputes focus on narrow, technical questions of trade policy. For example, the EU recently complained that the way Washington state gives tax breaks to aircraft manufacturers violates international trade rules.

The EU felt so strongly about hormone-treated beef that it refused to change its law for more than a decade — even after the Bush administration jacked up the Roquefort duty to 300 percent in 2009. But that's unusual. Most of the time, the threat of retaliatory sanctions gets results. Most countries — even powerful countries like the US or the EU's member states — comply with WTO rulings rather than risk a backlash from domestic industries that could be harmed by trade sanctions.

What makes trade deals different: they're actually enforceable

The robust enforceability of trade agreements is unusual. For example, while the Kyoto protocols to reduce greenhouse gases had penalties for noncompliance, countries could just withdraw from the treaty to avoid them — as Canada did in 2011. This is harder to do in a trade treaty, since withdrawing would mean losing access to foreign markets. So if a country makes a promise in the TPP and doesn't follow through, other countries will have an effective way to pressure them to comply.

Simon Lester, a trade expert at the Cato Institute (where I was a staff writer from 2003 to 2005), points to labor law as an example. Almost every country on Earth is a member of the International Labor Organization, a United Nations body that seeks to protect workers' collective bargaining rights. Much like the WTO, the ILO investigates complaints about countries violating ILO rules. The problem is that ILO rulings are basically toothless. The ILO can say a country has violated worker rights, but it can't do much about it.

So the American labor movement has pushed to incorporate labor rules into trade treaties. Labor groups got labor rules included in the 2005 CAFTA-DR agreement between the United States, the Dominican Republic, and several Central American countries. Celeste Drake of the AFL-CIO believes that was a step in the right direction, but she argues that CAFTA-DR still gives governments too much room to drag their feet when they get labor rights complaints. For example, a 2008 United States complaint about labor rights violations in Guatemala still hasn't been resolved seven years later. Drake wants stronger labor rights language included in the TPP, with strict time limits for governments to respond to allegations of labor rights violations.

You can see this same pattern in other areas of the law. Hollywood wants to extend copyright protection to the life of the author plus 70 years. Pharmaceutical companies want to make it harder to introduce generic versions of brand-name drugs. Environmental groups want stronger environmental protections. International investors want better ways to challenge alleged government expropriation of their investments.

And they all see the TPP as the perfect vehicle for doing that. If a country fails to live up to its commitments under the TPP, it can be hauled before a TPP dispute-settlement panel and — if it loses — face trade sanctions. Which means countries are likely to actually comply with their commitments — something that isn't necessarily true of other types of international agreements.

Big Pharma's campaign to raise drug prices around the world

The pharmaceutical industry was a pioneer in using trade agreements for purposes that have little to do with facilitating trade. In the 1980s, drug companies were frustrated that permissive patent laws in developing countries such as Brazil and India were allowing the production of generic versions of many of their drugs. Complaints to the World Intellectual Property Organization, which had jurisdiction over patent issues, didn't have much effect.

So the pharmaceutical industry began lobbying to incorporate patent rules into trade deals. Their efforts paid off in 1994, when WTO countries ratified the Trade-Related Aspects of Intellectual Property Rights agreement. It set minimum standards for patent protections, and allowed the use of the WTO's dispute-settlement mechanism to punish countries that didn't provide stronger patent protections.

But the industry wasn't satisfied. Over the last two decades, as the United States has negotiated a variety of bilateral and regional trade deals, pharmaceutical companies have pushed to require countries to adopt ever more industry-friendly laws.

Not everyone thinks that's been a good thing. One of the industry's most energetic antagonists is Jamie Love, who directs the small nonprofit organization Knowledge Ecology International. Love believes trade deals have jacked up the price of prescription medications, making them less affordable for many people in the developed world and totally inaccessible to millions of people in developing countries. And he says the TPP could make things even worse.

One example has to do with the rules for regulatory approval of complex drugs known as biologics. Before these drugs can be introduced to the market, the Food and Drug administration requires drug-makers to prove they are safe and effective.

Often, the data from one drug's clinical trials is useful to other companies wanting to introduce competing, biologically similar drugs. But under a controversial US law, competing drug manufacturers have to wait 12 years before they can use this data in their own applications. To introduce competing drugs before then, companies have to perform their own set of redundant clinical trials. The higher cost of bringing drugs to market leads to less competition and higher prices.

The Obama administration seems to doubt that 12 years of data exclusivity are needed to reward the makers of new drugs. The president's 2016 budget proposed reducing the exclusivity period from 12 years to seven. Yet under pressure from industry lobbyists and their allies in Congress, Obama's trade negotiators are reportedly pushing for language requiring 12 years of exclusivity.

How industry groups shape the US trade agenda

Why would Obama's trade negotiators be pushing for 12 years of exclusivity even though the president's own budget advocates reducing the period of exclusivity to seven years? The office of the United States Trade Representative (USTR) did not respond to multiple requests for comment. But critics such as Love have suggested that close ties between USTR and industry groups have a big influence on USTR's priorities.

In a 2013 story, I identified a dozen examples over the last 15 years where people had moved between USTR and industry groups that favored stronger patent or copyright protections —

including seven who worked for pharmaceutical or medical device companies and also spent time at USTR.

Critics say these close ties help explain why USTR seems to have such an industry-friendly view on copyright and patent issues. As Love put it to me in 2013: "What's the next job that everyone at USTR has? It's working for some industry trade group."

To be clear, there's not necessarily anything unethical going on here. Government officials have a right to take jobs in the private sector, and it's not surprising that companies with interests in trade policy would hire USTR veterans. But at a minimum, the many close ties between USTR and industry groups have influenced the culture of the agency. USTR officials and their industry allies share a common worldview — one in which the interests of certain American industries are nearly synonymous with the interests of the United States as a whole.

People with opposing points of view — for example, the many people in academia and public interest organizations who believe excessive copyright and patent protection has been bad for American consumers — feel marginalized.

Trade liberalization has modest but real benefits

In the past, debates about trade deals have mostly been about trade. Ross Perot, for example, famously warned in 1992 about a "giant sucking sound" of jobs moving to Mexico if the US signed the North American Free Trade Agreement. In contrast, debates over the TPP mostly haven't focused on its trade provisions.

That's partly because even advocates of the treaty acknowledge that the economic effects of TPP's trade provisions would be modest. It's difficult to estimate the economic impact of the TPP's trade provisions, because we don't know exactly what's in the deal. But one of the most widely cited estimates finds that TPP would add about \$77 billion to US incomes in 2025. That's less than half of 1 percent of current US incomes.

"This is not going to dramatically going to change our lives overnight," Petri says. "We're a very big economy, so anything compared to the size of the economy is going to be small in percentage term."

Petri hopes the TPP will serve as a blueprint for future trade deals that include other big economies, such as the European Union and China. In that case, he says, the economic effects could be several times as large, with annual incomes increasing by as much as 2 percent of GDP.

A big reason for the deal's modest impact is that trade barriers are already low. There are a few politically sensitive markets, such as agriculture, where significant trade restrictions remain. But previous trade deals have removed so many restrictions that there just isn't much room for further progress.

How the TPP empowers elites

As the opportunities for trade liberalization have dwindled, the nature of trade agreements has shifted. They're no longer just about removing barriers to trade. They've become a mechanism for setting global economic rules more generally.

This trend is alarming to Simon Lester, a free trader at the Cato Institute. "We've added in these new issues that I'm skeptical of," he says. "It's not clear what the benefits are, and they cause a lot of controversy."

And this system for setting global rules has some serious defects. We expect the laws that govern our economic lives will be made in a transparent, representative, and accountable fashion. The TPP negotiation process is none of these — it's secretive, it's dominated by powerful insiders, and it provides little opportunity for public input.

The Obama administration argues that it's important for TPP to succeed so that the United States — not China — gets to shape the rules that govern trade across the Pacific. But this argument only makes sense if you believe US negotiators are taking positions that are in the broad interests of the American public. If, as critics contend, USTR's agenda is heavily tilted toward the interests of a few well-connected interest groups, then the deal may not be good for America at all.