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# TRANS-PACIFIC PARTNERSHIP—IS IT REALLY “NAFTA ON STEROIDS?”

Natalie Sears\*

## I. TRANS-PACIFIC PARTNERSHIP—IS IT THE NEW NAFTA?

**W**ILL history repeat itself? That is the question many critics of the newest free trade agreement, the Trans-Pacific Partnership (TPP), are asking. The Office of the U.S. Trade Representative touts that the TPP is an ambitious, 21st century trade agreement that the United States is negotiating with eleven other countries throughout the Asia-Pacific region.<sup>1</sup> The Office of the U.S. Trade Representative further claims it will unlock opportunities for American workers, families, businesses, and ranchers because of access to growing markets.<sup>2</sup>

Along with that claim, the government’s promise to eliminate tariffs, other barriers to goods and services trade, and investments with these eleven other countries sounds exactly like the promises made twenty years ago when the North American Free Trade Agreement (NAFTA) was implemented.<sup>3</sup> Critics fear that history will repeat itself after the TPP is passed and the negative economic effects we have seen since NAFTA will be magnified with the TPP.<sup>4</sup>

## II. WHAT IS THE TRANS-PACIFIC PARTNERSHIP?

### A. NOT YOUR AVERAGE FREE TRADE AGREEMENT

Negotiations surrounding the TPP began in 2003 and continue today.<sup>5</sup> Although that amounts to twelve years’ worth of negotiating, many U.S. citizens are unfamiliar with the TPP because the press coverage has been minimal and the government has yet to release a single text or negotiat-

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1. *Overview of the Trans Pacific Partnership*, OFFICE OF THE U.S. TRADE REPRESENTATIVE, <https://ustr.gov/tpp/overview-of-the-TPP> (last visited Feb. 11, 2015).

2. *Id.*

3. PUB. CITIZEN’S GLOBAL TRADE WATCH, *NAFTA’S 20-YEAR LEGACY AND THE FATE OF THE TRANS-PACIFIC PARTNERSHIP 2 – 3* (Feb. 2014), available at <http://www.citizen.org/documents/NAFTA-at-20.pdf>.

4. *Id.*

5. IAN F. FERGUSSON ET AL., CONG. RESEARCH SERV., *THE TRANS-PACIFIC PARTNERSHIP (TPP) NEGOTIATIONS AND ISSUES FOR CONGRESS 1* (2015), available at <https://www.fas.org/sgp/crs/row/R42694.pdf>.

ing position to the public.<sup>6</sup> Because of the secrecy surrounding the TPP negotiations and provisions, the only information we have to rely on is what the government gives us.

The Office of the U.S. Trade Representative has provided an outline of the TPP's provisions.<sup>7</sup> The objectives of the United States in signing the TPP are reportedly to address issues such as: comprehensive market access, facilitation of production and supply chain among participating member-countries, promotion of trade/investment in innovative products and services, constant updating to accommodate new trade issues, and additional participating countries.<sup>8</sup> With regards to the legal texts said to be included in the TPP, provisions regarding issues such as competition, consumer protection, e-commerce, environment, intellectual property, legal issues, and technical barriers to trade will be addressed.<sup>9</sup>

The government states that the TPP's eliminated tariffs will benefit sectors such as agriculture and textiles by removing fees associated with these products' exportation.<sup>10</sup> For example, in Malaysia, the U.S. poultry faces a 40 percent tariff, and in Vietnam, U.S. auto parts face a 27 percent tariff.<sup>11</sup> Both of these, and many more, will be eliminated after the TPP's implementation.<sup>12</sup>

## B. HOW DOES THE TPP COMPARE TO NAFTA?

### 1. *The TPP Expands NAFTA's Reach*

Although no one outside of the negotiating parties has access to the specific text of the TPP, the government has provided basic provisions to be included that show an immense similarity to NAFTA.<sup>13</sup> In addition, portions of the TPP have been leaked to the public and those seen show an actual expansion from NAFTA's framework and authority.<sup>14</sup>

The TPP, similar to NAFTA, will reportedly cover all aspects of commercial relations among the TPP countries.<sup>15</sup> But the expansion in TPP is evident in its procedural practices. When NAFTA was implemented in 1994, the agreed participants were limited to the United States, Canada,

6. *The Trans-Pacific Partnership Agreement*, PUB. KNOWLEDGE, <http://tppinfo.org/> (last visited Feb. 11, 2015).

7. *Outlines of TPP*, OFF. OF THE U.S. TRADE REPRESENTATIVE, <https://ustr.gov/tpp/outlines-of-tpp> (last visited Feb. 11, 2015).

8. *TPP Issue-by-Issue Information Center*, OFF. U.S. TRADE REPRESENTATIVE, <https://ustr.gov/trade-agreements/free-trade-agreements/trans-pacific-partnership/tpp-issue-issue-negotiating-objectives> (last visited Feb. 11, 2015).

9. *Id.*

10. *Trade in Goods*, OFF. U.S. TRADE REPRESENTATIVE, <https://ustr.gov/trade-agreements/free-trade-agreements/trans-pacific-partnership/tpp-chapter-chapter-negotiating-0> (last visited Feb. 11, 2015).

11. *Id.*

12. *Id.*

13. PUBLIC CITIZEN'S GLOBAL TRADE WATCH, *supra* note 3, at 2.

14. *Id.*

15. *See Outlines of TPP*, *supra* note 7.

and Mexico.<sup>16</sup> The TPP, however, may be the last treaty Washington ever writes because it is leaving the door open to any and all future willing participants.<sup>17</sup> Although the TPP currently includes the United States and eleven other countries, the number of participants could potentially grow even after the TPP has been signed and implemented for years.<sup>18</sup>

In addition to the expansion on the number of participants, the TPP also plans to broaden the Investor-State Dispute Resolution provision found in NAFTA.<sup>19</sup> Currently, NAFTA provides a private tribunal for foreign investors to resolve their issues with domestic governmental regulations.<sup>20</sup> In the case that investors successfully claim these regulations interfere with their foreign investment, they can seek damages from the government for lost profits and economic harm.<sup>21</sup>

The purpose of these investor-state arbitrations is to encourage foreign investment among the participating countries. Criticisms of the current investor-state dispute resolution procedure found in NAFTA argue that an expanded version in the TPP would only undermine governments' authority to procure regulations in accordance with the safety of its own citizens.<sup>22</sup> Many worry that these investor-state arbitrations favor corporations that invest in foreign countries while enabling them to sue governments outside of their own domestic court systems.<sup>23</sup>

When evaluating the amount of settlements resolved in favor of foreign investors, it is easy to see that the criticisms have great merit. Since NAFTA's implementation, governments have been forced to pay corporations more than \$350 million following suits against matters like toxic bans, land-use policies, and forestry rules.<sup>24</sup> Under NAFTA, there were only three governments and their accompanying foreign investors to worry about. When we consider the effect of twelve governments and thousands of foreign investors filing claims under investor-state arbitration provisions, the amount of damages facing the governments could easily rise into the billions.

## 2. *Why is the TPP necessary?*

Many of the countries currently in negotiations regarding the TPP al-

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16. M. ANGELES VILLARREAL & IAN F. FERGUSSON, CONGRESSIONAL RESEARCH SERVICE NAFTA AT 20: OVERVIEW AND TRADE EFFECTS 1 (2014), available at <https://www.fas.org/sgp/crs/row/R42965.pdf>.

17. Lori Wallach, *NAFTA on Steroids*, NATION (June 27, 2012), available at <http://www.thenation.com/article/168627/nafta-steroids#>.

18. *Id.*

19. *Id.*

20. *NAFTA Investor-State Arbitrations*, U.S. DEP'T ST., <http://www.state.gov/s/l/c3439.htm> (last visited Feb. 12, 2015).

21. *Id.*

22. See Wallach, *supra* note 17.

23. *Id.*

24. See generally *Table of Foreign Investor-State Cases and Claims Under NAFTA and Other U.S. "Trade" Deals*, PUB. CITIZEN (Feb. 2014), <http://www.citizen.org/documents/investor-state-chart1.pdf>.

ready have free-trade agreements with the United States.<sup>25</sup> So why are so many countries getting on board with the TPP? It could be the expansive access to new markets and favorable investment incentives. In reality, it appears that the countries aren't actually jumping on board with all of the United States' recommended provisions after all.<sup>26</sup>

Australia announced that it would not submit to the parallel court system found in NAFTA's investor-state dispute resolution provision.<sup>27</sup> New Zealand rejected a U.S. proposal to allow pharmaceutical companies to challenge their government medicine regulations' pricing decisions.<sup>28</sup> In addition, every TPP participating country rejected the U.S. proposal to extend drug patent monopolies.<sup>29</sup> Unlike many of the other countries' negotiating teams, the U.S. advisory members include many corporate executives that are reaching for provisions similar to those rejected by the participating countries in the hopes of gaining every advantage they can when sending their business to another country.<sup>30</sup>

Many TPP opponents contemplate that because most of the tariffs between participating countries are already low, the TPP's purpose must be to create regulations to favor corporate practices among the countries.<sup>31</sup> One of the leaked portions of the TPP revealed that it is trying to strengthen patents and related restrictions on selling drugs, which would result in increased drug prices.<sup>32</sup> But because the negotiating process has been so secretive, people can only hypothesize what other provisions, besides those governing free trade, the TPP will contain.<sup>33</sup>

### C. OPPONENTS WORRY THE TRANS-PACIFIC PARTNERSHIP IS "NAFTA ON STEROIDS"

In addition to expansive provisions, the TPP is open to any country's participation, even after it has been signed and put into practice. Scholars worry that the TPP's plan to expand on NAFTA's framework could be troublesome for countries that can't keep up with increased economic pressures, resulting in the crisis seen in Mexico today.<sup>34</sup>

When NAFTA was originally negotiated, it was seen as an experi-

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25. *Trans-Pacific Partnership and all free trade deals help the United States*, WASHINGTON POST (Jan. 16, 2014), available at [http://www.washingtonpost.com/opinions/trans-pacific-partnership-and-all-free-trade-deals-help-the-united-states/2014/01/16/c595da66-7ef5-11e3-93c1-0e888170b723\\_story.html](http://www.washingtonpost.com/opinions/trans-pacific-partnership-and-all-free-trade-deals-help-the-united-states/2014/01/16/c595da66-7ef5-11e3-93c1-0e888170b723_story.html).

26. See Wallach, *supra* note 17.

27. *Id.*

28. *Id.*

29. *Id.*

30. *Trans-Pacific Partnership (TPP): Job Loss, Lower Wages and Higher Drug Prices*, PUB. CITIZEN, <http://www.citizen.org/TPP> (last visited May 3, 2015).

31. Dean Baker, *The Trans-Pacific Partnership: Warnings From NAFTA*, HUFFINGTON POST (Jan. 20, 2014), [http://www.huffingtonpost.com/dean-baker/the-trans-pacific-partner\\_b\\_4633675.html](http://www.huffingtonpost.com/dean-baker/the-trans-pacific-partner_b_4633675.html).

32. *Id.*

33. *Id.*

34. *Id.*

ment.<sup>35</sup> NAFTA was a first of its kind in trade agreements, and the U.S. government made claims of economic and job growth that have yet to be seen in our country.<sup>36</sup> In addition, since NAFTA, other trade agreements have adopted its framework and seen their own negative effects.<sup>37</sup> For example, the original U.S.-Korea Free Trade Agreement was entered into in 2007 and re-formulated in 2011.<sup>38</sup> Since its inception, there has been a “decline in U.S. exports to Korea”, but “a rise in imports from Korea.”<sup>39</sup> The U.S. monthly trade deficit with Korea has increased 49 percent compared to the years before the U.S.-Korea Free Trade Agreement was signed.<sup>40</sup> These losses equate to more than lost exports—they translate into thousands of lost jobs for American workers.<sup>41</sup>

The World Bank released reports that NAFTA led to rapid growth in Mexico, but the Center for Economic Policy and Research quickly disclaimed their numbers as misleading because developing countries, like Mexico, should have much faster GDP growth rates than rich countries.<sup>42</sup> In fact, Mexico had the second slowest growth of any Latin American country since NAFTA was implemented twenty years ago.<sup>43</sup> The middle class of Mexico has reportedly grown, but the poverty population still remains high, equating to between one-fourth and one-half of the entire Mexican population.<sup>44</sup> In addition, wages in Mexico have now dropped “below pre-NAFTA levels as price increases for basic consumer goods” exceed wage increases.<sup>45</sup>

NAFTA, rather than creating the hundreds of thousands of jobs proponents believed it would, has contributed to a huge trade deficit with Mexico and Canada.<sup>46</sup> In 2004, only ten years after NAFTA was implemented, one million jobs were estimated to have been lost because of U.S. firms embracing NAFTA’s foreign investor privileges.<sup>47</sup> More than 845,000 additional jobs have been lost from the transfer of U.S. production plants to Canada and Mexico.<sup>48</sup>

35. PUB. CITIZEN’S GLOBAL TRADE WATCH, *supra* note 3, at 2.

36. *Id.*

37. *Id.* at 3.

38. *U.S.-Korea Free Trade Agreement*, OFF. OF THE U.S. TRADE REPRESENTATIVE, <http://www.ustr.gov/trade-agreements/free-trade-agreements/korus-fta> (last visited Feb. 11, 2015).

39. PUB. CITIZEN’S GLOBAL TRADE WATCH, *supra* note 3, at 3.

40. *Id.*

41. *Id.*

42. MARK WEISBROT, ET. AL., *GETTING MEXICO TO GROW WITH NAFTA: THE WORLD BANK’S ANALYSIS 4* (2004), available at [http://www.cepr.net/documents/publications/nafta\\_2004\\_10.pdf](http://www.cepr.net/documents/publications/nafta_2004_10.pdf).

43. Baker, *supra* note 31.

44. William Booth and Nick Miroff, *Mexico’s middle class is becoming its majority*, WASHINGTON POST (Mar. 17, 2012), [http://www.washingtonpost.com/world/mexicos-middle-class-is-becoming-its-majority/2012/03/14/gIQA9R0KJS\\_story.html](http://www.washingtonpost.com/world/mexicos-middle-class-is-becoming-its-majority/2012/03/14/gIQA9R0KJS_story.html).

45. PUB. CITIZEN’S GLOBAL TRADE WATCH, *supra* note 3, at 5.

46. *Id.* at 3.

47. *Id.*

48. *Id.*

If the facts do not convince us that an expanded version of NAFTA would be a bad idea, then the public consensus agreeing with that notion should. In a 2012 Angus Reid Public Opinion Poll, 53 percent of Americans agreed that the “United States should ‘do whatever is necessary’ to ‘renegotiate’ or ‘leave’ NAFTA.”<sup>49</sup> This was the popular vote among all U.S. citizens—no matter what political party.<sup>50</sup> Today, we face the challenge of the TPP, an expanded version of NAFTA that has much farther-reaching implications. Not as many citizens know about the TPP because the government’s negotiations with participating countries have been very secretive and the media has been limited in its press coverage.<sup>51</sup> When there is media coverage, the public outlets are primarily praising its objectives, similar to the way in which it portrayed NAFTA during its adoption in 1994.

But some citizens are aware of the TPP and the majority of those that know about it do not support it. In 2014, a poll by Hart Research Associates and Chesapeake Beach Consulting reported that 62 percent of U.S. voters opposed Fast Tracking the TPP.<sup>52</sup> To fast track a trade agreement means to allow the President of the United States to negotiate international agreements that Congress can approve or disapprove but cannot amend whatsoever.<sup>53</sup> Only 28 percent of U.S. voters were in favor of Fast Tracking this agreement, proving that the majority of those informed citizens aware of the TPP and its contents do not want to see it immediately come to fruition.<sup>54</sup>

#### D. EFFORTS TO STOP THE TRANS-PACIFIC PARTNERSHIP AGREEMENT

Although the government is trying to keep the contents of the TPP covered up until negotiations are final, many people have already made up their minds about this giant free trade agreement.<sup>55</sup> Efforts all across America are being made to inform citizens about the minimal information we do have about it because many worry that it will be a NAFTA repeat.<sup>56</sup> Many people fear corporate and “political leaders of the Pacific Rim nations” are using the TPP to turn the regions into a “giant privatized corporate lake.”<sup>57</sup>

Multiple websites have been made in an effort to inform, criticize, and outright halt the TPP’s progress and negotiations.<sup>58</sup> For example, one movement, called “STOP TPP” invites fellow citizens to inform others about what is wrong with the TPP and to join them “march[ing] in the

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49. *Id.* at 5–6.

50. *Id.* at 6.

51. *The Trans-Pacific Partnership Agreement*, *supra* note 6.

52. PUB. CITIZEN’S GLOBAL TRADE WATCH, *supra* note 3, at 6.

53. *Id.* at 3.

54. *Id.* at 6.

55. See *Stop TPP*, STOP TTP, <http://stoptpp.org/> (last visited Feb. 11, 2015).

56. *Id.*

57. *The Call to Action*, STOP TPP, <http://stoptpp.org/the-call-to-action/> (last visited Feb. 11, 2015).

58. *Stop TPP*, *supra* note 55.

streets, with pots and pans, and banners and signs.”<sup>59</sup> This group claims that the TPP would “create a super-treaty which would jeopardize the sovereignty of the nations involved by giving that power to large corporations like Wal-Mart, Monsanto, [and] Goldman Sachs.”<sup>60</sup> Another website, called “Flush the TPP!” urges citizens to take a pledge to oppose the TPP and reach out to local senators and representatives in hopes of gaining their own support as well.<sup>61</sup>

It seems as though the efforts to gain political support has been somewhat fruitful.<sup>62</sup> Senator Elizabeth Warren (D-MA), Representative Alan Grayson (D-FL), Representative Michelle Bachman (R-MN), and Representative Walter Jones (R-NC) have all expressed opposition to the Fast Track of the TPP and seek the text’s immediate release.<sup>63</sup> Senator Warren wrote a letter to the United States Trade Representative, Ron Kirk, and stated that “if transparency would lead to widespread public opposition to a trade agreement then that trade agreement should not be the policy of the United States.”<sup>64</sup> Many TPP opponents are hoping that a cross-partisan coalition can stop its implementation, similar to the fourteen other trade agreements stopped by this method within the past ten years.<sup>65</sup>

Public opposition to the TPP has not been found only in the United States.<sup>66</sup> Other demonstrations have been seen in Japan and Malaysia, while the lead TPP negotiator in Chile resigned due to his concern that the agreement would “restrict Chile’s ability to shape public policies, control financial institutions and address issues of health, education and development.”<sup>67</sup>

#### E. WHAT IS TO BECOME OF THE TRANS-PACIFIC PARTNERSHIP?

So the question remains—will history repeat itself? This is the question many scholars, protestors, and even petitioners of the Trans-Pacific Partnership are asking themselves. The government continues to reassure citizens and participating countries that the agreement is an ambitious, 21st century trade agreement that the United States is negotiating with eleven other countries throughout the Asia-Pacific region.<sup>68</sup> Other

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59. *Id.*

60. *The Facts*, STOP TPP, <http://stoptpp.org/thefacts/> (last visited Oct. 17, 2014).

61. *Stop the ‘Fast Track’ Train!*, FLUSH THE TPP, <http://www.flushthetpp.org/> (last visited Feb. 11, 2015).

62. Kevin Zeese, *Protest against the Trans-Pacific Partnership. Secret Negotiations behind Closed Doors*, GLOBAL RES. (Sept. 29, 2013), <http://www.globalresearch.ca/protest-against-the-trans-pacific-partnership-tpp-secret-negotiations-behind-closed-doors/5352012>.

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

68. *See The United States in the Trans-Pacific Partnership*, OFF. OF THE U.S. TRADE REPRESENTATIVE, <https://ustr.gov/about-us/policy-offices/press-office/fact-sheets/2011/november/united-states-trans-pacific-partnership> (last visited Apr. 26, 2015).



government officials praise its job-creating benefits.<sup>69</sup>

But many people question the government's claims when they have seen the twenty-year effect of the North American Free Trade Agreement, which has brought increased illegal immigration and lost jobs. Promises made by proponents regarding the TPP sound very similar to those issued by the government twenty years ago. Critics believe that history will only repeat itself with the TPP, and fear that due to the high number of participating countries involved, the negative effects of its implementation will be witnessed on an even larger scale. Only time can tell this story.

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69. See generally *Trans-Pacific Partnership*, OFF. OF THE U.S. TRADE REPRESENTATIVE, <http://www.ustr.gov/tpp> (last visited Feb. 11, 2015).