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## ***Latin American Perspectives on the Trans-Pacific Partnership (TPP)***

Leading up to the signing of the Trans-Pacific Partnership Agreement, civil society organizations from the Pacific formed a network of Indigenous communities, environmental, human rights, labor, and public health organizations and small agricultural producers to analyze the text of the TPP.

Authors from Mexico, Chile, Peru, the US, Canada, Australia and New Zealand contributed to the Mexican newspaper *La Jornada del Campo*, Suplemento Number 100, January 16, 2016. These articles offer a Latin American perspective on the TPP. The US, Mexico and Canada have 20 years' experience with the North American Free Trade Agreement (NAFTA) on which the TPP was based.

<http://www.jornada.unam.mx/2016/01/16/delcampo.html>

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Kathryn Lehman [k.lehman@auckland.ac.nz](mailto:k.lehman@auckland.ac.nz) and Dominic Hartnett [dhar121@aucklanduni.ac.nz](mailto:dhar121@aucklanduni.ac.nz)

Translations by Gwyn Fox, Jeanne Guthrie, Dominic Hartnett, Kathryn Lehman, Jennifer Park, Cristina Parra and Cathy Wright. See *Globalising Aotearoa* (2015) <https://www.youtube.com/watch?v=26HfcVnruPM> by Lillian Hanly for perspectives on how this treaty affects Indigenous rights and citizen's rights.

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# **Is the TPP a mega-NAFTA that will devastate Mexico?**

Daniel Villafuerte Solís

The Centre for Advanced Studies in Mexico and Central America (CESMECA)

[gasoda\\_2000@yahoo.com.mx](mailto:gasoda_2000@yahoo.com.mx)

In 2014, Mexican President Enrique Peña Nieto celebrated the 99th anniversary of the signing of the 1915 Agrarian Law, stating that he would push for a “profound reform of rural Mexico”, which was being formulated and would soon be sent to Congress.

The ink was scarcely dry on the so-called structural reforms proposed for education, budget, energy, telecommunications and other areas under the Pact for Mexico. However, two years after the announcement of this “profound reform” nothing has changed in rural Mexico. Why is this? One plausible explanation may be the political climate produced by the package of structural reforms. Any additional reform that deals with such a sensitive topic directly affecting 7 million agricultural producers might not be considered to be in “the state’s interest”.

However, this was occurring at the same time as the last phase of negotiations of the Trans-Pacific Partnership agreement (TPP) which after 5 years of negotiations was approved on October 5, 2015 in Atlanta, Georgia, USA. So is the reform for rural Mexico hidden in the TPP?

Various analysts have called the TPP the most devastating agreement possible for economies like Mexico, worse than the North American Free Trade Agreement (NAFTA) that destroyed the large sector of rural farmers and small to medium producers, many of whom are now in the United States working as undocumented day laborers. The TPP is an agreement involving 12 countries (Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, Vietnam and the United States). The majority of these countries are more economically competitive than Mexico, putting the country at a disadvantage in selling goods to the United States.

It is necessary to read the 30 chapters that make up the TPP to determine the impacts it will have on the less competitive countries, especially Mexico. However, we can now begin to understand some of these impacts.

The agro-food sector, the most hard-hit by NAFTA, could suffer a new beating under the TPP. To put this into context, let us remember some figures from the Bank of Mexico: in 2014, the Mexico had a trade deficit for agro-food and agro-industrial products of US \$2.593 billion, an amount equivalent to 40 percent of the budget assigned that year to the Secretariat of Agriculture, Livestock, Rural Development, Fisheries and Food (SAGARPA).

The figures for imports by sector are frightening: between 2010 and 2014, imports of milk, dairy, eggs and honey grew by 57% totalling more than 2 billion dollars in 2014; meat and edible meat offal imports grew by 42.5% to \$4.596 billion; cereals grew by 31.6% reaching \$4.259 billion; and imports of legumes grew by 15.3%. Together, imports in these four sectors grew from \$10.751 billion to \$14.342 billion, an increase of 33.4%

With regard to milk and meat production, Mexico will face major difficulties due to the establishment of tariff free quotas when the TPP comes into force (see Appendices of Annex 2-D) enabling Australia, Brunei, Canada, Japan, New Zealand, Singapore and Vietnam to sell Mexico milk, milk powder, evaporated milk, condensed milk, butter, cheese, dairy based products, palm oil and almond oil.

As we know Australia, Canada and New Zealand are countries that farm cattle; specifically, they have well developed dairy farming sectors in comparison to the levels of production and productivity of this sector in Mexico. In the case of palm oil, Malaysia is the world leader, which will affect palm oil production in Southern Mexico, particularly Chiapas. Staple grains, particularly corn and rice will also be left unprotected.

Additionally, the TPP contains references to accessing traditional knowledge on plant varieties pertaining to genetic resources through contracts between users and providers. This issue relates to the intellectual property chapter, in particular article 18.16 that recognizes the relationship between intellectual property and traditional knowledge associated with genetic resources. This clearly involves large sections of the indigenous population living in areas of high biodiversity. This also relates to Chapter 20, on the environment, particularly article 20.18 that talks about promoting trade and investment in environmental goods and services.

In Chapter 9 on investment, articles 9.4, 9.5 and 9.6 establish national treatment for foreign investors and the most favoured nation clause which apply the principle of “treatment no less favorable than that which it accords to its own investors”. This puts Mexico at a serious disadvantage considering the asymmetries among the TPP countries. These provisions are consistent with article 9.7 on “expropriation and compensation” under which Mexico is obligated not to expropriate or nationalize a “covered investment” except when it is in the public interest, in which case due process should be followed without delay and compensation paid to market value.

These are some examples of the implications of the TPP for Mexico. There are many questions that should be answered and analyzed by the sectors involved. The TPP is a wide-ranging agreement that will reposition the United States on the global economic and geopolitical stage with specific implications for China and Russia. It will also hit the entire BRICS bloc (emerging markets) and will reconfigure regional relationships within Latin America.

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*Daniel Villafuerte Solís*

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## **Negotiated by companies, the TPP violates many rights**

Lourdes Rudiño

The secrecy surrounding both the negotiations and the content of the TPP agreement's 30 chapters, -- especially for sensitive topics such as intellectual property, subsidies and competition -- provide evidence that the TPP was negotiated among private and public corporations rather than between states. This is frightening for us because the agreement will weaken many sectors of the Mexican economy, including agriculture. It also violates basic human rights such as the right to work, to land, to health and to a healthy environment, according to Jorge Witker, PhD in Law from the Universidad Complutense of Madrid and researcher at the Institute for Legal Research at the UNAM in Mexico. He calls on senators of the Mexican Senate to study the TPP and reject it, and he believes that civil society, especially farmers should mobilize against the agreement.

Witker states that the TPP is a geopolitical instrument that proposes a bipolar framework for international trade that is clearly designed to isolate China and the BRICS countries (emerging economies) which at least offer an alternative model to the current neoliberal system. The US as a superpower is attempting to use the TPP to reestablish a unilateral approach to sensitive matters and problems that have reached a deadlock at the World Trade Organization (WTO). This occurred with The Doha Round when it incorporated demands of the emerging countries, including those favoring the environment and fewer agricultural subsidies. They put forward proposals on international trade linked to development, but these demands will likely become further weakened under the TPP.

"The fact is that when China joined the WTO in 2001, whether we like it or not, it joined with others to form the BRICS and there was a shift in the balance of power within the WTO: issues that had been raised by emerging nations rather weakly or irregularly such as a reduction of agricultural subsidies in developed nations, unfair practices and intellectual property, were incorporated into the Doha Round. In 2008 the US openly expressed its interest in joining the TPP, at that time comprising Brunei, New Zealand and Singapore, along with only one other country in the Americas, Chile. It attempted to raise these issues at the WTO but has now shifted its approach and is using the TPP to adopt a unilateral position."

**In this interview Jorge Witker**, who in the past defended pork producers against unfair US trade practices in the framework of NAFTA (North American Free Trade Agreement) analyzed the sensitive issues presented by the TPP.

**The TPP differs from the WTO Agreement on Agriculture (AoA)**, which supports discriminatory practices, such as subsidies, safeguards, tariffs, and special regimes for emerging countries. It is also differs from the European Union practice of protecting its agricultural sector in trade agreements

because the TPP absolutely ignores the relationship between the agricultural sector and food sovereignty, the use of natural resources, and wider society; the agreement text mentions agricultural products one by one: apples, milk, corn, wheat, etc., as if there were a manufactured product like televisions or refrigerators. “They are subjecting agriculture by force to traditional regulations on the trade of goods, which is an issue that has caused a huge bottleneck in negotiations at the WTO.” However, Witker adds that NAFTA had already undermined the importance of the agricultural sector, “it was the first North-South agreement that only met the needs of the North. Agriculture was practically handed over to US under NAFTA”.

Furthermore, what the TPP text proposes as good commercial practice is clearly designed to turn the market over to public and private corporations, such as the Japanese Agricultural Corporation (CAJ), (akin to Conasupo, previously run by the Mexican state), which controls all grains in Japan, and was obviously used to defend their strategic national resources, rice and wheat; the same thing happened with another state monopoly in New Zealand that controls milk. From the perspective of Mexico, the interests defended in the TPP are those of Cargill, Maseca (a corn flour and tortilla transnational) and Monsanto.

The fact is that those governments that negotiate at the WTO have allowed corporations to define terms of the TPP and therefore this agreement does not promote free competition. For example, the chapter on government purchasing requires that state owned enterprises that still exist in the TPP region must adjust to private sector thinking. The TPP talks about competition but not open competition; in no part of the text are there limits or sanctions on monopolies or oligopolies. “There is nothing about how Cargill or CAJ controls prices, or the New Zealand milk monopoly, not one word. This indicates why it was negotiated in secret.” This is why the TPP is different to the agreement Chile has with Korea, the only one in Latin America that has a clause stating that when exports come from a company that has a dominant position in the market, the host country which receives those products has the right to register complaints.

With respect to the intellectual property chapter, he emphasized that the TPP extends market exclusivity on patents to 15 years for biologics and traditional medicines. In Latin America today these patents last between 5 and 10 years, the TPP could extend them to 15 years, and after that, the owner of the patent could authorize or reject the request of those wanting to produce generics, which is absolutely absurd. “This violates human rights, the right to health. It is a huge blow to poor countries and emerging economies.”

Considering, then, that giant private corporations (almost all of which have monopolies) dominate in the agribusiness and pharmaceutical sectors, “it turns out that there will not even be good prices for consumers, and the TPP does not discuss unfair practices.”

**The TPP violates constitutional rights as well,** because it affects human rights such as the right to work, to protection, and Indigenous rights among others. For example, in the articles on “Private Rights”, the

agreement provides for the possibility that foreign investors interested in energy resources appropriate land from its rightful owners and it prevents the owners from having the right challenge these actions.

Additionally, Witker emphasized how the US has been very clear in expressing its trade interests in the TPP, which are two: agriculture, because it aims to increase its exports in this sector; and services, related to pharmaceutical laboratories, intellectual property and other matters. Manufacturing does not interest them, because they benefit if this is done by Japan and Viet Nam, the latter has 100 million people, a very low national income and slave wages. For this reason, it does not speak of value chains, but of supplies, and this implies an increase in trade in this area, which will affect Mexican producers of textiles, shoes and toys, already suffering “but with this agreement they will disappear.”

He concludes that it is expected that the TPP will advance through the approval and ratification process of the legislative bodies in the member countries, but given that the US is now in an electoral cycle, the most likely outcome is that the ratification process will be delayed until at least January of 2017, when the new president is inaugurated. Meanwhile, the Mexican Senate should study the agreement and realize that all of its implications are negative for Mexican society and therefore it should not be ratified. Civil society should also protest, especially the agricultural producers who will be the most affected by the TPP.

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*Lourdes Rudiño*

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## What is the Trans-Pacific Partnership all about?

Alejandro Villamar, Mexican Action Network on Free Trade (RMALC)

What do we call a process and political regime where a small group dominates, or concentrates the triad of legislative, executive and judicial powers? One might immediately think of the situation in Mexico today and this would not be far from what is called 'totalitarianism' or 'dictatorship'.

The Trans-Pacific Partnership Agreement can be characterized not as an opening of doors to trade in the region from which it takes its name, but as a political attempt at unrestricted monopolization and centralization of power in the region in the hands of those countries party to the agreement. It also seeks mass public support and uses modern propaganda techniques, the basic characteristics of totalitarianism and political dictatorship, now gone transnational.

The text of the Trans-Pacific Partnership was negotiated in secret by a minority of dominant transnational groups and government civil servants behind the backs of legislative representatives and of civil society. The overwhelming propaganda presents it to us as a done deal but, contradictorily insists that every state should accept it and the legislators simply ratify it.

The legal-political framework of the Trans-Pacific Partnership contains multiple regulations in its more than 6000 pages, with more than 30 Chapters and side letters (some of them not released) on what the countries party to agreement are obliged to do:

- Change laws to the liking or interest of transnational groups (not in the public interest but for private transnationals). This is noted in various chapters, including Chapters: 2. National Treatment and Market Access for Goods, 9. Investment, 15. Government Procurement, 18. Intellectual Property and 20. Environment.
- Accept the supremacy of private transnational tribunals (with judicial powers) to make rulings on disputes between foreign investors and the governments of the member states of the TPP. These tribunals will have greater powers than those of national judicial authorities, as detailed in Chapter 28 (Dispute Settlement).
- Recognize, accept and comply with the powers of the TPP Executive Commission above those of national judicial authorities. The commission is formed by ministers with the powers to execute, adapt and modify the terms of the agreement (see Chapter 27. Administrative and Institutional Rulings).

These characteristics show that the Trans-Pacific Partnership is an attack on sovereignty, that is to say, an attack on the power and right of the people to define their laws, elect and control their institutions and exercise power over their national territory. In constitutional terms it is an explicit and flagrant violation of Article 39 of the Mexican Constitution.

Moreover, from the point of view of international law, there have appeared unusually strong denunciations by special rapporteurs and experts from the United Nations (UN) in which they point out the contradiction between the nature of 'trade' treaties such as the Trans-Pacific Partnership, and the promises and obligations of governments to comply with human rights, the rights of indigenous peoples, the right to development and the commitments of the Millennium Development Goals, among others. The World Health Organization has also released a warning regarding the potential barriers for access to medicines included in the TPP (<http://goo.gl/90Xm0d>).

The overwhelming call of the rapporteurs and UN experts to ‘give priority to human rights above those of corporate profits,’ sums up an alternative political direction to fraudulent corporate trade treaties like the Trans-Pacific Partnership (<http://goo.gl/AoMsBk>).

The potentially dangerous political, economic, social and cultural impacts of the Trans-Pacific Partnership are based on previous experiences and on a current analysis of the wide ranging legal changes contained in this voluminous text that were made known to us in “The Mexican Declaration of an Emphatic NO to the TPP” (<http://goo.gl/6kD9dH>), and in the TPP, the crowning transnational strategy (<http://www.ciudadcapital.com.mx/?p=82897>).

To give just some examples of recent analyses of the potential impacts on food sovereignty, agriculture and health, the TPP would result in illegal contamination of foodstuffs by genetically modified organisms, and a new report questions the rules of food security and animal health in the TPP (<http://goo.gl/SKKbqe>).

Finally, the structure of the TPP is based on a global geopolitical strategy that aims to: 1. Overturn the rules of international law and its institutions starting with the imposition of illegitimate global regulations agreed upon by a handful of countries, and 2) Consolidate a ‘plurilateral’ attack to contain China and slow the decline of American hegemony.

For these and many other reasons the national and international coalition of opposition has grown and continues to broaden against this Trans-Pacific monster of civilizing regression.

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## **Interview with Victoria Tauli-Corpuz, United Nations Special Rapporteur on the Rights of Indigenous Peoples**

By Alejandro Parellada, Member of the International Work Group for Indigenous Affairs (IWGIA)

### **Based on the current negotiations of one of the major free trade agreements, the Trans-Pacific Partnership (TPP), what is your opinion of the impact of this type of agreement for Indigenous Peoples?**

Many international investment and free trade agreements are negotiated without taking human rights in general into consideration and without any participation from Indigenous Peoples. This is one of the main problems we face.

One of the main principles of these agreements is that they have a clause promising non-discriminatory treatment of investors, which means that you cannot discriminate between local and international investors. This entails the liberalization of all laws, in order to give companies more rights, which generally means undermining the rights of Indigenous Peoples.

In the specific case of the TPP, there was no information about the content of the negotiations, and only recently were the contents of the agreement revealed. This is an agreement for total freedom of investment, and one which generates serious threats in the area of intellectual property rights, among other things. I fear that this agreement, under the pretext of creating more jobs, will actually weaken human rights. Although we are still in the ratification stage, I can say with certainty that this agreement is a serious threat to the rights of Indigenous Peoples.

We have to keep in mind that many remaining natural resources are found in indigenous territory, either because they have traditionally protected these areas or because they are located in very remote areas. The depletion of natural resources in many countries means that they are hungry for the natural wealth found in indigenous territory. We have unfortunately seen a decline in the defence of the rights that Indigenous Peoples have to their lands, territory and natural resources, as much at a state level as at the level of international organizations. For example, although Indigenous Peoples are recognized under Convention 169 of the International Labor Organization (ILO) there is no strong program promoting this Convention that would compel States into real compliance.

### **Could you give us an example of the impacts of these agreements on Indigenous communities?**

The case of Chevron dumping fossil fuels in Ecuador is a perfect example. The Indigenous community won the case over the loss of their land due to the contamination of the soil. Although the Supreme Court ruled that it was the company's obligation to clean up the area, nothing was done, and the company alleges that it was the responsibility of the Ecuadorian state. These trade agreements totally support the rights of companies, and a state can be subjected to a lawsuit because of the measures it takes to defend human rights, protected by these trade agreements.

### **In a situation like this, what can Indigenous Peoples do?**

First of all, Indigenous Peoples have the law on their side. Both the United Nations Declaration and ILO Convention 169 establish the rights of indigenous communities to their lands and resources. In many Latin American countries the ILO Convention has been ratified and in some cases it has been incorporated into national laws. These rights are established nationally and internationally and

should be respected. Indigenous Peoples also have the right to participate in the negotiations of trade agreements that may affect their communities. At the very least, they should have the opportunity to know what is being negotiated and be able to express their opinions. However, Indigenous Peoples are not usually informed of what is happening, when they should rightly be informed about investment projects that will have an impact on their communities. The specific right to free, prior and informed consent exists so that indigenous communities will be at least consulted about these investment projects.

**What is the role of the Special Rapporteur on the Rights of Indigenous Peoples?**

I am currently working on a report about trade agreements and investments and their impact on Indigenous Peoples, giving some recommendations regarding these agreements. My goal is to analyse if these trade agreements violate or respect indigenous rights. Perhaps we'll find trade agreements that do respect them! The Rapporteur monitors violations of the rights of Indigenous Peoples. And if these violations are caused by the operations of companies under free trade agreements, I must report this, and inform the states that are involved in these types of agreements.

**As Rapporteur, you have now visited two Latin American countries: Paraguay and Honduras. What is your opinion of the situation of the Indigenous Peoples in each country?**

In Paraguay the indigenous communities are losing their lands because the government has decided that the expansion of the farming and livestock industry is their priority. Paraguay is the fourth largest producer of soy worldwide, and the fifth largest exporter of meat. This policy has direct implications on indigenous communities, as they are seeking to expand production onto indigenous lands.

In the case of Honduras, investment projects are also affecting indigenous communities, though they have never been consulted. But these situations are not unique to these countries, and in fact are occurring in many countries worldwide.

**Where will you visit next?**

We have confirmed a visit to Brazil at the beginning of 2016 and I would like to be able to visit another country in Latin America. The Mexican Congress passed a resolution to invite me, but so far, I have not received the official invitation from the government to visit the country. So, I await the invitation, and hope to visit Mexico in 2016.

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*Alejandro Parellada*

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## **The TPP, a watershed in trade that leaves the WTO behind**

Rodolfo Cruz Miramontes

Lourdes Rudiño

The Trans-Pacific Partnership TPP and another agreement around the corner being negotiated with the European Union, the Transatlantic Trade and Investment Partnership (TTIP), will be the drivers of world trade in the future, leaving the World Trade Organization (WTO) as merely a forum for dispute resolution and a study center for international trade. This event represents a watershed, just as the North American Free Trade Agreement (NAFTA) did in its own time.

Rodolfo Cruz Miramontes is a lawyer and prominent university professor, specializing in international trade, who has defended the interests of Mexican national industry in NAFTA. He expressed these sentiments in a panel discussion on the TPP last November, at the Institute for Legal Research at the Universidad Nacional Autónoma de México (IIJ-UNAM).

Specifically, he stated that if it is ratified by the member states and then implemented, the TPP will “represent a more advanced and complete new version of the forms that positive legal principles and text consider are 1) areas of free trade and customs unions, 2) a common market, and 3) the “general integration of diverse entities.”

Specifically, he outlined how the General Agreement on Tariffs and Trade (GATT) had defined the first two as exceptions in Article I.1 and the doctrine involved had only outlined the other forms of integration. However NAFTA reformed the first of these because it considered the others as subjects that Article XXIV establishes in separate relevant sections. “Now in this new Treaty, we have several more chapters that represent a new vision of international integration.”

**The TPP announces this clearly,** he stated, by noting how it constitutes a “platform for regional economic integration”, although the descriptor should be “international” rather than regional.

It is no coincidence that the United States, “whose life blood is trade” has been concerned with promoting this approach to the nations of Asia, although late in the game, just as it is not by chance that it is negotiating a different treaty with the European Union.

“As we can see, two solid platforms are being consolidated as trade blocs in each of the major oceans, and this indicates that it is not a mistaken assumption on my part to assert that the WTO ended its designated work and that it will undoubtedly continue operating in future but only as a center for the resolution of international trade disputes and various studies about world trade”. Furthermore, it confirms that for the US, the TPP constitutes much more than a simple trade association; it is a national security defense apparatus, as President Barack Obama has acknowledged.

Cruz Miramontes recalled that the Trans-Pacific Strategic Agreement, as it has been called in Spanish, or Trans-Pacific Partnership (TPP) in English closed its doors to negotiation last October 5th in Atlanta but the document that we have today is not the final copy, since it will be modified through the approval process before ratification by the member states.

**He commented on the reports published** regarding the TPP in the US, Canada and Mexico (NAFTA countries) on the day negotiations concluded.

In the US, there was a report published by the White House, which raised high expectations regarding the commercial gains for the country, and there was another report by the Office of the United States Trade Representative (USTR) which was more extensive and descriptive, and similar, or in fact identical to that presented by the Mexican Government.

The report presented in Canada is very brief and highlights the national sectors that will benefit, such as agriculture and processed foods, fish, timber, metallurgy and industrial products. It says that to achieve the anticipated benefits, several initiatives and programs should be devised to help and support production and administration of supplies to benefit the economy. Some 81% of exports of this country are destined for the TPP member states.

The White House report praises the TPP as “a high level international trade agreement that offers wide scope of action for US workers as well as US businesses, strengthening the stamp ‘made in America’ on exports, and providing higher paying jobs due to the elimination of 18,000 taxes in the form of tariffs that several countries put on products manufactured in the USA. The TPP guarantees that our farmers, ranchers, manufacturers and small businesses can successfully compete in some of the markets that are growing rapidly in the world,” quoted Cruz Miramontes.

The USTR document emphasizes three major aspects of the TPP that form the cornerstone of a 21<sup>st</sup> century international trade:

- 1) Wide-ranging access to a regulated market. Tariffs and non-tariff barriers will be substantially reduced or eliminated on all trade in goods and services covering the entire spectrum, including investments, as well as creating new opportunities and benefits for consumers, workers and businesses in the US.
- 2) A regional approach to the factors involved in trade.
- 3) Preparation to face new challenges in trade, because “The TPP promotes improvements and innovations, productivity and competition, introducing new items, including the digital economy and the role of public enterprises in the global economy, inclusive trade and a platform for regional integration.”

What is left now to learn are the detailed opinions of our authorities about the benefits that it brings to Mexico, said Cruz Miramontes.

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Lourdes Rudiño, Rodolfo Cruz Miramontes  
<http://www.jornada.unam.mx/2016/01/16/delcampo.html>*

## **The TPP: Bad news for farmers and agriculture**

Karen Hansen-Kuhn, Institute for Agriculture and Trade Policy  
[khansenuhn@iatp.org](mailto:khansenuhn@iatp.org)

After six years of contentious negotiations, the Trans-Pacific Partnership (TPP) text is complete. This was supposed to be something different – a 21<sup>st</sup> century trade agreement. Instead, the new agreement is modeled after past free trade deals that have made wildly inaccurate promises about benefits for farmers. The TPP further entrenches a system of agriculture dominated by the interests of agribusiness corporations, geared toward global markets and propped up by ineffective farm policies.

The good news – sort of-- is that after years of pressure by civil society groups, starting during the NAFTA debate, governments took some tentative steps to rein in investor-state dispute settlement, the antidemocratic private tribunal system that allows companies to sue governments over public interest laws. After heated criticism of tobacco giant Philipp Morris' suit against Australia and Uruguay's laws requiring plain packing of cigarettes, the governments agreed to allow TPP parties to carve out any rules on cigarettes from the mechanism, preventing future lawsuits along those lines. This is a significant, but small, victory. The mechanism still allows for cases like those pending now over El Salvador's mining laws, Germany's decision to phase out nuclear power, or Ecuador's insistence that oil companies clean up the environmental damage they have caused (to name just a few). The trials are still held in secret by a rotating panel of trade lawyers paid by companies. And there is still nothing to prevent cases to protect key sectors or advance public health, such as the three cases Mexico lost over its decision to restrict High Fructose Corn Syrup (for which it was compelled to pay companies \$169 million). The new limits recognize that the mechanism can be abused, but not that its fundamental purpose is to give corporations new rights over the public interest.

The bad news is that the TPP expands many of the worst features of NAFTA. Mexican farmers were devastated by the dramatic increase in corn exports from the U.S. under NAFTA. This didn't help most U.S. farmers, who were pushed to expand exports to compensate for low prices and declining public support. It led to increasing corporate concentration in agricultural production, leaving farmers with fewer options of where to buy and sell their goods, and a decline in the number of family farmers in all three NAFTA countries. This unfair market will be deepened under TPP. For example, despite massive protests by farmers, Japanese markets for rice, beef and other goods will be opened up to floods of imports.

The TPP breaks new ground on other issues. It requires countries to ratify the International Convention for the Protection of New Varieties of Plants 1991 (UPOV-91), an international treaty protecting plant breeders like Monsanto. UPOV-91 requires intellectual property protection to be provided for all plant varieties; it requires protection for 20 to 25 years; and it stops farmers and breeders from exchanging protected seeds, a common practice of farmers in many countries around the world. Previous versions of that treaty allowed family farmers to continue to save and exchange seeds, but the 1991 version referenced in TPP cuts off that possibility. Brunei, Chile, Malaysia, Mexico, and New Zealand, have not yet ratified UPOV-91, but will be required to do so under TPP.

These issues have already generated controversy in Mexico. Two years ago, the Senate considered making changes to seed laws along the lines of the requirements in UPOV-91. After heated push back

from the Sin Maiz No Hay Pais and other civil society groups, the proposal was dropped, but it's likely to come up again in the context of TPP.

Trade in agricultural biotechnology (GMOs and other new technologies like nanotechnology applications for fertilizer, or synthetic biology production of vanilla) is encouraged under TPP's market access chapter. In the past, those technologies have been dealt with in the chapter on Sanitary and Phytosanitary Standards (SPS -- plant and animal health and food safety). Moving it to market access weakens the ability to establish limits based on human or environmental health. Similarly, the SPS chapter redefines the kind of evidence needed to limit trade by requiring proof that a product poses specific health risks rather than a precautionary approach that requires that a product be proven safe before it's put on the market. In the U.S., most "scientific" evidence used in those decisions is funded by the companies seeking to commercialize the technologies. Under TPP, those companies would be allowed to keep much of that data secret, as "confidential business information," creating new obstacles to informed public debates about the safety of these new technologies.

But back to the good news. The TPP text is completed, but that doesn't mean the deal is done. Once the leaders of the 12 countries sign the agreement, the real debate begins in national legislatures. Over the last few years, civil society groups have been forced to rely on bits of leaked text, rumors from negotiators or clues from other recent trade deals. Now the full 5,000 pages of text is available online, so experts and activists can examine exactly what's been agreed to and mobilize their publics based on concrete information. In early January, more than 1,400 U.S. civil society groups published a letter to Congress demanding that TPP be rejected. This comes on the heels of a heated, drawn out debate over the summer on fast track authority in the U.S. that sharpened arguments and created new alliances. Many local food and farm groups, digital privacy, human rights, labor and other organizations that had never been involved in trade debates before are actively engaged now. The battle over TPP's ratification is only just beginning, and the final verdict is far from clear.

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*Karen Hansen-Kuhn*

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## **TPP + NAFTA = RIP Rural Mexico**

Víctor Suárez Carrera, Director of the National Association of Rural Commercialization Enterprises (ANEC) [victor.suarez@anec.org.mx](mailto:victor.suarez@anec.org.mx)

*"We can't let countries like China write the rules of the global economy"* Barack Obama (La Jornada, 6/10/2015)

On the October 5, 2015, Economy Secretary Idelfonso Guajardo announced that the negotiations of the Trans-Pacific Partnership (TPP) had been “successfully” concluded. Recently, he also reported that the meeting of heads of state to sign the agreement will be held on February 4, 2016 in New Zealand. Following the signing, the Mexican President is expected to send the signed legal text to the Senate to be ratified or rejected.

The negotiations were held in secret, behind the backs of the productive sectors, Mexican society and the Senate and as always, the Mexican government announced that “this time”, the thousandth free trade agreement would bring economic growth, wellbeing and prosperity for all.

As occurred with the NAFTA negotiations, small and medium agricultural producers and businesses did not participate in the TPP negotiations, and their demand to exclude agriculture and the farming sector from TPP was ignored. Agricultural producers called for this exclusion due the adverse results of 21 years of NAFTA, the extremely sensitive position of the sector and the strategic role that the sector plays in maintaining national security in the context of an increasingly uncertain global environment (economic stagnation as well as financial, energy, food security, climate and geopolitical crises).

The Mexican government has used the same false promises that it used almost 25 years ago to justify the benefits of signing NAFTA: “great opportunities for exporting to the largest market in the world”, “the TPP will drive growth in the sector”, “major concessions for the protection of the sector have been achieved”....Let's look at the reality of the TPP and its implications for rural Mexico.

**We remember: 21 years of NAFTA are enough.** President Peña Nieto and the Secretary of Economy are betting that collective amnesia of the public will allow them to “sell” the TPP as a “new product” which actually replicates the demagogic and broken promises made by Carlos Salinas de Gortari, Jaime Serra Puche, Pedro Aspe, Luis Téllez and Santiago Levy, among others over the last 21 years.

Unfortunately for the federal government we remember; 21 years of NAFTA are enough and as US congresswoman Marcy Kaptur declared: “NAFTA is an ocean of broken promises”. Here are some examples.

The Mexican government promised that with NAFTA growth in the farming sector would accelerate, generating well paid jobs, reducing poverty and supporting the rural population to reduce the flow of migrants to the United States. The reality is that during the 21 years of NAFTA the gross domestic

product of the agro-food sector has grown by scarcely 1.7% on average per year (see Graph 1). This growth rate is notoriously lower than that which the sector experienced during the 50 years before NAFTA came into force. NAFTA has clearly been incapable of generating well paid jobs, reducing inequality, poverty and rural migration. Between 1994 and 2010 alone more than 6 million people from rural areas were forced to leave in search of work in the United States.

The abandonment of rural Mexico due to NAFTA produced a void that was filled by organized crime. One figure illustrates this: The area of opium poppy cultivation in Mexico has increased from 5050 hectares in 1995 to 19,500 Hectares in 2009 (José Reveles, quoted in *InSight- Crime, La Jornada*, December 28, 2015).

However, it was predicted that NAFTA would produce a considerable increase in agricultural exports leading to growth in the agro-food sector. In reality the great increase in agricultural exports (16% per year on average) only resulted in a ridiculous growth rate of 1.7% per year on average for the sector. Furthermore, though agricultural exports increased under NAFTA this was already a trend during the previous 20 years and the Mexican government neglects to mention the uncontrolled imports of farming and agricultural food products. As demonstrated by the data in Graph 2, during the 21 years of NAFTA there has been a negative trade balance in agricultural and food products with the exception of years 1995 and 2015. Coincidentally, in both these years there were serious economic and financial crises.

The increase in imports of agri-food products has contributed to the collapse of the productive sectors in the rural areas, the imposition of a model of nutrition damaging to human health, the monopolization by transnationals of the Mexican agro-food system, growing food and technological dependencies, and as a result, the loss of food security and sovereignty for the population.

Another supposed benefit of NAFTA for rural Mexico was that the sugar industry would be able to access the US market thanks to the elimination of the quota system for sugar, the industry would also be allowed to put its surplus onto the US market at favorable prices. Thus far this has not happened. Recently, Secretary Guajardo made an “administrative agreement” with US refineries to export a maximum of only 1.5 million tons of Mexican sugar. It is worth recalling that the United States exports 1.5 million tons of high fructose corn syrup, that is to say, after 21 years of “free trade” the quota system is still in place.

And so on, we can continue recounting the ocean of broken promises of NAFTA.

**The TPP, US strategy and transnational capital.** Along with the Transatlantic Trade and Investment Partnership (TTIP) between the European Union and the US and The Trade In Services Agreement (TISA), the TPP forms part of the US economic and geopolitical strategy to achieve the following interrelated objectives: a) secure its extensive expansion (territorial) and intensive expansion (services, digital communication, genetics, biodiversity, etc.) for transnational capital investment; b) break with the multilateralism of the World Trade Organization (WTO) and establish unilateralism for transnational capital by fixing the rules of trade, investment and intellectual property; c) isolate and weaken the sovereign processes and alternative models of integration (Mercosur, Bank of the South, The Union of

South American Nations) promoted by South American countries with progressive governments and d) isolate and weaken the growing power of China in the Pacific Rim region.

At the “invitation” of Barack Obama, the Mexican government belatedly joined the TPP negotiations in 2011 which had started in 2005. This meant blindly accepting all of the agreements made in the previous negotiating rounds (a *sine qua non* condition for all new countries joining the TPP).

The countries party to the TPP are: The United States, Canada, Mexico, Chile, Colombia, Peru, Japan, Malaysia, Australia, Brunei, Singapore, Vietnam and New Zealand.

Of these, Mexico had no free trade or similar agreement with Australia, Brunei, Malaysia, New Zealand, Singapore or Vietnam. These countries account for 1% of Mexican exports and a trade deficit of 8.783 billion dollars (2014).

Thus, the greatest new threats and supposed opportunities for the agro-food sector would come from the aforementioned countries.

#### **What did the Mexican government “negotiate” for the agro-food sector?**

- The opening of the market to the free importation of agro-food products without exceptions.
- There will be no protections for agriculture: “Any kind of rights used to exercise special protection in accordance with the WTO Agreement on Agriculture (AoA) on the origin of agricultural goods from countries party to the agreement will not apply.”
- “Special protection” (quotas and temporary tariffs) for sensitive products such as: beef, dairy, grape-wine, rice, coffee, sugars, apples and avocados.
- A commitment to eliminate export subsidies but nothing on the elimination of subsidies for production and consumption.
- Commitments to negotiate in the framework of the WTO “disciplines” for state owned companies exporting agricultural products.
- The need to prohibit or restrict the exportation of agricultural products due to food security issues is recognised.
- Trade in transgenic agricultural products: a) “Nothing in this Article (2.29) shall require a Party to adopt or modify its laws, regulations, and policies for the control of products of modern biotechnology within its territory”; and b) “Each Party shall identify contact point(s) for the sharing of information on issues related to low level presence (LLP) occurrences”. The inadvertent low level presence of transgenic products in the commercial sector is based on the *Codex Guideline for the Conduct of a Food Safety Assessment of Food Derived from rDNA plants*.
- Quota administration: listed in Annex 2-D (Tariff elimination): “Each Party shall ensure that its procedures for administering its TRQs (tariff rate quotas) are made available to the public, are

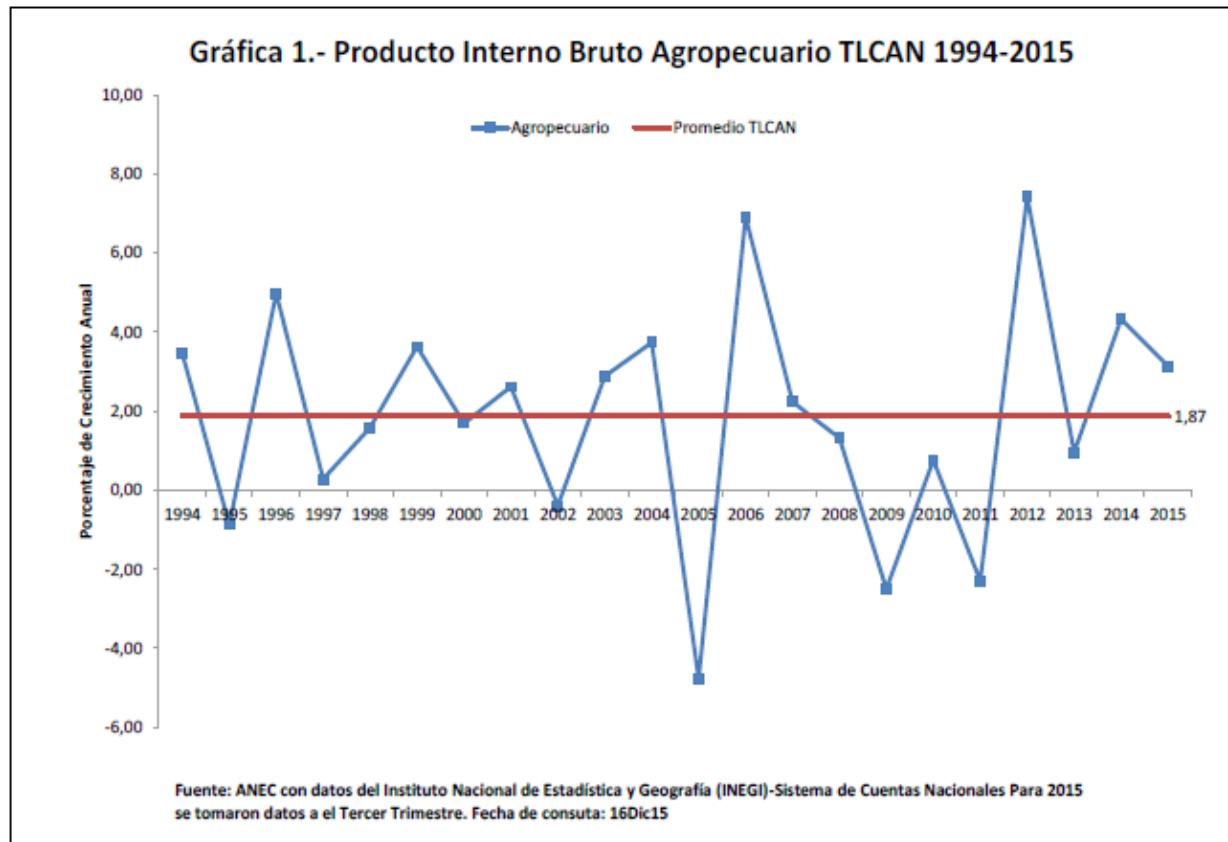
fair and equitable, are no more administratively burdensome than absolutely necessary, are responsive to market conditions and are administered in a timely manner”.

**Impacts on the agro-food sector.** The “special protection measures” for sensitive Mexican productive sectors are insufficient and their application is subject to the discretion of the Secretary of Economy.

Experience under NAFTA shows that under pressure from agro-import corporations, the Secretary of Economy modifies the import quotas according to the rise and fall of tariffs and phase-out periods for tariffs.

- The products and sectors most affected by imports from the countries in brackets are the following: dairy (from New Zealand); coffee and rice (from Vietnam); sugar, apples, avocados and wheat (from Australia); meat products, wine and apples (from Australia and New Zealand).
- The following are companies that will benefit from the TPP, among others: Nestlé (coffee and dairy); Vizur, Sygma, Campofrío (meat products); Danone (dairy), Walmart, Soriana, Comercial Mexicana, Chedraui (apples, grapes and rice); Bimbo, Gamesa (wheat); Femsa, and Pepsico (sugar).
- A program of tariff elimination “negotiated” for the Mexican agricultural sector: Category A: Free importation of “Non sensitive” products once the agreement enters into force. Category B: “Moderately sensitive”. The gradual elimination of tariffs using various methods, leading to total elimination in periods between 3 and 16 years. Category D: “Highly sensitive”. Quota tariffs: Maximum amounts of tariff free importations each year and WTO tariffs on the amount of imports exceeds the quota. Quotas will increase annually until they reach a determined amount after the 11th year of the agreement.
- The Economy Secretary promises that in addition to the “strong protection” for sensitive sectors via quota tariffs, he will promote an investment program to increase the competitiveness of sensitive sectors enabling them to successfully face competition from the agricultural imports from TPP countries.
- In this sector, during the 21 years of NAFTA implementation the frequently promised investment program to increase competition was not carried out due to “budget constraints” and the “crisis of public finances”.
- The TPP completes the process of dismantling Mexican agriculture, above all, the sector of small to medium producers; it results in increasing food dependency, insecurity and the loss of our food sovereignty. Additionally, it ends up imposing the food imperialism of transnational corporations and a system with increased prices for consumers and reduced nutritional quality. As has been demonstrated with NAFTA, the only beneficiaries of the TPP will be the big Mexican and foreign agro-food companies.

With the TPP in addition to NAFTA we can only expect to witness the extinction of the rural Mexico, unless the peasant farming organizations, the small and medium agribusinesses and the social movements say: 21 year of NAFTA is enough. No to the TPP!



Graph captions:

Graph 1

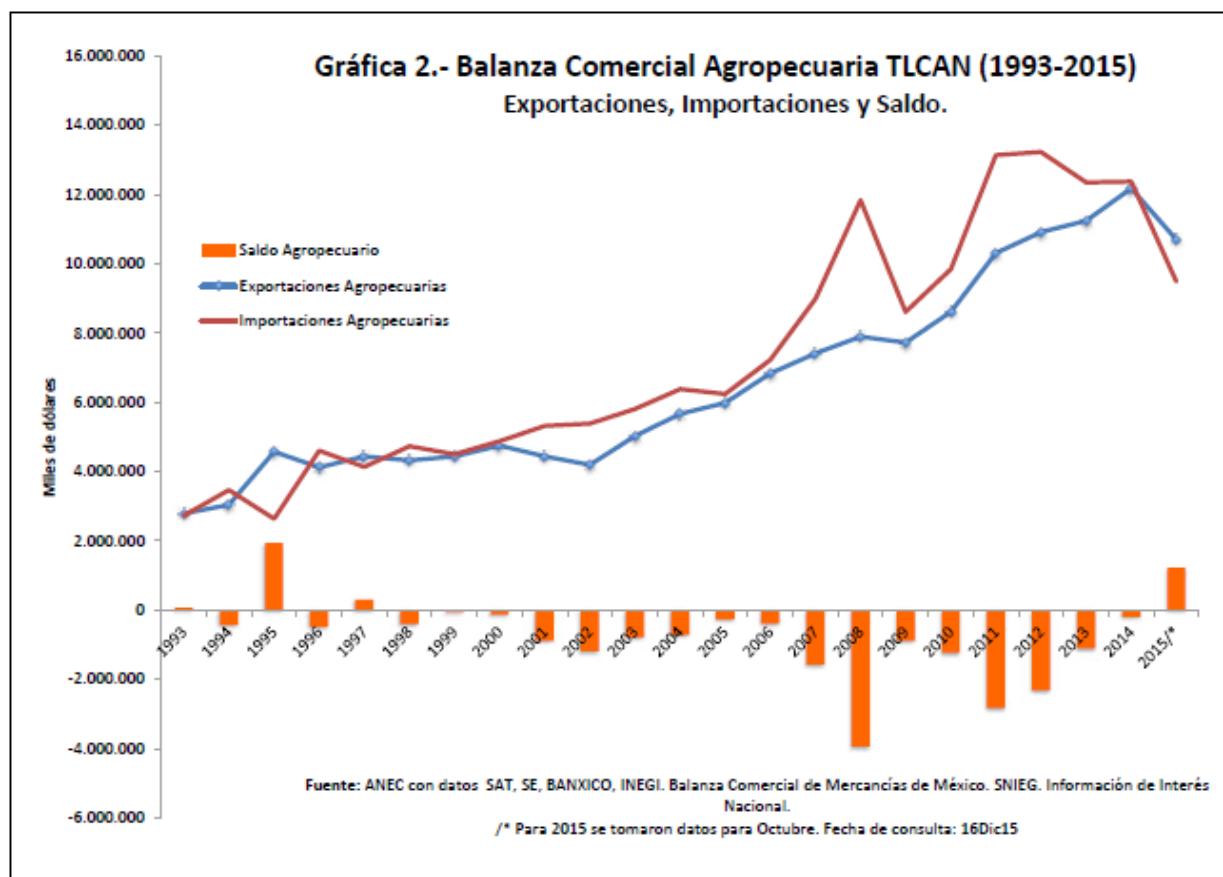
Title: Agro-food sector gross domestic product during NAFTA (1994-2015)

Y axis: Percentage of annual growth

Blue line: Agro-food

Red line: NAFTA average

Source: ANEC with data from System of National Accounts of the National Institute of Statistics and Geography (INEGI). For 2015 data for the third trimester were used. Date accessed: 16 December 2015.



Graph 2

Title: Agro-food balance of trade during NAFTA (1993-2015) - Exports, imports and balance

Y axis: Dollars (thousands)

Blue line: Agro-food exports

Red line: Agro-food imports

Source: ANEC with data from SAT, SE, BANXICO, INEGI. Mexican Goods Trade Balance. SNIEG. Information of National interest.

/\* For 2015 data for October were used. Date accessed: 16 December 2015.

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*Víctor Suárez Carrera*

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## **The rights of foreign investors under the TPP**

Alberto Arroyo Picard, Researcher at UAM and Member of the Red Mexicana de Acción Frente al Libre Comercio (RMALC)  
[alberto.arroyo60@gmail.com](mailto:alberto.arroyo60@gmail.com)

The so-called Trans-Pacific Strategic Agreement for Economic Partnership is nothing but a Free Trade Agreement (FTA) that goes well beyond trade. It is a set of compulsory regulations and norms designed to subject the economy and life in general to a way of thinking dominated by competition and the economic benefit of the most powerful. The only thing that matters here is profit, which is why social and environmental consequences and rights become secondary.

The chapter on investment states this perfectly. It grants rights to investors which they can assert before international arbitration tribunals that can basically sanction any breach. In comparison, the labor and environmental chapters merely list mechanisms for dialogue and cooperation and encourages each country to follow its own laws. When it comes to social rights there is no international mechanism for enforcement and no penalty for violations.

Furthermore, in the chapters on labor and the environment, the purpose of dialogue and cooperation is not intended to guarantee workers' and peoples' rights, but to prevent the use of low environmental and labor standards as an undue advantage in the competition for investments or access to markets.

Let's briefly look at the rights investors are granted:

- a) to be treated as if they were nationals (Article 9.4). This guarantees that no advantage will be given to domestic companies, not even state owned enterprises which will be subjected to competition from private companies. This is euphemistically presented as a right to not face discrimination, which puts an end to the role of the state as promoter of national development projects that use public policy to strengthen the national economy.
- b) it establishes the principle of awarding Most-Favored-Nation-Treatment (Article 9.5), i.e. the right to be treated in the same manner as the trade partner that receives the most benefits. This hinders any regional integration strategy based on cooperation and economic complementarity. Any concession granted to a "friendly" country - to achieve mutual support or complementarity for successful integration within the world economy, or to strengthen political alliances in pursuit of regional sovereignty to overcome dependency on world powers - would automatically have to be extended to all treaty partners.
- c) free flow of capital in and out of countries (Article 9.8) including speculative investment. It is even worse: unlike other FTAs, here derivatives are explicitly included, i.e. the tools that brought on the 2008 global crisis.
- d) protection against expropriation, even against so-called "indirect expropriation" or "measures equivalent to expropriation" (Article 9.7). This means that any government measures which result in

diminished earnings for investors can be considered an expropriation of said earnings, and thus have to be compensated or paid for like any other expropriation. We must acknowledge that in the TPP, unlike NAFTA and other FTAs, there is a more precise definition of what can be considered expropriation equivalent measures, so less is left to the discretion of the dispute settlement tribunals in their interpretations.

The right not to have performance requirements imposed for their operations, not even those that are worthy or maintain advantages (Article 9.9). A long list is provided of requirements which cannot be imposed. It is worth highlighting two of them: 1) that they buy a percentage of their supplies locally. In relation to current FTAs and investment agreements, this has been a main reason why the arrival of foreign investment has not produced the positive results expected. A large foreign corporation imports almost all of its supplies, which prevents a positive flow-on effect for the national economy and the creation of new jobs; and 2) technology transfer – in its place, the protection of intellectual property is expanded and strengthened.

f) The right not to have any regulatory or legislative change diminish the benefits granted by this agreement. That entails renouncing legislative sovereignty (Article 9.11). Is the Mexican Senate willing to lose this? Once again the TPP safeguards so-called structural reforms, because any change that diminishes rights already acquired by the investors would be subject to lawsuits at the international dispute settlement tribunals.

g) Not to have any binding social responsibilities imposed on them. It is all left to “corporate social responsibility” which they have designed themselves, and which they adhere to on a voluntary basis.

h) Measures taken by any government to protect the environment have to be consistent with the obligations under the chapter on investment (Article 9.15)

All these rights granted to foreign investors are made more powerful and serious if we consider the following four substantive elements of this agreement:

1) The definition of foreign investment (Article 9.1) includes “any asset owned or controlled by a foreign investor”. This explicitly includes not just companies, but speculative capital invested in shares or bonds, financial derivatives; debt in general; intellectual property rights; so-called administrative rights, i.e. licenses and concessions for mining or oil extraction, for services or building contracts, etc. etc.

2) Unlike current FTAs signed previously, in the TPP the parties bound by the agreement are not only federal governments, but government at every level: states and city councils (Article 9.2.2.a) and even autonomous regulatory agencies and state enterprises (Article 9.2.2.b). This violates the [Mexican] Constitution, since central government cannot override the constitutional authorities of other levels of government. In addition, just like any current FTA, it applies not only to investments subsequent to its enactment, but all investments, and not only those made by signatory countries, but in some cases, any foreign investment. In our struggle against the ratification by the Senate, we must explore the possibility that states or city councils seek a constitutional ruling on this, or demand that the approval of the agreement by state congresses be required, given the magnitude of these commitments.

3) All these rights of foreign investors and government obligations will be litigated by international tribunals (Section B of Chapter 9), where the only applicable law will be the text of the agreement (Article 9.24); the countries' own laws can only be applied in exceptional cases listed in the appendices. This means foreign investments are not subject to the rule of law or to the courts in the countries in which they operate.

4) The other FTAs Mexico has ratified are still in force. In the case of any incompatibilities between the TPP and other FTAs, the countries involved will agree on which agreement should be applied (Article 1.2) which means our main trading and investment partners will be able to evade those few elements which – due to the exposure to lawsuits involving millions of dollars – were defined precisely in the TPP. They will evade them by applying the rules of NAFTA.

As with all FTAs, the problem is not just the opening of borders to foreign goods, services and investment, but the rights (with no obligations) of investors, which are operationalized in the chapters on investment, services (these will be further developed under the TISA negotiations), purchasing and public works, in the regulations on competition and intellectual property, precisely those matters which they failed to introduce in the mandates of the World Trade Organization (WTO).

The TPP, more than any other FTA, comes close to that old ambition expressed by the former president of the WTO, Renato Ruggiero, of creating “a world constitution protecting the rights of capital”.

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*Alberto Arroyo Picard*

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## **The TPP sacrifices agriculture to favor the consumer**

Enrique Domínguez Lucero, Consultant economist on organizational development.

Buoyed by the quasi-dogmatic inertia of the past decades, Mexican negotiators, with unusual zeal, decided unilaterally (without consulting a single national productive sector) to add themselves belatedly to the Trans-Pacific Partnership Agreement (TPPA), an agreement that is intended to strengthen the position of corporates based in the United States.

The inability to evaluate the advantages or gains that that it could bring was always a concern. A cost-benefit analysis for Mexico was never raised and has never been considered. Considering that Mexico already had specific treaties with the most important countries in this TPP, more worrying still will be the real additional costs that it will eventually bring us, because up to this point, not one trade agreement or treaty has been questioned, let alone reversed, by the Senate of the Republic.

Government representatives up to this point have been negotiating with a myopic, short-term vision and an orientation favoring the consumer, even at the cost of national production. In previous decades Mexico had an open, unilateral policy established in agreements with several states, but our close associate to the North has increasingly become the focus of Mexican trade.

In several international fora, the Mexican case has been widely observed and studied to identify the advantages achieved in regional accords compared with the Multilateral Agreement of the World Trade Organization (WTO). From this perspective it is clearly established that Mexico is the only country that negotiates based on what it consumes, not what it produces, as in the rest of the world.

Firmly staking their positions on the interests of a small group of importers and privileged national companies, the Mexican government negotiators of the TPP have restricted the participation of the national productive sector, in particular the national agriculture and livestock sectors and even more so for rural organizations and small producers.

The arguments are indeed questionable that were put forward by the Mexican negotiators to commit us to such a distant agreement that offers so little and risks the few advantages of the treaties that Mexico has already negotiated. Mexico already has commercial treaties with the majority of the most important countries that are part of this TPP (USA and Canada within NAFTA, Japan, Chile and Peru). These treaties, already negotiated *en bloc* and with individual countries, show that 95.5% of our country's current trade already takes place in this new region. Hence, the addition of the countries of South East Asia is a disadvantage. In addition to being of marginal benefit for Mexico, we lack the required infrastructure to compete. On the contrary, it was countries like Vietnam, Australia and New Zealand that sought the opening up of Mexico.

Not one agricultural or livestock sector in the country asked to join this Trans-Pacific agreement that represents 40% of global commerce. Our profit, if any at all, would be marginal, while in exchange the treaty involves conceding new rights to third parties at the same time as other countries gain advantages already obtained by Mexico in previous agreements. As a consequence, in levelling the playing field, we will lose those advantages without any compensation at all for many national agricultural and livestock products.

Because its goal is to seek greater access for corporates and global companies, predominantly based in the United States, the TPP is not focused on lowering tariffs where they are already low. Instead, it tries to impose new international commercial disciplines, the same ones that were unsuccessful in the multilateral agreement of the Word Trade Organization. This is a way to avoid having to comply with the Doha Round or Millennium Development Goals of 2001, whose objective was to balance development and apply disciplines on measures that distort international business, such as direct and concealed subsidies, as well as matters of concentration or competition. The situation was already evident in the 10th WTO Ministerial Conference in Nairobi in December 2015.

**The Doha Agreement** expresses many of the legitimate aspirations of developing nations and the agricultural and livestock sector is the anchor that slows its advance given the systematic rejection by the developed countries, especially the United States, to dismantle or cut their subsidies and the constant increase of new non-tariff barriers having greater protectionist effect than tariffs. Amidst clear stagnation of world trade and economic growth, income concentration is deepened in the developed countries, and especially in the big corporations.

At the same time, the TPP explicitly represents President Obama's interest in containing the advance and influence of China in the region, at any cost.

On May 8, 2015 on the Mayan Riviera, Joseph Stiglitz participated in the Latin American Economic Forum (organized by the World Economic Forum) and answered a specific question on the TPP by stating: "The TPP is not a trade agreement, but rather it seeks to impose new, strict and enforceable disciplines on the subscribing governments that will benefit the big corporates, principally pharmaceutical companies, by imposing new rules on patents for generics; similarly on regulations on investment, in order to limit and sanction government actions that deal with health, climate change, etc, that could affect the interests of foreign investors". Only the corporations will have the right to defend their interests against governments and regulations, and the resolutions will be determined by international arbitrators not subject to the law of the signatory countries. We know that NAFTA already has this provision, the very one that has been roundly rejected by the Europeans in the current negotiations between the US and the EU.

The TPP is the largest trade agreement in existence and involves twelve nations (Brunei, New Zealand, Australia, Vietnam, Malaysia, Singapore, United States, Canada, Japan, Chile, Peru and Mexico). Our country entered late into this treaty. At the same, Mexico recorded the largest trade deficit of any country with China. For the year 2009 this deficit was around \$US34 billion (without a treaty and due to an anticipated unilateral opening up to foreign trade). By 2014 this figure had increased to a little more than \$US60 billion and we should not be surprised by such a large increase in the deficit given the figures that we will have by the end of 2015.

Statements by US legislators and specialists clarify how large US corporations achieved such broad access and intrusion into such negotiations – as observed in the pharmaceutical industry – while on the other hand civil servants have limited access.

**In the case of the Mexican agricultural and livestock sector**, some organizations – several representatives of the Consejo Nacional Agropecuario ([CNA] National Agricultural and Livestock Council) from the meat (beef), dairy, tobacco, grape growing and viticulture, rice, avocado, coffee, sugar and apple industries – presented their positions for this negotiation, seeking to attenuate their risks. They asked for measures including exclusion to late access. Absolutely no one asked for the market to be opened to countries that do not have a treaty with Mexico. The priority for many of them was to improve their current negotiations with Japan. In the case of dairy producers, the petition was for an exclusion of their sector from the TPP from the stiff competition from New Zealand, which is fighting for total access. In these negotiations there was no representation of rural organizations or small producers. In the end, there was little room to manoeuvre for Mexico's negotiators in the context of the unilateral access put forward by the federal government, so the agricultural and livestock sector was converted into a bargaining chip for negotiations in other sectors like the automotive industry.

At this point, the concerns of the agricultural and livestock sector about the TPP are: 1. – the complete omission of agreements about subsidies for production and consumption. The TPP only mentions export subsidies; 2. – the TPP will mean removing safeguards on agriculture, and 3. – the form in which the rules of origin are defined, where goods can pass through third countries and a weakened process can confer origin. Changes in defining the point of origin will have to be analyzed by each sector. Even so, the negotiation extends benefits to third parties who are not signatories to the TPP. Predictably, India and China are likely to be the most favoured without implying any cost to them whatsoever.

Similarly, 4. – with respect to intellectual property and copyright, it is necessary to analyze the implications for biogenetic material, plant varieties, seeds, fertilizers, agro-chemicals and veterinary medicines, among others; 5. – The issue of economic competition, in view of the large private corporations and state companies which have control over supplies, stock, marketing, financing, earnings and industrialization, areas where the transnational corporations have comprehensively cornered the market, and 6. – These considerations make it likely that there will be a loss of quality control regulation in our country, since highly regulated nations tend to send abroad surplus products that do not comply with their own regulations to countries with deficient regulations.

The structural concerns are: the lack of an agricultural policy– while developed countries provide generous protection and support to their rural producers, this government maintains a dogmatic position whereby trade is an end in itself (thus attempting to favor the consumer at the cost of national production, breaking value chains in the agro-food sector), and also by refusing to acknowledge the circumstances that Mexico faces, of increasing unemployment, poverty, an informal economy and organized crime, all contributing to a real lack of opportunities.

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Enrique Domínguez Lucero*

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## **Mexican agriculture already disadvantaged in the TPP: José Luis de la Cruz**

Lourdes Rudiño

The Trans-Pacific Partnership (TPP) is an agreement between countries that do not implement the same kind of economic policy. Especially relevant is how several of these nations practice an evident selective protectionism, particularly for agriculture. Most protectionist measures take the form of subsidies for small farmers or the agricultural sector, usually found, unsurprisingly, in the United States and Japan, while countries like Australia and New Zealand have impressive policies for economic development. It is no minor matter, therefore, that Mexico should sign a trade agreement in which the fundamentals required for equitable economic competition do not exist.

José Luis de la Cruz Gallegos, Director of the Department of Economics and Finance and of the Research Centre on Economy and Business in the Business School at the Technological Institute of Monterrey, State of Mexico Campus, has affirmed this and emphasized an aggravating factor: "These countries are concerned not only about strengthening their primary agricultural products, but they also support the value added products of the powerful agribusiness sectors, in which they have made substantial investments and hold patents. Mexico enters into competition without these strengths, and in fact something similar happens in almost all of Mexico's economic sectors".

The time factor is also relevant. For decades, these competing countries have been implementing protectionist measures or economic development policies that favor their businesses; this is nothing new. They have built this fortress while the Mexican agricultural and agro-industrial sectors continue as they always have, and lag behind. Much of the agricultural sector produces for local consumption, and although we have some very strong agribusiness zones, they are concentrated in some regions. These asymmetries must be considered, to be very clear about the challenge that the TPP poses for Mexico, according to De la Cruz.

The North American Free Trade Agreement (NAFTA) offers a clear case of opening Mexico to free trade: agriculture is a sector that lost out. As evidence, the per capita production of 15 major crops and products has stagnated since 1980, including white maize, beans, wheat, tomatoes, rice, eggs, milk and others. "What this means is that the challenge is to increase production."

In the agribusiness area in particular, the TPP gives us two very formidable competitors, added to those in NAFTA, Australia and New Zealand. As an example, Australia has a trade surplus with China of more than \$US30 billion, much of it based on their agribusiness sector and some mineral products. Likewise, New Zealand has a positive trade relation with China in these areas, indicated De la Cruz.

So now in addition to NAFTA, which has not given us the desired results in the agricultural and agro-industrial sectors, we add competition from two economies that specialize in these areas. Although they face certain limitations, certain quotas on exports to Mexico, there will be a gradual move toward market openness and total trade liberalization in 16 years. Although 16 years sounds like a long time, it won't be if Mexico fails to take adequate measures to address this competition, warned the specialist.

The agricultural sector turns out to be pivotal because it was very clearly not favored by NAFTA, although this was also the case for other sectors, including textiles, footware, the leather industry and to a lesser but equally marked degree, some parts of the metalworking industry. Now, with the TPP, that risk is amplified.

The shining star of NAFTA is the automotive industry but even it will face challenges because of a forced reduction in regional value content for auto parts in the TPP. In the NAFTA treaty region, it is currently required that auto parts contain a regional value content above 60%; regional value content meaning manufactured in the United States, Canada and/or Mexico. However, with the TPP and pressure from Japan, this will be reduced to just 45%. This means the sector will face competition with a country that specializes in auto parts: Japan. There is a risk that integration of production in the automotive sector will decline. And the electronics, computer, machinery and medical equipment industries will face competition from countries like Vietnam, Singapore and Malaysia, many of which have links to China, where they can triangulate this type of trade, even though China will not be part of the TPP.

“Mexico will have to face the challenge of how to avoid triangulation via China, as Singapore, for example, shares a special economic zone with China. Sectors like electronics, machinery and electrical equipment will confront this situation.”

Jose Luis de la Cruz states that: “at the end of the day, the great challenge for Mexico is to grow its economy and that means increasing production capacities. With or without the TPP, Mexico must face the challenge of increasing domestic production, but the TPP adds pressure. If we do not strengthen productive capacity quickly, in the end, competition will aggravate the situation, allowing for the quick entry of those countries that are specialists in areas critical to Mexico, including strategic manufacturing industries”.

It was an option for Mexico not to participate in the TPP, he said. Unfortunately, much of Mexican trade is dependent on US foreign trade strategies. That is the aspect that forces our economy to become involved or to enter into the signing of these agreements. Therefore, while it is true that Mexico could decide to stay out, the fact that it has already committed to sending much of its exports to the United States means that our country is obliged to be part of these decisions and not stay out of them. “This is the downside of having an economic, industrial and exporting dependency on the United States”.

“In Mexico, small scale producers are confronting issues like GMOs at the same time as the companies promoting transgenic seeds insist they be planted. Does the signing of the TPP make the small family farmers more vulnerable in situations like this?”, wondered De la Cruz. “I think so, because they are exposed to competition where they must respond by making the necessary adjustments, if they don’t do this, they risk losing out to big producers in the agricultural sector, further reducing the presence small-scale producers, of organic or GMO free agricultural goods, and large-scale farming technologies.

“I think that this competition risks weakening the position of the small rural producer through the disappearance of some producers or through the loss of economic power, and being small, they will more easily be forced out of the market. This should be seriously considered because in the medium to

long term, it will increase the presence of much more industrialized producers, particularly those who like to use GMO, which will reduce opposition to this technology”.

One of the country’s weaknesses is that we have not developed our producers and their companies and we must ultimately face competition from large foreign transnational companies. If Mexico wants to benefit from trade agreements, it must avoid making the same mistakes it made previously. We must strengthen our domestic production and, of course, the agricultural and agro-industrial sectors, De la Cruz concludes.

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*Lourdes Rudiño, José Luis de la Cruz*

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## **Contrasting analyses of the TPP by small-scale farmers' organizations and agricultural producers**

*Lourdes Rudiño*

While there have been few reactions to the Trans-Pacific Partnership (TPP) negotiations from small-scale farming organizations and agricultural producers, those picked up by the mass media show that opinions are polarized. On one side are those who, like El Barzón Nacional and ANEC (National Association of Rural Commercialization Enterprises) believe that this agreement, like others of its kind, will not end up improving the economic and social conditions of the country, nor will it strengthen the productive sectors, let alone rural Mexico itself. There are others, such as the Consejo Nacional Agropecuario (National Agricultural Council, hereafter NAC), who believe that this agreement among 12 countries will be positive because it will ultimately lead to the opening of Japan to Mexican exports.

But two aspects must be noted: first, the NAC includes representatives from national and transnational companies including Maseca, Cargill y Monsanto, the historical winners in international trade agreements, which have resulted in a greater concentration of ownership. Secondly, the NAC drastically changed its opinion about the TPP as negotiations proceeded. At first, it was critical of the agreement (up until the beginning of October, 2015), but in the days after negotiations concluded, it applauded its content.

According to a note published by *El Economista* on October 6, Benjamín Grayeb, President of the NAC, warned that producers of milk, coffee, sugar and apples would be negatively affected when the TPP was implemented. Grayeb specified that "it would not benefit national growers at all to have goods they already produce imported into Mexico, but that they would try to be competitive and increase their production in order to mitigate the impact that the TPP could have." He then stated that as a country, Mexico had proposed a seasonal window for the importation of New Zealand apples, "but they did not accept that deal"; he also said that Mexico had faced impasses in the negotiations of four products including milk, sugar, coffee and Mexican apples, and even though they prevented a total opening of the Mexican dairy market and had established quotas, national dairy producers would still face difficulties.

According to a report published in *El Economista*, on October 27, 2015 at the Global Agribusiness Forum in Guadalajara, Benjamín Grayeb made an overall assessment of the TPP focused on the advantages for the Mexican agribusiness sector. He did this from a perspective strictly focused on trade. One of the most important advantages, he said is market access to Japan "because we already have trade agreements with all the countries in the Americas that are participating in the TPP". He stated that the agribusiness sector had been very "well cared-for" by the government representatives in spite of the complexity of the negotiations and the number of countries party to the agreement. He considered that the TPP would benefit Mexican products including orange juice, pork and beef, rice and several fruits,

although he recognized that one of the sensitive topics is dairy, in which they negotiated limited additional quotas that would gradually increase for Australia and New Zealand.

The NAC president pointed out that “another great benefit for Mexico” is the recognition of certificates of origin for Mexican products, such as tequila, mescal, charanda, habanero chilies, bacanora, coffee from Chiapas and one type of Ataulfo mango.

In contrast, ANEC has made public criticisms of the TPP, as shown in an article by Victor Suarez, the Executive Director of the ANEC, published in this supplement. The director of El Barzón Nacional, Alfonso Ramírez Cuellar also expressed the opinion that the government’s promise that the TPP will put us in contact with 700 million consumers (the total population of the TPP member states) is false.

Currently, the treaties which Mexico has implemented “already allow us to reach more than 500 million consumers, however, the weakness of the country’s production infrastructure, a lack of investment in technological innovation and processing of patents, aggravated by all the problems of insecurity and the existence of monopolies and oligopolies in most of the national markets have prevented our country from reaching greater levels of development through the signing of trade agreements”, according to a press release from El Barzón.

At present, Mexico has 11 Free Trade Agreements (FTAs) with 46 countries, 32 Reciprocal Promotion and Protection of Investments (ARPPIs) with 33 countries and nine Economic Complementation Agreements and Partial Scope Economic Complementation Agreements within the framework of the Latin American Integration Association.

For El Barzón, “the TPP will be no panacea. On the contrary, it will have a severe negative effect on milk, rice, wheat and meat producers, and will deepen Mexico’s food dependence as well as bring devastation and bankruptcy to entire regions and thousands of producers in different parts of the country. Just as happened with the FTA, the agricultural sector will be one of the most affected, especially for milk, rice and wheat producers because our country has suffered a collapse in production that has made the country completely dependent on imports. The provisions under the TPP for the total elimination of tariffs will lead to the effective disappearance of small and medium producers who still produce these products and the loss of these productive regions of the country.

According to El Barzón, Mexico has no need to sign treaties, since it already has enough. The real problem that the country has is “the state of neglect that the country’s production infrastructure is in which prevents Mexican producers from taking advantage of trade relations with other countries.”

“The Mexican government is inflating the supposed benefits that signing the TPP will bring. Twenty years of NAFTA have resulted in stagnant economic growth averaging 2% annually. In the majority of regions this trade agreement has not generated any new job growth, while the growth of exports has relied on cheap labor and on the increase of supplies imported both for agriculture and for manufacturing.”

According to El Barzón, the TPP will only bring benefits for the Mexican companies that already have a multinational presence, such as Su Karne, Lala, Alpura, Bimbo and Maseca, “whose growth and international presence has been achieved through national market domination and because of the significant assistance received through tax breaks, finance and budgetary support from the Mexican government.”

In its press release El Barzón called on all those affected by the TPP to “join forces to mobilize the Mexican population and not allow giant agribusiness corporations to have their way again, above all, stop the senators from approving an agreement via fast-track that will affect the economy and society of our country.”

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## **The TPP is not what small agricultural producers in Mexico are hoping for**

Emanuel Gómez, Universidad Autónoma Chapingo  
pinotzin@gmail.com

**The Mexican agricultural sector** is particularly vulnerable to the type of trade liberalization outlined in the Trans-Pacific Partnership Agreement (TPP) which would result in the gradual reduction of trade tariffs among the member states until they are eliminated.

The Mexican experience of 20 years of the North American Free Trade Agreement (NAFTA) has produced a generalized crisis in rural areas, evident in the forced migration from rural areas to the cities in Mexico and the United States, producing new social phenomena such as the “the feminization of rural Mexico”, the emergence of “transnational rural communities”, the rural exodus as well as the appearance of criminal groups carrying out human trafficking, whose victims are also used to smuggle drugs, arms and even human organs.

In the last 20 years, Mexico changed from being a net exporter of agricultural products to a net importer of basic foods, such as corn, rice, wheat, milk, meat, eggs and apples. In some sectors such as vegetables, Mexico does export to the United States yet it is only in the production of organic coffee where it is possible to assure that small producers are involved at each step of the supply chain, from sowing through to marketing, a process that includes harvesting, and the conversion from coffee cherries to toasted beans, that are ground and packaged. According to official statistics from the most recent agricultural census, more than 90% of the agricultural products produced by small farmers and rural producers in Mexico are sent to market fresh, raw and in bulk, i.e. unprocessed products, consequently producers do not benefit from the profits made further up the supply chain.

**Some organizations like El Barzón** predict the bankruptcy of millions of agricultural and livestock producers throughout most of the country. The Secretary of Agriculture (SAGARPA) identifies several products that will be “sensitive” when trade is opened up under the TPP: milk, meat, rice and coffee. Milk from New Zealand; rice and coffee from Vietnam; meat, wheat and corn from the United States; palm oil from Malaysia; wine, prawns, lobster and berries from Chile; chili peppers, potatoes, bananas, mangos, sugar, fishmeal and garlic from Peru; and other products, will enter freely into Mexico without tariff barriers.

Furthermore, SAGARPA tries to convince us of the viability of the TPP by identifying new markets in six countries with which Mexico has no trade agreement: Brunei, Singapore, Vietnam, Australia, New Zealand and Malaysia, to which, they say, it will be possible to offer Mexican agro-food products such as vegetables, alcoholic beverages, fruit juices, processed food and avocados.

Consumers International, a network of consumer organizations, released an open letter in September 2015 to the presidents of Mexico, Peru and Chile that detailed many reasons to reject ratification of the TPP, among which is the Investment Chapter, which requires states to abolish

existing laws and disincentivize the passing of new regulations that would be “obstacles to trade” such as any legislative proposal to protect the consumer against deceptive advertising, harmful nutritional content, any labelling of foods and beverages, financial services or any other quality control that might guide consumers. However, tobacco was exempted from the TPP, which was praised by international networks that promote strict measures to avoid health problems associated with the consumption of this product.

The National Workers Union sent out a press release in November 2015 in which it warned that the ratification of the TPP by the Mexican Senate would infringe on social rights, increase unemployment and destroy small and medium-sized enterprises, as well as hand over the sovereignty of countries party to the TPP to private tribunals in which disputes are settled with transnational corporations ending up the beneficiaries.

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## **The TPP: One more agreement that ignores Indigenous Peoples**

Emanuel Gómez, Universidad Autónoma Chapingo  
pinotzin@gmail.com

The 12 member countries of the Transpacific Partnership (TPP) in alphabetical order are Australia, Brunei, Canada, Chile, United States, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam. They have never promoted a single initiative together; at best, they have signed the United Nation's Universal Declaration of Human Rights. Taken together, these nations represent a bit more than 800 million people, 77% urban and the rest rural, according to the UN Population Division.

**The cultural diversity** of the 12 countries according to *Ethnologue* comprises 1,588 living languages, of which 207 are those of Indigenous Peoples and 381 are languages that emerged as a result of migrations over the last 500 years. However, for the purposes of trade, the language in which communication is possible is undoubtedly English, the language in which the negotiations of the signatory countries has been carried out.

México, Peru and Chile are the only member countries of the TPP which have ratified Convention 169 of the International Labor Organization (ILO) on the rights of Indigenous and Tribal Peoples, in which the these peoples' right is established to "decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programs for national and regional development which may affect them directly (C-169 ILO, Art. 7.1). However, the official document of the TPP establishes no protocol for consultation with Indigenous Peoples to define their strategies of development which respects their rights.

Even those Latin American signatory countries of the TPP which have not signed ILO Convention 169 recognize the cultural diversity of their countries through their having signed the UN Declaration of the Rights of Indigenous Peoples (DRIP). It must be mentioned that during the 61st Assembly of the UN in which this Declaration was approved, the US, Australia, Canada and New Zealand, all countries whose official language is English, voted against, although they later approved it. Perhaps this is due to the fact that the Declaration establishes the right of Indigenous Peoples to freely determine their economic, social and cultural development (Article 3), and moreover, the obligation of the States to consult them is defined as being required "before adopting and implementing legislative or administrative measures that may affect them." (Article 19)

So among the TPP member states there is no shared vision or juridical framework in the area of Indigenous Rights. Neither is there a framework for the management of biodiversity.

**All TPP member states have signed and ratified the Convention on Biological Diversity (CBD),** with the exception of the United States, which only signed after adding countless observations and conditions. The importance of this Convention for Indigenous Peoples is specified in Article 8-J, which establishes a

framework so that each country respect, preserve and maintain “knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge innovations and practices, as well as promoting equitable sharing of benefits from the use of such knowledge, innovations and practices”.

On the other hand, far from being characterized by transparency, or having been created through a participatory process, the process for the Implementation of the Trans-Pacific Partnership established criteria for the exploitation of human and biological resources that favor international business, with the objective of being forced to harmonize national legislation. With respect to the rights of Indigenous Peoples and small farmers to native seeds, or phytogenetic resources, the obligation is to form part of the International Convention for the Protection of New Varieties of Plants of 1991 (UPOV-91), which prohibits farmers from saving seeds to sow the following year, as they have done for hundreds of generations, and instead they are required to buy seeds from companies that have registered their varieties and are protected by patents.

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## Biotech seed companies win again in TPP

Ben Lilliston, Institute for Agriculture and Trade Policy  
[blillisto@iatp.org](mailto:blillisto@iatp.org)

After six years of secret negotiations, the dozen countries that make up the Trans Pacific Partnership (TPP) have finally made [the text public](#). The full implications of the broad-reaching, 30 chapter, 5000-plus page deal will be analyzed intensely in the coming months. A close look at the [Intellectual Property Rights](#) (IPR) chapter shows how just a few lines in TPP can turn into a big win for the biotech industry — and a loss for farmers' rights. The chapter requires patent protection for companies like Monsanto and Syngenta, who depend on strong patenting regimes to control the market for genetically engineered crops. The IPR chapter largely reflects the [wish list that BIO](#), the U.S. biotech industry's powerful trade group, outlined when TPP negotiations began in 2009.

The IP chapter requires all 12 [TPP countries](#) to join a number of global intellectual property treaties. One of those treaties is the International Convention for the Protection of New Varieties of Plants 1991 ([UPOV 91](#)). That agreement updated the 1978 treaty in several important ways that emphasize the rights of seed companies over farmers' rights, according to [an analysis](#) by Public Citizen and Third World Network (TWN). UPOV91 requires IP protection to be provided for all plant varieties; it requires protection for 20 to 25 years; and it stops farmers and breeders from exchanging protected seeds, a common practice of farmers in many countries around the world.

Of the TPP countries, Mexico, Brunei, Chile, Malaysia, and New Zealand are not yet [members of the UPOV 91](#). Under the TPP, these countries could face major changes to laws and rules that protect farmers' rights when it comes to plant breeding and seed saving. Malaysia has already gone through the process of joining the UPOV 91 treaty. They will have to [change their laws](#) in order to: lengthen the patent time protection for seed companies, prohibit farmers from exchanging seed they have saved and remove anti-biopiracy provisions which protect plants from patents.

Changes in plant patent laws could become very controversial in Mexico. Farm groups in Mexico, considered the birthplace of corn, are leading a campaign called "Sin Maíz no Hay País", that advocates for a ban on GMO corn. They have been successful, and the ban is currently facing a [legal challenge](#). Farm organizations argue that the country's biodiversity and genetic resources are at risk from contamination of GMO corn. Monsanto hopes to [double its sales in Mexico](#) over the next five years if the ban is struck down.

Strong opposition may also arise in New Zealand, which currently has not approved any [GMO crops for commercialization](#), requires any imported GMO foods to be labeled, and uses its GMO-free status as an [export marketing tool](#). [Brunei is just developing](#) its regulatory framework for GMO crops.

The argument for patent protection is that it spurs innovation, but that assertion is questionable in the case of plants. A [2011 study](#) looking at vegetable varieties over the last century found a "clear demonstration that massive amounts of innovation occur without the stimulus of patent or PVP law." In the U.S., where strong plant patent protection exists and GMOs for commodity crops are widely used, [research published this year](#) by Kansas State University found that U.S. cropping systems are becoming markedly less diverse and the "homogenization of agricultural production systems" could have "far-reaching consequences" for the food system.

Maintaining genetic diversity in crop and animal production is seen as a critical tool for adapting to climate change, according to a [report published earlier this year by the FAO](#). The report concluded:

It is likely that climate change will necessitate more international exchanges of genetic resources as countries seek to obtain well-adapted crops, livestock, trees and aquatic organisms. The prospect of greater interdependence in the use of genetic resources in the future underscores the importance of international cooperation in their management today and of ensuring that mechanisms are in place to allow fair and equitable—and ecologically appropriate—transfer of these resources internationally.

The international battle over the patenting of plants by biotech companies versus the rights of farmers is [not a new one](#). The biotech industry has won a favorable patent regime through free trade agreements, and through the World Trade Organization's TRIPS (Trade Related Aspects of Intellectual Property Rights) Agreement. Farmers have fought to protect their rights on seeds through the [International Treaty on Plant Genetic Resources](#), which [grants farmers](#) the right to save and share seed. The conflict between these international regimes continues and will likely emerge as an issue at the international Convention on Biological Diversity meeting hosted by Mexico in December 2016.

The UN Special Rapporteur on the Right to Food has been [particularly critical of trade agreements](#) that require the implementation of UPOV 91, urging instead that countries undertake a Human Rights Assessment (including the Right to Food) prior to signing any trade agreements. In 2012, the FAO's Committee on Food Security's [High Level Panel of Experts called](#) for countries to adopt the International Treaty on Plant Genetic Resources for Food and Agriculture and urgently implement provisions on farmers' rights to conserve and curate genetic resources in order to adapt to climate change.

The U.S. government's requirement that countries join UPOV 91 as part of free trade agreements is starting to see resistance. Last year, [Guatemala repealed plant variety legislation](#), known as the Monsanto law. That law had been passed in order for Guatemala to join UPOV 91 as required under the Central American Free Trade Agreement (CAFTA). The law had sparked massive protests from farmers and indigenous movements.

The TPP IPR chapter represents yet another in a long list of actions by the U.S. government to advocate on behalf of biotech seed companies—including [a WTO challenge](#) to European GMO regulations and using [State Department attachés](#) to pressure governments to accept GMOs. The industry's influence within the office of the U.S. Trade Representative (USTR) is considerable. [USTR's Assistant Agriculture Specialist](#) is a former VP at BIO, the industry's lobbying group. BIO also sits on the USTR's [Advisory Committee on Intellectual Property](#).

The TPP's IPR chapter provides a glimpse into what this new mega free trade deal is all about. The chapter's requirement that countries grant patent protection for multinational biotech seed companies has little to do with trade and nothing to do with respecting farmers' innovations, their livelihoods or countries' food security. It is about asserting corporate power over sovereign nations and the farmers who live there.

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## **A new challenge to the human right to water**

Jésica Estefanía Jiménez Montoya, Edgardo Monroy Rodríguez  
Members of Water for All, Water for Life National Coalition

The world has been hit by a tsunami of agreements and treaties designed to open up trade and expand privatization of public services. The result is that reforms of national legislation protect the profits of transnationals. In this context, the Trans-Pacific Partnership agreement (TPP) is presented as the next stage in the history of free trade and described as “the most important and ambitious trade agreement in the world”.

Throughout the entire 30 chapters of the agreement there is no mention of commitments, protective measures, mandatory consultation, damages for actions harmful to ecosystems and the environment or any sanctions for failure to comply, or for the violation of human rights. Paradoxically, the TPP permits voluntary observance of and compliance with environmental protection laws, whereas compliance with the agreement’s investment provision is mandatory. On the issue of water, it continues with the tired old model of extraction and waste. Economic interests related to mining, fracking, petroleum, dam building, water treatment plants, and hydroelectric power, are protected in the TPP by another layer of regulation that goes against existing environmental policies and citizens opposed to these activities.

Chapter 20, on the “Environment” claims to promote trade and environmental policies. It mentions concerns about the discharge or emission of contaminants, the control of chemicals, waste and toxic substances and the protection of the ozone layer, of biological diversity and of flora and fauna. Nevertheless, the mechanisms to guarantee protection are neither visible nor obligatory; all that is required is that investment activity be undertaken in a manner “sensitive” to the environment, whereas in the Investment Chapter, regulations, lawsuits and sanctions are covered in detail.

The intrusion of the private sector, especially of corporations, into public water services has been encouraged in Mexico under neoliberalism since the rewriting of the National Water Law in 1992, which was followed by reforms to state legislation and a loan from The World Bank in 2001 sought by the government of then President Vicente Fox. The privatization of water means the transfer of control and operational management to private companies that convert water into a profit-making venture.

The 2014 reform of the Law on Public-Private Partnerships created the legal foundation for unlimited private intervention, without monitoring, in the management of water. This is contrary to the current worldwide trend of returning water to government or public non-governmental control, as has happened in Greece, Bolivia, Germany and France, among others. Challenges to the model of water privatization have become especially necessary for self-governing communities and towns that efficiently manage their lands and resources as a community, based on their ancestral rights.

The intervention of the private sector is a systematic threat to the ever-diminishing public services sector, designed to introduce competitive forces that would make it legally impossible to give preferential treatment to the domestic market. Many voices across the world have spoken out against the dangers of the TPP. Public Services International (PSI) has denounced the fact that workers and service users are not allowed to participate in the negotiations despite the participation of the powerful business sector. The Economy Secretary, Ildefonso Guajardo, declares that Mexico negotiated in consultation with the “relevant sectors”. In fact he has excluded trade unions, universities, indigenous

peoples and the general population from the negotiations, even though it is their future that is on the line with the signing of the TPP.

Hence, the privatization of public services like water is part of the agenda of transnational capital and the TPP is its instrument. There is no indication in the agreement of either the will or the processes necessary to slow the advance of environmental pollution and devastation, but just the opposite; it promotes the further deregulation of the corporations.

However, the agenda of the social movements and organizations includes fighting to guarantee the right to Water for All, Water for Life, which is far from the commercial logic of the transnationals and corrupt governments. Putting the brakes on privatization under the National Water Law, promoted by the National Water Commission (CONAGUA) was one of the victories of the Mexico for the Human Right to Water movement. This victory was the fruit of a collective process and attests to the maturity of the movement in defence of water. We are working on a collective proposal to support the Citizen's Initiative on General Water Law as part of a national consensus building process. Putting a stop to treaties and agreements that put the future of present and future generations at risk is part of the strategy that was developed in response to the challenges to the Human Right to Water.

### **No to the Trans Pacific Partnership!**

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*Jésica Estefanía Jiménez Montoya & Edgardo Monroy Rodríguez*

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## **Social Impact Evaluations - Tools for taking Indigenous Peoples' lands in Mexico**

By Mauricio González González, CORASON Huasteca-Totonacapan/AMCF

[mauroglez@gmail.com](mailto:mauroglez@gmail.com)

The contemporary rural world has a long history that prevents it from giving up practices that safeguard life above all else, and this puts rural inhabitants in conflict with interests intent on reducing their world to a place for simply producing profit.

Social conflict in our time is now defined as territorial, since defending life spaces has become a burning issue over the last decade. All over the country, development projects have come to light almost always as a result of the opposition from communities, activists and organizations when they are faced with development that they see as an affront to the preservation of the peasant farming and indigenous ways of life. This is not only evident to the shirtless poor, because governments and companies have also taken notice.

**Article 119 of the Fossil Fuels Act** proposes a type of social research which must be performed prior to the publication of a call for tenders or tender allocation, whereby “the Secretary of Energy, in coordination with the Secretary of Administration and other offices and competent entities, will carry out a social impact assessment of the area which is to be the subject of the Contracted Area” to ensure that the principles of “sustainability and respect for human rights” under article 118 of the same Act, are upheld. For this purpose, Social Impact Evaluations (SIEs) were designed to assess the sociocultural impacts of the implementation of fossil fuel exploration and extraction projects and infrastructure. The SIEs emulate the Environmental Impact Assessments (EIAs) imposed under legislation for the regulation of the environment, and they attempt to masquerade as viable assessments but don’t fool anyone.

A requirement of the SIEs is that they be carried out using participatory methods, which have been widely used in government interventions in rural areas since the 1980s. These methods are defined by the involvement of the local population acting as the main contributors to the design, planning, implementation and monitoring processes, for which they draw on their own experiences. This methodology has been very useful for bringing together diverse stakeholders with interests in issues that were previously the domain of specialists and rural development advisors only.

**Participatory methods seek to make agents of engagement out of people who are the subjects of intervention.** However, despite the benefits of these methods, they can be manipulated. Many varieties of participatory methods have been used in evaluations to the benefit of interested parties that consider SIEs to be administrative tasks at best. The participation can be as little as is required by the developers. Essentially, the main problem with these tools is that strategies for participation are devised by the same people

implementing the project and can therefore be adjusted and made to function in whichever way the financial backer sees fit.

There are many examples of this disingenuous use of participatory methods, and under federal entities such as the National Commission of Natural Protected Areas (CONANP), they have become the main contributor to the loss of territorial sovereignty suffered by the communities in which they intervene.

However, if done well, participatory methods can not only inform the decisions of those who implement development projects, but also include them in the resolution of major local problems. Is this taken into account when SIEs are carried out? According to employees of the SIE office of the Secretary of Energy, the purpose of SIEs is to inform business of possible offense to local populations, and at same time of risks to their bank balance, as experience has shown us that local resistance can be costly to investors, whose moral imperative is to make maximum profit, never a loss.

**The question is how could an SIE ever endorse shale gas extraction using hydraulic fracturing (fracking)**, which requires millions of liters of water per well and which pollutes the soil, the air, and water resources, putting the health of locals at risk? How could an intrusion which competes with any other form of life reproduction be endorsed? In other words, if the SIE were done properly, fairly, there would be no way of supporting a fracking project. However, SIEs are carried by out consultants, and it is left up to the Secretary of Energy to evaluate the studies and decide whether to give equal weight to qualitative sociocultural knowledge versus the quantitative data from economic cost-benefit analyses.

At the end of the 1930s and beginning of the 1940s anthropologists were called upon to contribute to the post-revolutionary Mexican nation-building project, in which the government needed to include indigenous peoples. The costly outcome was ‘indigenism’ which constructed discourses and strategies to encourage diverse indigenous peoples to renounce their unique identities; however ‘indigenism’ was a complete failure.

**Today the Social Sciences are called upon once again to join the nation-building project**, although this time around we have reached the wealth generation stage which no longer requires indigenous peoples to be made part of the development project, in fact it requires the opposite, that they be driven out. We are at a stage when the economic system no longer needs an army of workers in the service of capitalism, so now that lives are surplus to requirement, it gets rid of them. This is why those who have held on to their territories for thousands of years are enemies of the economic system. The SIEs are nothing more than a research modality in the service of plunder, whose “human face” has no mission other than to guarantee the best possible conditions for the maximization of economic gain.

As a tool for the defence of indigenous rights, SIEs are ineffective, they are only useful when the tendering process fails to execute them due to irregularities. In other words, they are good when they are not carried out which means the use of SIEs should be considered as the first stage of intrusion by oil companies, which has to be opposed. To take part in an SIE is to open the door to the dispossession of indigenous peoples from their lands in Mexico.

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*Mauricio González González*

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## The TPP threatens freedom of expression and privacy online

Jesús Ramírez Cuevas [jesusramirezcuevas@gmail.com](mailto:jesusramirezcuevas@gmail.com)

After seven years of secret negotiations, the signing of the proposed Trans-Pacific Partnership Agreement (TPP) threatens internet freedom, the free circulation of content online and the privacy of internet users under the pretence of protecting intellectual property or copyright.

The agreement affects copyright as it extends the exclusive use rights on works by 20 years without any justification. This brings the laws of countries signing the agreement into line with the US copyright system. Following international standards a work becomes common property after a period of 50 years (The Berne Convention) but under the TPP this period is extended to 70 years, which provides longer monopolies on works to the benefit of large copyright holding companies.

If ratified, the TPP would result in internet users being monitored and persecuted, threatening the right to freedom of expression and the free circulations of ideas. The TPP sets up judicial processes and harsh punishments for the use of programs and content without a licence or authorization from the content owner.

A particularly serious aspect of the TPP is the threat that it represents to the free circulation of content that is facilitated by the internet. The TPP extends mechanisms to punish infractions and proposes limiting the circulation of legal works between countries. This affects freedom of expression and access to content for internet users.

Despite the objections of experts, users and international organizations, and in violation of net neutrality laws and civil liberties, the TPP gives internet service providers (ISPs) and governments the power to control content on the internet.

The TPP revives control and sanctioning mechanisms very similar to those of the defeated SOPA bill so that ISPs can detect content that violates the law and block unauthorized content. All in the name of copyright without considering the minimum due process requirements when censoring content for political or economic reasons. In other words, the TPP promotes censorship with no opportunity for defence.

The regulation of the use of copyright protected technologies under the TPP increases sanctions for those who do not pay intellectual property right fees for the use of programs and content but also those who provide services without controlling how those services are used. Sanctions will not only be civil but also criminal, that is to say, users and service providers will be criminalized.

Civil society agencies along with United Nations and Organization of American States (OAS) human rights rapporteurs have stated it is not possible to make those who provide internet services responsible for illegal acts committed by internet users. This is a key principle for the maintenance of freedom of expression online. The final text of the TPP forces countries to “cooperate” with copyright holders and adopt a US model of legislation for the removal (take-down) and censure of content which is considered to infringe on copyright, without giving users an opportunity to defend themselves.

**The TPP authorizes censorship by private request.** In cases of supposed copyright infringement the intellectual property law concerning the internet and digital technologies allows for the use of

simple private notices that establish the responsibility for the infringing content and the obligation to take it down. This would result in the creation of a content take-down system with no opportunity to question decisions.

Furthermore, the TPP legalizes the monitoring of content and increased criminal punishment for the decrypting of satellite signals. The TPP goes beyond the Berne Convention and does not guarantee the rights of the public, only the interests of monopolistic companies. It doesn't consider guarantees for the distribution and access to information and open content or the role of libraries and digital archives or the rights of users.

In the end the TPP enshrines a model of censorship that can be controlled from the United States to the benefit of geopolitical interests and it satisfies big business at the expense of public interests.

It is worth mentioning that the chapter on intellectual property is only one of the almost 30 chapters that make up the agreement.

In the face of these threats and the use of censorship for political and economic reasons, a serious, informed debate is required on the scope of an international treaty negotiated in secret especially with regard to access to content on the internet and the forms of communication and information exchange in the 21<sup>st</sup> century. Mexican society has its turn to speak and the Senate should listen and legislate according to the interests of the Mexican public and not only to those of US companies.

The signing of the TPP puts freedom of expression and the free circulation of ideas and content on the internet at stake, thus giving privilege to the interests of companies and governments above the rights of citizens.

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Jesús Ramírez Cuevas  
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## **Impact of the TPP on the Yucatán Peninsula**

Mauricio Macossay Vallado

Chapingo Autonomous University (UACH)

When the Trans-Pacific Partnership (TPP) comes into effect it will have a major impact on a diverse range of economic activities in Mexico. It will greatly affect social classes, particularly rural working-class groups, families and peasant farmers.

The TPP will no doubt continue hollowing out the path opened by NAFTA since 1994 which has profoundly altered the economic outlook for the Yucatán Peninsula. Rural and urban workers already facing hard labor conditions with very little income will bear the brunt of the TPP; especially through an increased use of neoliberal capitalist policies that have already modified their economic and social conditions (and the political situation to some extent) over the last 35 years.

In 1980, Yucatán Peninsula, with its strong presence of Maya and mestiza peoples, was a region dominated economically and socially by the agro-industrial and agro-food sectors such as the henequen (agave) industry that was completely managed by the state, the private shrimp industry subsidized by the state, the small farmer rice industry, private cattle farming, small farmer commercial citrus production, small producer horticulture, and Maya agriculture using the traditional *milpa* cropping system, amongst other activities. At that time, the small petroleum and tourism industries on the peninsula were already growing.

However, as of this year, the Yucatán Peninsula is an economic region dominated by transnational capital that finances the tourism industry, mainly in Quintana Roo and to some extent in Yucatán and Campeche; the petroleum industry dominates in the Campeche Sound; whereas the poultry and pig industries have medium sized businesses and services; the henequen industry has collapsed and almost disappeared, as have the rice and shrimp industries; the cattle, citrus and horticulture are constrained and have serious problems. At the same time, despite all this, Maya small milpa cropping struggles on.

The changes have been rapid, profound and devastating. Important economic activities that provided employment and food for tens of thousands of small farming and urban families have collapsed or disappeared. This has occurred since the implementation of NAFTA in 1994, but is also a result of the boost given to the textile maquiladoras funded by foreign capital (principally from the United States, even though this has reduced in last 10 years) and the enormous stimulus given to petroleum production and tourism along the length of the Mexican Caribbean coast from Cancún to Majahual and Chetumal.

Such changes have resulted in a huge migration to Quintana Roo and the United States (slowing in recent years) and hard working conditions, low salaries, weak benefits and virtually non-existent labor rights and unions in the Yucatán Peninsula.

The advance of transnational financial capital and of the Mexican state itself, which completely changed its policies and focus, has been unstoppable. It has faced little resistance from the working class and Maya except on a few issues and some calls for the recognition of basic rights. The rejection of GMO soy that Monsanto tried to impose has resulted in a growing social mobilization in opposition; however this

movement is still narrowly focussed. The neoliberal hurricane has caused devastating changes and has damaged the social fabric of both the working and middle classes.

NAFTA opened the door to transnational capital finance to do almost as it pleased, as in the case of the Walmart market penetration that has come to dominate commercial food distribution in the main cities of the Yucatán Peninsula, from which it has spread into practically all urban areas in the region.

The TPP will increase this trend, having a strong impact on important economic activities on the peninsula including food production (honey, citrus, maize and horticulture) as well as seed production for small farmers by strengthening monopolistic practices. It will surely create a migration flow towards the Caribbean, accelerating the chaotic and violent growth of Cancún and Playa del Carmen, as well as to the United States, depopulating communities on the peninsula, especially of young people.

Maya milpa cropping, protected in hundreds of small and medium communities throughout the peninsula has offered admirable resistance. However, it is now on the defensive and at the mercy of powerful forces and economic interests.

The TPP will generate more inequality and larger social, economic and surely political problems for the great majority of the population on the peninsula, while transnational capital finance associated with medium and small scale national investors will strengthen its power and interests creating more and more tension.

In 1847, the enormous social unrest that had built up under the harsh rule of the settler landowners on the peninsula resulted in an important rural war, which, although quashed at the beginning of the 20<sup>th</sup> century still resonates in the long memories of the Maya and the working classes. There are now outbreaks of resistance that could grow and flourish. We must stay alert.

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## **The TPP, electing Monsanto to govern us and privatize seeds**

Lucía Sepúlveda Ruiz

Pesticide Action Network (RAP-Chile) Chile better off without the TPP [www.chilemejorsintpp.cl](http://www.chilemejorsintpp.cl)  
[lusr20@gmail.com](mailto:lusr20@gmail.com)

If the Mexican and the Chilean congresses ever approve the TPP, they will have performed *hara-kiri*. They might as well pack up and go home! The fact is that this agreement creates a global law formulated in secret by the governments of 12 countries led by the US, together with multinational corporations and their local supporters. If any future law attempts to protect national interests with respect to the environment, agriculture, health or education, these corporations – citing the TPP – will be able to sue the governments that have signed the agreement in an international tribunal where only the powerful win.

The TPP has been written by Monsanto, the transnational producer of hybrids, GMOs (genetically modified organisms) and pesticides, alongside the pharmaceutical industry, auto manufacturers and other corporations. Monsanto is now using the TPP to achieve what it couldn't get via legislation or the courts in Chile. A powerful social movement in Chile arose in defense of the privatization of the seed varieties maintained by small farmers and Indigenous Peoples. The movement managed to stop the proposed "Monsanto Law" (Plant Variety Rights Law) in 2014. The Chilean socio-environmental organizations which fought this struggle respect and admire Mexican organizations for their defense of corn, their capacity to form alliances, and their legal and social achievements.

If this agreement is approved, presidents Bachelet and Peña Nieto, and their respective congresses, will be remembered as those responsible for an unprecedented handover of national sovereignty. This is why in Chile the strategy to fight the TPP includes hounding representatives to make them vote against it in congress, following the signing of the agreement in February.

Until 2013, Islam Siddiqui, a former Monsanto lobbyist, was the TPP negotiator on agricultural matters for the US. He left once the interests of the transnational corporations were safeguarded in the TPP text. For instance, in Chapter 18 on Intellectual Property, Article 18.7.2, Chile and Mexico are required to ratify the 1991 International Convention for the Protection of New Varieties of Plants (UPOV-91) that protects intellectual property rights for seed varieties. This involves abolishing current legislation covering seeds and approving the Plant Variety Rights Law ("Monsanto Law"), which is a translation into Spanish of the UPOV-91 convention and paves the way for GMOs.

To reinstate the "Monsanto Law" in Chile through the TPP would prevent farmers and Indigenous Peoples from exercising their ancestral rights to freely exchange seeds, and would expand the registration of seeds to include all plant varieties. Family based agriculture will collapse, producing more migration from rural areas to cities, and this will allow the expansion into those emptied spaces of GMO plantations and the polluting forestry industries. Without family-based farming that currently provides produce to farmers markets and other fruit and vegetables vendors, consumers will have to rely exclusively on supermarkets. Only products which cannot be exported will be available for domestic consumption, which will ruin the current "short supply chain" model that operates between producers and consumers and provides new and healthy alternatives free of toxic fertilizers or pesticides.

The TPP ushers in illegal biopiracy. In Chapter 18 mentioned above, the agreement promotes the training of experts in the patenting of indigenous knowledge of plants. These experts will patent ancestral knowledge, a practice which has been rejected by indigenous peoples' organizations, whose traditional plant varieties and ancestral knowledge has been the target of biopiracy for too long. This agreement further encourages biopiracy and ignores the commitments under The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization, signed by Mexico.

In the TPP agreement text, New Zealand negotiated exceptions based on the Treaty of Waitangi on behalf of its indigenous peoples. Chile has not even carried out consultations with Indigenous Peoples, ignoring its obligations under Convention 169 on the Rights of Indigenous Peoples.

The tangle of provisions in the TPP creates a kind of straightjacket of new regulations. Chapter 2 on National Treatment and Market Access for Goods, Article 27.10, establishes a Working Group on Biotechnology, which will analyze "acts of parliament, regulations and national policies, both current and proposed". For example, any proposed moratorium on GMOs, GMO labelling proposal, or public policy on the purchasing of organically produced food, could be considered as obstacles to trade and would be stopped. Chapter 15 on Government Procurement, and Chapter 8 on Technical Barriers to Trade define national regulation as actions that go against the "reasonable expectations of profit" of investors in the agricultural industry. The Chilean government will not risk possible lawsuits under the provisions of Chapter 9 on investment and Chapter 28 on investor-state dispute settlement (ISDS) which involve international tribunals issuing biased judgments that cannot be appealed.

People are starting to resist the TPP in Chile, Mexico, Peru and Malaysia. Coordination among these groups will support their struggles, bursting into life like the green seed that does not ask permission to sprout.

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*Lucía Sepúlveda Ruiz Red de Acción en Plaguicidas RAP-Chile and The I Don't Want GMOs in Chile Campaign,*  
*Citizen's for Chile is Better without TPP www.mejorsinttp.cl lusr20@gmail.com*  
<http://www.jornada.unam.mx/2016/01/16/delcampo.html>

## **The TPP and human rights in Chile**

José Aylwin, Co-Director of Citizen's Rights Watch, Member of Chile is Better off without the TPP  
[jose.aylwin@gmail.com](mailto:jose.aylwin@gmail.com)

In October of 2015, the government of Chile, along with 11 other governments concluded negotiations of the Trans-Pacific Partnership Agreement, better known as the TPP, a trade agreement negotiated in secret over several years, whose objective is the creation of the largest market on the planet. With the participation of the USA, Australia, Canada, Japan, Mexico, Peru and Chile, among other countries, the agreement represents 40% of the world's GDP.

Alongside the US, the most active TPP promoters have been transnational corporations. An analysis of the agreement contents explains their interest in the TPP. For example, the TPP permits the extension of up to eight years of data protection for biological medicines which prevents market entry by generic versions of medicines. According to the Under-Secretary of Health in Chile it will increase costs by US\$770 million annually for each additional year beyond the current five years of data protection.

**The TPP threatens traditional knowledge** by obligating Chile to ratify the 1991 International Convention for the Protection of New Varieties of Plants (UPOV 1991) as it had promised to do under previous trade agreements. That protocol establishes a system of "protection" of the rights of plant breeders with regard to the breeding and marketing of plant varieties. Many of these varieties have been developed using the traditional knowledge of indigenous peoples. On environmental matters, the TPP stipulates that the 12 signatory countries cannot enforce their environmental laws in a manner that negatively affects trade or investment, subordinating environmental policy to the free market.

The TPP establishes the obligation of the signatories to grant investors "fair and equitable treatment and full protection and security", and states may not expropriate or nationalize their investments, either directly or indirectly, unless it is in the public interest. Expropriations can't be made in a discriminatory manner and investors must be paid full compensation. In order to determine if the actions of a government constitute an indirect expropriation, the TPP considers the form of expropriation, its economic impact and its interference with "distinct, reasonable investment-backed expectations," which leaves the doors open for investors to challenge public policy decisions by arguing that they constitute indirect expropriation.

Investors are further empowered under the TPP by allowing them to take their disputes to the International Centre for Settlement of Investment Disputes (ICSID), which can overrule the rights of governments to promote legislative or public policies to meet their commitments to human rights. In recent years, this kind of action by governments has been challenged by corporations that consider them to be in violation of trade agreements. Thus in 2014, investors took more than 600 lawsuits before the ICSID for alleged failures by governments to comply with their obligations under provisions of their trade agreements. Of 269 cases settled in 2013, 82 [30.5%] involved Latin American countries with many of rulings going against them. This proportion has increased dramatically in recent years; of 175 pending cases, 74 [43.5%] are against Latin American countries. This is a situation that contravenes the Guiding Principles of the UN Forum on Business and Human Rights, approved by the UN Human Rights Council in Chile in 2011, which states that "States should maintain adequate domestic policy space to meet their human rights obligations when pursuing

business-related policy objectives with other States or business enterprises, for instance through investment treaties or contracts". Chile's President Bachelet has given total support to the TPP, affirming that it is "good" for the country. Up to this point, the Ministry of Foreign Affairs has not released the studies that claim to offer data to support this statement, as demanded by the coalition "Chile is better off without the TPP," which brings together 100 socio-cultural organizations. Nor has it indicated that it has considered the agreement's implications for human rights in reaching its decision to support the TPP. It is clear that the 24 trade agreements to which Chile has subscribed with more than 60 countries have directly influenced the increase in extractive and productive investments -- mining in the North as well as forestry and salmon farming in the South – along with energy and infrastructure projects on Indigenous lands and territories throughout the country. This investment comes from corporations domiciled in the countries with which Chile has trade agreements but it is also result of the opening of markets for national capital.

After ratifying International Labor Organization's Convention 169, Chile was obligated to consult its indigenous communities with regard to legislative measures likely to affect them directly. In spite of this, Ministry of Foreign Affairs representatives have indicated that the TPP does NOT require preliminary consultations with indigenous communities. In 2014, parallel to the TPP negotiations, the government announced its intention to develop a National Plan on Business and Human Rights, which includes active citizen participation, to determine whether the national regulatory policy framework as well as the actions of corporations are consistent with the Guiding Principles of the UN Convention on Business and Human Rights.

The debate surrounding the TPP must be taken into account during the process of developing this plan. Similarly, the rights of indigenous communities to be consulted about whether it is in their interests or not to ratify this trade agreement must also be included in the debate. This would make it possible to conduct a genuine public debate with citizens and indigenous communities to determine the fate of the TPP, which many of us believe seriously limits human rights based on a rationale that up to this point has not been heard. We hope that the government and legislature understand this.

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*José Aylwin Co-Director of Citizen's Watch, and Member of Chile is Better off without the TPP*

*jose.aylwin@gmail.com*

*<http://www.jornada.unam.mx/2016/01/16/delcampo.html>*

## Rethinking the economic model of free trade

Pierre-Yves Serinet Coordinator of the Quebec Network On Continental Integration (RQIC)  
[serinet.py@gmail.com](mailto:serinet.py@gmail.com)

In Canada, free trade has again taken center stage in public debate. The announcement of the Trans-Pacific Partnership Agreement (TPP) on the October 5, 2015, in the middle of the federal election campaign, prompted a reaction by all parties. The Prime Minister elect, Justin Trudeau, promised to end the lack of transparency with “a profound and open public debate so that Canadian men and women are consulted.”

These consultations must be public and structured, carried out throughout the country and handled with honesty, since it is probable that they will call for the revision and renegotiation of the treaty. The population deserve more than the façade of consultation.

### **State sovereignty threatened**

The TPP belongs to a new generation of free trade agreements (FTAs) which do not so much favor trade as construct a new system of rules that essentially attempt to restrict the capacity of states to govern and regulate in the public interest.

The free trade model causes a slippage of power from democratically elected legislators towards transnational economic actors. Comparable to a commercial coup, the FTAs exploit the state, forcing it to intervene solely in order to favor *laissez-faire* (free trade), and prohibit it from directing economic activity and developing social policies that correct the injustices of the market.

### **Cooperate or we sue!**

The erosion of sovereignty is expressed in multiple ways. For example, the new FTAs include mechanisms for “regulatory cooperation” that sidestep the democratic processes of each country by imposing a prior review of all new public policy – with business participation – to guarantee their “consistency” with economic freedom.

The FTAs also include the controversial mechanism of Investor-State Dispute Settlement (ISDS) that allows transnational businesses to sue states before a supranational arbitration tribunal when these adopt policies liable to affect their “legitimate expectations” of making profits.

Deepening the scope of this mechanism, already present in Chapter II of the North American Free Trade Agreement (NAFTA), the interpretation of the “rights” granted to foreign investors casts an increasingly wider net over public policies: they contest increases in the minimum wage (Veolia versus Egypt); environmental protection measures (TransCanada versus United States for the oil pipeline Keystone XL); gradual elimination of nuclear energy (Vattenfall versus Germany); public health policies (the tobacco company Philip Morris versus Uruguay); and even legal decisions (the pharmaceutical company Eli Lilly versus Canada).

The FTAs grant extraordinary privileges and rights to foreign investors, but they do not include equivalent mechanisms to oblige transnationals to be held to account when their activities destroy the environment or violate human rights. The ISDS mechanism is not justified in political or economic terms and should simply be removed from the agreements.

### **Austerity, public services and food sovereignty**

The text of the TPP confirms the liberalization of public services. They are protected only if they are provided in a context of non-competition with other providers and are not based on commercial logic. Today in our countries the public systems of health, education and social services coexist and compete with the private sector, therefore the negotiated agreement tends to favor an extension of privatization at the expense of public management of services.

At some stage, governments, local councils and state-owned enterprises will find themselves obliged to open their public markets and submit their bids for public contracts to foreign competition, and award contracts to the provider with the lowest prices. They will no longer be able to use government purchases to stimulate local development, create quality jobs, consolidate technical knowledge or innovate at the environmental level.

Furthermore, the TPP will hit not only the already weakened family farming sector and the alternative local organic agriculture sector, but will deepen the food crisis of our countries, creating more victims of climate change, as the Japan Family Farmers Movement and the Korean Peasants League (KPL) have clearly shown.

The situation is even more dangerous given that free trade and the politics of austerity complement each other in transforming the role of the state. The new wave of FTAs seeks to definitively secure privatizations. Through the so-called “ratchet effect” it will be impossible to return the sectors to public management once they have been privatized, even when the privatizations were deemed ineffective or against the public interest. Any free trade agreement that paralyzes democratic life and feeds the spiral of austerity must be rejected.

### **Rethinking the paradigm in the light of the facts**

While the new agreements extend and go further than NAFTA, it is surprising that no rigorous official evaluation exists of the impacts of the North American “model”. The experience of our people cannot be clearer; 30 years of liberalization and deregulation policies have been a disaster for the fragile equilibrium of the planet and have deepened social inequalities to serve mainly the interests of transnational companies.

### **A change of paradigm is urgent**

But in the absence of political will from the elites, we find ourselves at a turning point: we continue actions to drive forward the planetary coordination of our movements and assume that, with the alternatives we develop, we are becoming “the other world that is possible” as claimed by the World Social Forum, and together we are building that world.

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*Pierre-Yves Serinet Coordinator of the Quebec Network on Continental Integration (RQIC)  
serinet.py@gmail.com*

*<http://www.jornada.unam.mx/2016/01/16/delcampo.html>*

## **Free Trade Agreements and Indigenous Peoples in Peru**

Luis Vittor Technical Adviser of the Andean Coordinator of Indigenous Organizations (CAOI)  
Peru

In the early 1990's Peru adopted major economic and trade liberalization reforms, partly to improve Peru's participation in international trade by increasing exports. In this way, trade agreements or free trade agreements (FTAs) have been used as important instruments for consolidating and/or expanding existing markets and opening new ones. There have now been 20 agreements concluded regionally or bilaterally, and the Ministry of Foreign Trade and Tourism (Mincetur), reports that exports have increased fivefold during the first decade of the 21<sup>st</sup> Century, rising from US\$6.883 billion to \$35.806 billion as a result.

Currently the Peruvian government is negotiating two bilateral agreements (with El Salvador and Turkey) and one regional (Trade in Services Agreement, TISA). In October 2015, Peru concluded Trans Pacific Partnership (TPP) negotiations with 11 other countries across three continents (the Americas, Asia and Oceania). According to Mincetur's report, Peru will gain access to five new markets (Australia, Brunei, Malaysia, New Zealand and Vietnam) and achieve "better conditions than those from trade agreements" with the other TPP members (Canada, Chile, United States, Japan, Mexico and Singapore). There has been an estimate of a potential increase of US\$2.25 billion in non-traditional exports as the TPP is implemented.

For the most part, debates on trade agreements focus on economic benefits, while considerations of the impact on human rights are largely absent.

In practice, trade agreements involve reforms of national standards and affect the human rights of various groups. For example, because effects on workers' rights are now recognized, labor provisions are regularly included in order to reduce the negative impacts. However, the impact on the rights of other groups – in particular on Indigenous Peoples – are not adequately addressed in FTA negotiations, nor do States take protective measures after ratification.

Taking into account the past ramifications of the Peru-United States FTA on indigenous rights, concerns arise as to the implementation of the agreements of the TPP, detailed in 30 Chapters.

First, an agreement like the TPP requires due process for the adjustment of national regulations for it to enter into force, which implies the development of new regulations and the modification of others.

Already, Mincetur Minister Magali Silva has acknowledged that considering the implications of the FTA with the United States, "Peru will have to develop a few regulations in order to implement the TPP". The concern of indigenous peoples is precisely about the regulations that the government must adopt with the TPP. In the case of the Peru-United States FTA, a package of more than 100 statutory orders was issued. At least 11 of these were challenged by Indigenous Peoples as affecting their rights and for being issued without prior consultation. A Law on the Right to Prior Consultation is in force, but there is no guarantee that the measures to be enacted for implementing the TPP will be submitted for effective consultation.

Secondly, concerns have been raised about the Investment Chapter, obligations of which apply to the measures adopted or maintained by the national, regional or local governments,

and include an investor-state dispute settlement (ISDS) section. In situations where Indigenous People oppose mining in their territories, the government would be able to force the granting of consent for mining projects in order to avoid international arbitration under a trade agreement such as the TPP, or would be able to cancel a mining project in case they had not obtained consent from the Indigenous People involved. In that case, corporations could force the State into international arbitration for violating a trade agreement.

**A case in point in Peru is the Santa Ana mining project**, of the Canadian company Bear Creek Mining Corporation. In 2011, Indigenous Aymaras of the Puno region staged protests demanding the termination of mining activities and among them was this project. Following organized protests during which evidence was provided that the company had violated Article 71 of the Constitution, referring to foreign shareholdings within 50km of the border except where there is public interest, the government decided by Supreme Decree –among other things- to repeal the declaration that declared Santa Ana of public interest. In August 2014, the company initiated arbitration before the International Centre for Settlement of Investment Disputes (ICSID), invoking the Canada-Peru FTA signed in 2009, while saying it is open to finding a solution with the Peruvian government. Similar to this case there are other mining projects of investors from the TPP countries facing strong social opposition, such as Tía María owned by Grupo México.

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Luis Vittor Technical Adviser of the Andean Coordinator of Indigenous Organizations (CAOI), Peru  
<http://www.jornada.unam.mx/2016/01/16/delcampo.html>*

## **The threat to New Zealand social democracy posed by the TPP**

Since 2012, more than 20 organizations representing civil society, including public health professionals, legal specialists, and union, environmental and Maori representatives have joined forces to inform the New Zealand public about the threats that the Trans-Pacific Partnership Agreement (TPP) raises for social democracy. University of Auckland Law Professor Jane Kelsey is the public figure most responsible for communicating legal interpretations of agreement text to the general public in a language accessible for all. In a Radio New Zealand interview, Kelsey, said “People should be very worried, because this confirms long held fears that New Zealand will have less control over its destiny.”

New Zealand has been one of the major proponents of this treaty because both the Labour and National parties had historically proposed “free trade” policies that supported the agricultural sectors exporting dairy, meat and fruit to markets in China, Asia and Latin America. This was necessary following the loss of markets in the UK upon its entrance to the European Union in 1973. However, National Party policies have been far more radical than those of Labour, and the privatization of state owned enterprises has been a major objective of the current government. The welfare state characteristic of New Zealand since the 1930s was rapidly dismantled in the 1990s, leading the OECD to rank New Zealand as having the most rapidly rising rates of inequality for several years.

The TPPA is just the latest phase in New Zealand’s process of economic neoliberalization because it restricts democratic participation and is therefore in breach of several principles of the Treaty of Waitangi, while it also promises to produce increasing social inequalities. As food exports from New Zealand have increased, paradoxically, so have hunger and poverty.

For these reasons, specialists who have studied the contents of the TPP state that it represents a serious threat to the most highly valued rights of New Zealand society, those most associated with social democracy:

1. The right to health care through the provision of medicines at reasonable prices.
2. The rights of the Maori people to maintain their sovereignty as guaranteed in the Treaty of Waitangi of 1840.
3. The right to protect the environment.
4. The rights of workers.

## **The threat to public health**

Public health professionals have spoken out against the TPP in the strongest terms possible because it will likely raise the cost of medicines. Since 1993, the government agency PHARMAC has negotiated the price of medicines with pharmaceutical companies and has successfully maintained low prices for citizens. According to Dr. Deborah Gleeson, the TPP will reduce the autonomy of PHARMAC because it will have to assume increased administrative costs associated with new compliance processes such as entering into prior consultation with pharmaceutical companies and member states during its decision-making process to determine the medicines it funds. Similarly, the Chapter on Investments will allow these companies to sue the New Zealand government for non-compliance with the agreement. But of most concern is the Chapter on Intellectual Property, which Gleeson calls “nothing less than a disaster for global health”. This chapter contains provisions on the extension of patents for traditional medicines and increases data protection for the new “biologic” medicines from 5 years to 8 years. As a consequence, there will be long waits for the generic versions of these medications which will translate into higher costs for PHARMAC; and ultimately, higher prices that will be passed on to the consumer.

## **Lack of prior consent with Maori communities**

For centuries, the Maori people have struggled to defend their sovereignty amidst unceasing European immigration. In 1840, *te Tiriti o Waitangi*, (the Waitangi Treaty) signed by the British Crown and 540 *Rangatira* Maori chiefs, established a legal mechanism to recognize the rights of Maori people to their lands, natural resources and communities. A century later, in 1985, the Waitangi

Tribunal was set up to resolve claims related to breaches of the Treaty. Although some Maori business groups favor the TPP, other representatives of Maori communities have appealed to the Tribunal to lay the following claims:

1. Lack of prior consultation in the negotiation process of the TPP, which is a clear violation of Treaty principles.
2. Any increase in the cost of medications will affect Maori people at a proportionally higher rate, as statistics have shown.
3. The Chapter on Intellectual Property could allow for the commercialization of their culture, language and art.
4. The lack of consideration of the long term impact of the TPP on their control and access to water and other natural resources.

### **Environmental threats posed by the TPP**

Although New Zealand markets itself as “clean and green” in its advertising campaigns, the National government has not committed to environmental or economic policy that would reach the global objectives to reduce CO<sub>2</sub> emissions agreed at COP21. In fact, according to Climate Action Tracker, New Zealand is the lowest ranking country on its list of TPP countries in terms of its commitment to confront climate change. This lack of commitment has provoked criticisms by neighboring Pacific nations most affected by climate change, such as Tuvalu and Kiribati. According to Dr Joshua Freeman and Dr Hayley Bennet, the TPP threatens the agreements made at COP21 which demand drastic changes in economic and environmental policies at the global level, as the TPP text does not mention climate change even once; on the contrary, it promotes the establishment of a “predictable legal and commercial framework for trade and investment”. Furthermore, if governments move to legislate in response to climate change and protect the environment, they could be sued under the ISDS provisions of the Dispute Settlement Chapter of the TPP by foreign companies that perceive new domestic legislation as going against their economic interests. This was the case in Canada where the Lone Star Resources Company filed a lawsuit for US\$250 million against the government under the ISDS provisions of North American Free Trade Agreement (NAFTA) after it placed a moratorium on oil and gas fracking in Quebec. Significantly, 63% of ISDS claims made against Canada under NAFTA have involved natural resources or the environment.

### **Threats posed by the TPP to labor rights**

The New Zealand Council of Trade Unions (NZCTU) joined other union councils of the TPP countries to propose a labor chapter that would be backed by their organizations: (<http://www.ituc-csi.org/the-trans-pacific-partnership-16694>). The final version of the Labour Chapter of the TPP did not include any of the amendments that would have protected workers’ rights. The International Labor Confederation was very concerned about this final version of the text: Secretary General Sharan Burrow states: “Business will rule itself, and be able to wield a big stick over governments, while workers are left out in the cold. It’s no wonder that people in countries across the world reject lopsided agreements like the TPP.” The Government of the National Party has utilized aggressive legal and secretive media tactics to undermine workers’ rights in New Zealand, especially in sectors such as mining, ports, the film industry (the “Hobbit Law”), and cleaning services.

In short, from the perspective of civil society in New Zealand, the TPP places democratic participation in jeopardy, which threatens the rights of the Maori people as well as the basic rights of workers, access to public services and the environment.

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*Kathryn Lehman and Dominic Hartnett The University of Auckland k.lehman@auckland.ac.nz*

*<http://www.jornada.unam.mx/2016/01/16/delcampo.html>*

See *Globalising Aotearoa* (2015) <https://www.youtube.com/watch?v=26HfcVnruPM> by Lillian Hanly for perspectives on how this treaty affects Indigenous rights and citizen’s rights.

## Campaign against the TPP in Australia

Patricia Ranald  
Coordinator, Australian Fair Trade & Investment Network

The Australian Fair Trade and Investment Network (AFTINET) is a network of 60 community organisations including unions, church, public health , environment, women's, pensioners, aid and development and human rights groups which advocates for fair trade based on human rights, labor rights and environmental sustainability. See [www.aftinet.org.au](http://www.aftinet.org.au)

The Australian campaign against the TPP was launched in 2009 and over the past 6 years has held hundreds of public forums and community meetings, lobbied politicians and organized demonstrations. Over 150,000 people have signed petitions against the TPP, with involvement from consumer groups like CHOICE and social media groups like GetUp.

Polls show [61% of Australians oppose TPP special rights for foreign corporations](#) to sue governments in international tribunals over domestic law (Investor-State Dispute Settlement ISDS). The tribunals consist of investment lawyers who are not independent judges, and there are no precedents and no appeals.

Community opposition prevented the Conservative Howard government from including ISDS in the Australia-US free trade agreement in 2004. This is why the US-based Philip Morris tobacco company had to shift some investments to Hong Kong and use an obscure Hong Kong investment agreement which did include ISDS to sue the Australian Government over its pioneering tobacco plain packaging law in 2011. It took over 5 years and \$50 million in legal fees for the international tribunal to decide that Philip Morris was not a Hong Kong company and dismiss the case in December 2015. The current Conservative government has agreed to ISDS in the TPP.

Most Australians also oppose stronger monopoly rights for pharmaceutical companies, which will delay access to cheaper medicines. The TPP also imposes regional rules which give more rights to global corporations and restricts governments from regulating in the public interest in other areas.

Our campaign has promoted much critical [media commentary](#), both online and in major newspapers like the *Sydney Morning Herald*, the *Melbourne Age* and the *Canberra Times*.

After the release of the TPP text on November 5, 2015, the analysis by AFTINET's team of experts were quoted very widely in the [media](#), especially on [medicines](#) and [ISDS](#). We have produced plain language summaries which are on our [website](#). Although some of the worst proposals in leaked documents have been removed, there are many devils in the detail. The TPP still extends monopoly rights for corporations at the expense of people's rights, and, despite promises, does not provide effective enforceable environmental standards or labour rights.

Key issues in the text for Australia are:

### Foreign investor rights to sue governments over domestic laws

- Public health campaigning has resulted in a specific TPP clause to exclude future tobacco regulation from ISDS cases. This is a victory and should prevent future cases like the Philip Morris case.
- But the need for the specific exclusion of tobacco regulation shows that the general "safeguards" for other public interest laws are [weak](#), similar to clauses in other recent agreements, and will not prevent corporations from bringing cases on [environmental regulation of mining](#), [regulation of medicines](#), and even [regulation of minimum wages](#).
- "Safeguards" in the definition of "fair and equitable treatment" for investors are still open to wide interpretation by tribunals.

- Procedural improvements do not address the [fundamental flaws](#) that ISDS tribunals have no independent judiciary and no precedents or appeals.

### **Stronger monopoly rights for pharmaceutical corporations and medicine price rises**

Pharmaceutical companies already have 20 years of patent monopoly and higher prices on new medicines before cheaper versions become available.

Public health campaigning removed some of the most extreme TPP proposals, but for many countries, the TPP will strengthen patent rights and provide additional monopoly rights for the costly biologic medicines used to treat cancer and other serious diseases. Australian [health experts](#) and [Doctors without Borders](#) (MSF) say the TPP will restrict and delay access to lower-priced medicines for millions of people, especially in developing countries.

Australian law on biologic monopolies will not change immediately, but the text is ambiguous, referring to “other measures” which would “deliver a comparable market outcome,” and to a future review which could result in up to three extra years of monopoly.

Each year of delay in the availability of cheaper biologic medicines would cost the Australian government [hundreds of millions of dollars](#), creating pressure for higher consumer prices.

### **Environment Chapter: principles not legally binding**

- Only mentions four out of promised seven International agreements, and only one is enforceable (trade in endangered species).
- Does not refer to climate change, only to voluntary measures for lower emissions.
- Contrast with strong legal rights of foreign investors to sue governments.

### **Labour Chapter: weak on implementation**

- Must prove “sustained or occurring violations” of labour rights in a manner “affecting trade or investment”: does not cover non-traded sectors.
- Products of forced labour not banned, instead “recognise goal” of elimination.
- Lengthy complaint process has not resulted in effective action in similar chapters in other agreements.

### **Debating the TPP text and campaigning against the TPP implementing laws in 2016**

AFTINET presented its preliminary analysis of the text at our public forum on November 18, 2015. See video [here](#). We also spoke at a public forum on November 30, 2015, at Parliament House in Canberra, organized by the [cross-party Parliamentary TPP group](#) and attended by 50 members of parliament and their staff.

TPP Trade Ministers are likely to hold a signing ceremony early February, and the text is likely to be tabled in the Australian parliament in the first week of February.

There will be Parliamentary inquiries over February and March before Parliament votes on the implementing legislation. AFTINET will be organising public events, social media and actions to make politicians accountable during the Parliamentary Inquiries. The Government does not have a majority in the Senate, so this is the last opportunity to stop the TPP. We will be campaigning for the majority in the Senate - the Labor Party, Greens and Independents - to vote against the implementing legislation.

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*Patricia Ranald Coordinadora de la Red Australiana de Comercio e Inversiones Justas*

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