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# TPPA and Southeast Asian Labour

## History and Context

The Trans-Pacific Partnership Agreement (TPPA) is a trade, investment and economic integration that involves 12 Asia-Pacific countries, including Vietnam and Malaysia. The concluded agreement is around 6000 pages long, comprising 30 chapters, multiple annexes, appendixes general notes and side agreements. Trade unions, environmental, development and public health campaigners have all raised issues with various parts of the TPPA, and large-scale protests have animated much of the public discourse in other parts of the world. The deal's proponents have pointed to the economic gains, while arguing that the safeguards negotiated into the agreement will protect the public interest.

The technical legalistic jargon of the Agreement make it largely impenetrable for working class people to engage with it on a meaningful level. This project aims to address that issue, presenting information based on text, secondary analyses. The project has been funded by Friedrich Ebert Stiftung's Singapore Office, research has been undertaken by the Building and Wood Workers' International Asia-Pacific Regional Office, and consultation has taken place with union leaders through the ASETUC network.

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# History and Context

The TPPA was signed on 4 February 2016 in Auckland, New Zealand, however the road to then was a long and complicated one.<sup>1</sup> The TPPA involves 12 countries, 800 million people and 36% of global GDP. The TPPA evolved out of the Trans-Pacific Strategic Economic Partnership Agreement (aka the 'P4' Agreement), negotiated between Brunei, Chile, Singapore and New Zealand and concluded in 2005. That 'comprehensive' agreement included rules on trade in goods (calling for 90 percent tariff reduction by 1 January 2006), rules of origin, trade remedies, sanitary and phytosanitary measures, technical barriers to trade, trade in services, intellectual property, government procurement and competition policy.

In January 2008 the US agreed to enter into talks with the P4 countries regarding liberalisation in financial services. The P4 agreement was seen as an expeditious entry point for the US to embark on the first stages of its "pivot to Asia", and by September of that year US Trade Representative Susan Schwab announced that the US was joining the group to participate in the negotiation of the TPPA.<sup>2</sup> By November Australia, Vietnam and Peru announced that they were joining the fast-growing bloc, with talks set to begin in March 2009. These talks were delayed by around one year, with the first formal round of negotiation taking place in Melbourne in March 2010. At the third Round of negotiation in Brunei the eight participating states unanimously agreed to Malaysia joining the negotiation in October 2010. In June 2012 Canada and Mexico announced they would be join in the negotiation, and Japan officially joined the negotiation in July 2013. Negotiation continued for another two years, before its October 2015 conclusion in Atlanta.

A total of 19 rounds of negotiation took place between 2010 and August 2013, after which time other forms of meeting, such as Chief Negotiators' Meetings and Ministers' Meetings, took place. Throughout the entire period of negotiation the text of the TPPA was kept under abject secrecy. This secrecy concerned not just the general public, but even elected officeholders of the highest order were denied access to the text. Those concerned with the potential implications of the TPPA were forced to rely on a combination of political statements, past negotiating positions (in particular past US FTAs) and leaked texts. This was exacerbated by the fact that a group of 600 US corporate advisers were given access to the text, giving the impression of extremely uneven access between corporate interests and the popular interest and propelling criticisms that the TPPA was designed as a 'corporate power tool'. Indeed secrecy became one of the main rallying points for campaigners in many TPPA countries.<sup>3</sup> The text was not made available until November 2015, once the negotiation was complete.

## Motivations

For most countries involved in the TPPA, the major prize is securing liberalised trade and investment with the wealthy US markets, as well as the other TPPA countries.

The shift away from the multilateralism of the last decade towards more bilateral and regional FTA negotiations was the result of an impasse at the World Trade Organisation (WTO) that threatened the durability of the regime for Northern

1. Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, United States and Vietnam.

2. <https://ustr.gov/schwab-statement-launch-us-negotiations-join-trans-pacific-strategic-economic-partnership-agreement>

3. As with the WTO Doha Development Round, access to negotiation rounds and meetings became increasingly restrictive as time continued. The high point of this trend was the Chief negotiators meeting in May 2015 that was held in Guam, a US territory in the middle of the Pacific Ocean.

capital. For some time WTO negotiations (and the GATT negotiations that preceded them) had been dominated by the so-called 'Quad' countries – Canada, the European Union, Japan and the United States. The initial catalyst was the 1999 Seattle WTO negotiations, in which labour unions and environmentalists, along with developing country negotiators, collectively blocked the demands for deeper, uneven liberalisation.

The countries that were allowed into the TPPA negotiations themselves tell an interesting story. It is no surprise that the US, as the world's largest economy, led the negotiation overall, and a number of Anglo-American economies – Australia, Canada and New Zealand – are also involved. Bringing Japan into the fold – the US's traditional Trilateral Commission partner – speaks more for the Agreement's diplomatic arrangement than it does for negotiating expediency, and their inclusion slowed talks significantly.

Five of the countries involved – Australia, Canada, Malaysia, New Zealand and Vietnam – are part of the 'Cairns Group', a coalition of agricultural exporters committed to the liberalisation of agricultural trade. While a number of ASEAN countries are included – Brunei Darussalam, Malaysia, Singapore and Vietnam – they have tended to be the wealthier ASEAN nations, and no least developed countries (LDCs) are part of the club. Those four countries are also notable for the severe restrictions placed on the rights to freedom of association and expression, preventing popular opposition from undermining the talks.

## Geopolitical context

Even more telling is the question of who isn't involved. Despite the fact that at least three of the BRICS countries can be considered as part of the Asia-Pacific region – Russia, India and China – none of them were invited to participate. The 'Chinese economic miracle' is increasingly apparent through the Asia-Pacific region, and most countries are struggling to negotiate the Pacific powerplay. US officials attending the 2011 APEC meeting in Honolulu described the US as 'the anchor of stability in the [Asia-Pacific] region', committed to 'managing the relationship with China, economically and militarily'.<sup>5</sup> At times China has made overtures towards joining the negotiation, however given the concessions made by other late-comers to the negotiation, this is more likely part of a diplomatic game, as Kelsey explains:

It seems inconceivable that China would agree to a process of bilateral discussions and arduous pre-conditions simply to get to the table, and accept a raft of US-drafted corporate rules that are designed to cripple China's principal sources of commercial advantage.<sup>6</sup>

While leaders of TPPA countries were keen to distance themselves from Washington's anti-China rhetoric,<sup>7</sup> there was little ambiguity about this fact by the end of the negotiation. "With TPP, China doesn't set the rules in the region", stated President Obama in his 2016 State of the Nation address. "We do."<sup>8</sup> However, with ratification on hold until at least the conclusion of the 2016 US Presidential Election, the rapidly unfolding negotiation of China's diplomatic counter agreement, the Regional Comprehensive Economic Partnership (RCEP)<sup>9</sup> has for now rendered this claim at best aspirational. And, as RCEP's fortunes rise, long-time observers of these Agreements are noting that MNCs are working to ensure that even if TPPA fails their demands are met by RCEP in the alternative.

4. Brazil, Russia, India, China and South Africa.

5. Press Briefing by Deputy National Security Advisor Ben Rhodes and Admiral Robert Willard, US Pacific Command, Honolulu, 13 November 2011, <http://www.whitehouse.gov/photos-and-video/video/2011/11/13/press-briefing-ben-rhodes-and-admiral-robert-willard>

6. Jane Kelsey, *Hidden Agendas*, page 8.

7. NZ Trade Minister Tim Groser stated in February 2012 that New Zealand would pull out of the negotiations if politicians in the United States used them as a vehicle to try to contain the rise of China. <http://www.radionz.co.nz/national/programmes/insight/20120212>

8. <https://medium.com/the-white-house/president-obama-s-2016-state-of-the-union-address-7c06300f9726#.mouxg5ba3>

9. RCEP includes 16 Asia-Pacific nations: (Australia, Brunei Darussalam, Cambodia, China, India, Indonesia, Japan, Laos, Malaysia, Myanmar, New Zealand, Philippines, Singapore, South Korea, Thailand, Vietnam).

## Secrecy and the voice of labour

As already noted, TPPA negotiations were undertaken in abject secrecy. It was not until a month after the completion of the negotiation (in November 2015) that the text became public as a result of mounting political pressure in many TPPA countries.

This secrecy was required by a March 2010 pact signed by all parties that required all Governments involved to keep the negotiating texts, proposals of each Government, explanatory material, related emails and information in confidence unless all participants agree otherwise. According to that pact, parties agreed to “hold these documents in confidence for four years after entry into force of the Trans Pacific Partnership Agreement”, effectively providing an election-cycle buffer of scrutiny into the content of the Agreement.

The secrecy in TPPA negotiations has been widely criticised, including by UN experts. In a recent report Transparency International stated some of the implications of this secrecy:

...the current level of transparency remains largely out of step with contemporary disclosure standards and accountability mechanisms. Such opacity in international trade deals, which reach so deeply into national policy, generates and amplifies serious risks of undue influence and policy capture by well-connected, well-resourced interests.<sup>10</sup>

This threat of policy capture was amplified by special access to the texts in the US for industry bodies and corporate actors. While some states established channels through which public concerns could be voiced, there was no real opportunity for workers and unions to contribute to a public discussion around the kind of proposals they wanted to see reflected in the agreement.

The argument that public negotiation would jeopardise Malaysia’s bargaining position doesn’t stand up to scrutiny, given that the other countries involved in the negotiation can already see the documents that outline states’ positions on issues. The idea that it may affect the country’s future bargaining position in other negotiations is minimal – there is abundant public information relating to other future negotiating parties, many of whom have teams of economic experts whose primary role is to undertake these analyses.

Unsurprisingly, the resulting text is extremely one-sided, reflecting a narrow agenda of pro-corporate rules for trade, investment and economic integration. And, while the labour chapter and associated side-agreements go some way toward addressing current and future labour issues tied to economic development, these would likely be very different looking rules if labour had been involved throughout. Amidst glowing commentary (albeit short on actual detail) from public officials, ascertaining the actual merit of such a wide-ranging agreement like the TPPA is an extremely difficult process for workers and their unions.

### **Kelsey v Minister of Trade**

In New Zealand a High Court challenge was taken against TPPA’s secrecy, demanding a judicial review of the Minister of Trade’s blanket refusal to release documents relating to the negotiation. Attempts had previously been made to access information using New Zealand’s Official Information Act, but the request was denied. The Court decided in favour of the applicant, a law professor, and ordered the Minister in charge to review his decision to withhold the requested information (however this came after the agreement had been concluded).

10. Transparency International “Transparency and Corruption - A role in Mega Trade Deals” (2016) [http://www.transparency.org/whatwedo/publication/working\\_paper\\_2\\_2016\\_transparency\\_and\\_corruption\\_a\\_role\\_in\\_mega\\_trade\\_deals](http://www.transparency.org/whatwedo/publication/working_paper_2_2016_transparency_and_corruption_a_role_in_mega_trade_deals)