BRIEFING
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The Trans-Pacific Powergrab

Why joining the Trans-Pacific Partnership would be bad for people and planet – and the UK

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The UK government is currently considering the idea of the UK joining the Trans-Pacific Partnership (TPP or CPTPP). This is a high-risk deal that will benefit big business at the expense of people and planet.

TPP would:

- Entrench the corporate court system that gives multinational corporations special powers to bully and sue governments
- Exacerbate global inequality, restricting the ability of developing countries to transform their economies
- Undermine food standards – threatening to allow chlorine chicken and steroid-fed beef into the UK, lowering the quality of food and jeopardising farmers' livelihoods
- Undermine public services across the world – threatening the NHS and the ability of the developing countries in the deal to build their own public services
- Give more power to big tech companies to use and abuse our data, and prevent developing countries from building their digital sectors, which are vital for their development
- Take a high-risk approach to regulation of banks, hedge funds and other financial corporations
- Allow big corporations even greater power to patent and place monopolies on traditional seeds that many southern farms depend upon
- Move Britain closer to a US-style system of deregulation that would make it harder to work closely with the EU

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What is TPP?

The Trans-Pacific Partnership or TPP is a trade deal between eleven Asia-Pacific countries – Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam. Whilst the deal has already been completed, the countries involved have said they are open to others signing up, and the UK is considering this.

The UK would have to accept the deal as it is – the offer is not to reopen negotiations. However it would have to agree conditions for joining, which means making concessions over and above what is already in the deal.

Originally TPP was intended as a sister to TTIP, the proposed EU-US trade deal that was defeated after public outcry on both sides of the Atlantic, and it has many of the same features. Civil society groups in the countries involved in TPP have described it as a "threat to regulatory sovereignty"[1] and a "threat to fundamental rights" that would "deepen inequality and environmental unsustainability".[2]

Like many recent big trade deals, any predicted impact on overall economic growth is small. There are various different forecasts, but in general the optimistic ones anticipate only gains of tenths or even hundredths of one percent of GDP after several years for some countries.[3] Others predict no growth or even losses – and of course any gains that there might be will not be shared equally. Instead of growth, what the deal is designed to deliver is deregulation and removal of standards – which the government refers to as 'behind the border barriers'.

TPP also used to include the US, until President Trump withdrew from it. The deal had actually already been finalised by that point, and the US was the largest economy and most powerful voice throughout the negotiations. As a result, although Trump claimed the US was "hard done by" in TPP, the deal is actually shaped very much by US interests and the US approach to standards and regulations.

When the US left, the other countries decided to continue. They suspended a handful of the provisions in the deal which only the US had wanted, but they haven't actually removed them. They hope that the US will change its mind at some point in the future and re-join the TPP, at which point these clauses could be reactivated without further negotiation.

The continuing deal is formally known as CPTPP, for Comprehensive and Progressive Agreement for Trans-Pacific Partnership, but **to all intents and purposes, it is the same deal.**

The following are some of the concerns about TPP.

Corporate courts

TPP includes the notorious 'corporate courts' that were such a controversial part of TTIP. Formally known as ISDS (investor-state dispute settlement), these allow foreign corporations to sue governments over new regulations or even court decisions that affect corporate profits, through an international arbitration process that bypasses national justice systems.

In practice, this means corporations can sue over almost anything they don't like – environmental protection, regulation of hedge funds and speculative finance, renationalising public services, anti-smoking policies – you name it.

- **Public health:** Cargill sued Mexico over a tax on sugary drinks; Ethyl sued Canada over a ban on MMT, which is a suspected neurotoxin, in petrol
- **Energy and climate:** Vattenfall sued Germany for deciding to phase out nuclear power; Lone Pine sued Quebec over a fracking moratorium
- **Tax:** Vodaphone sued India over capital gains tax; Perenco sued Ecuador over a windfall tax on oil company profits

Governments can never really win from an ISDS case – even if the judgement is in their favour, they face average legal costs of US$8 million for each case.[4] If the state loses, it can be forced to pay much more in compensation – paid from our money. The average award is US$504 million and the largest award so far was US$50 billion.[5] The system can only be used by companies suing governments, not vice versa. The winners from ISDS have been the richest; over 95% of all compensation awarded in ISDS cases has gone to companies with over US$1 billion in annual revenue and super-rich individuals with over US$100 million in wealth.[6]

There was a change in government in New Zealand after the initial TPP negotiations had finished. The new government opposes ISDS but could not withdraw from it in the TPP deal or even include any safeguards. Instead they negotiated 'side letters' with half of the countries involved in TPP. These state that ISDS will not

US-owned fracking company Lone Pine Resources Inc. sued Canada when the Quebec provincial government revoked oil and gas exploration licenses in urban and sensitive areas.

apply in TPP between New Zealand and the other country. Japan and Canada, which have large investments in New Zealand, refused to sign letters. This illustrates how difficult it would be for the UK to change anything in TPP at this point.

We need to get rid of corporate courts. TPP would entrench them.

Global inequality

TPP involves a mix of developed and developing economies. These are countries whose economies are in different places and have different needs. Yet TPP requires them to make equal commitments. As Chilean civil society groups put it: "If you give equal weight to things which are different, you will get unequal results."[7]

Strategies that countries can use effectively to support their development will be blocked by TPP. A clear example is in industrial policy. Requiring a transnational corporation that wants to set up in a country to form a joint venture with a local company, to employ local people and to transfer technology, can help to ensure that benefits are shared with local communities and the local economy. TPP will prevent countries such as Vietnam and Malaysia from doing this.

Instead they will have to open up to powerful transnational corporations with few limits. This can lead to countries being locked into an unequal position, unable to transform their economies.

The entire approach of TPP also reinforces inequality within society as well as between countries, writing corporate power into the rules of our societies and undermining rights. This is likely to have particularly acute implications for groups who already suffer the effects of inequality. For example, women tend to access public services more often but also face relatively higher barriers to accessing them because, amongst other things, they tend to earn less than men and therefore find it harder to pay fees for privatised services. TPP locks in and assumes ever-increasing privatisation of public services; this will create more opportunities for corporations to make a profit but puts services even further out of reach for women.

TPP will also restrict countries' ability to meet commitments on climate change. For instance, to transition away from fossil fuels it is important to build local capacity in renewables. One way to do this is by ensuring that investors in the energy sector commit to using local suppliers, who might for example make parts for wind turbines, or to share research and technology to allow local industries to increase the efficiency of solar panels. Not only does the TPP prohibit these measures, it also explicitly envisages an increase in flights to support the expansion of trade.

TPP will therefore further fuel climate change, which will disproportionately affect millions of people living in poverty across the world.

Undermining food standards

TPP would lead to pressure for the UK to weaken its food safety standards. It strengthens the onus on countries to recognise standards as 'equivalent' and therefore to accept imports even where significant differences in food safety requirements exist.

TPP does this adopting language that has been used to challenge the precautionary principle, which places the burden of proof on the producer of a product to demonstrate that it is safe.

This increased pressure could lead to chlorine chicken and hormone-fed beef finding their way onto our shelves – with lower standards of animal welfare and the risk of spreading of bacteria and exposure to growth hormones. Both Australia and New Zealand allow chlorine-washed chicken, and Australian sources[8] have already said they want the hormone-fed beef ban to be lifted, although formally the government has denied this. Bans on pesticide use would also be in the firing line, as would the moratorium on genetically modified crops.

TPP also weakens the system currently used in the UK to protect local speciality foods made in traditional ways – Cornish pasties, Yorkshire Wensleydale, Scottish salmon, Whitstable oysters, Arbroath smokies and many others. These are currently protected by the system of 'geographical indications' (GIs). However the US opposes this system and uses a more limited approach of trademarks, and again there is competition globally as to whether the US or European system will prevail. TPP allows countries to opt to use US-style trademarks as an alternative way of recognising geographical indications. It also sets out procedures for countries to directly challenge geographical indications. And because ISDS is included in TPP, a company producing a competing product could also get in on the act.[9]

Public services and the NHS

TPP poses a threat to our public services, including the NHS in the UK as well as vital public services in the global South. Trade deals treat public services as tradeable commodities and lock in privatisation.

Like TTIP, TPP uses a 'list it or lose it' approach (negative list) for services. All public services are up for grabs, unless they are specifically excluded or fall within a very narrow exemption.

Even things we haven't thought of yet have already been given away. Nowadays the UK government regulates to ensure that broadband providers commit to offering a universal service; a couple of decades ago, the importance of this wasn't clear and we might well have signed away our ability to require that. What might become vital in twenty years' time?

Even among existing services it is inevitable that things will be overlooked and mistakes made. The US thought it had kept the ability to regulate internet gambling in an earlier deal, but it turned out it hadn't.[10] A blanket opening up on advertising, for instance, could limit the government's ability to regulate junk food advertising to children.

The list it or lose it approach becomes even riskier under a government that has little or no interest in protecting our public services. And effects can be long term, because TPP includes a ratchet clause which means change can only be in one direction – privatising more and more. If one government decides to open up a sector to the market, then there would be severe penalties if a future government wanted to reverse that. Proposals to return privatised services into public hands could be blocked. TPP will also make it harder for devolved governments or local administrations to make different policy choices on public services.

The government consultation tries to reassure us that the government has a commitment to protecting public services and that TPP poses no risk. However just like TTIP, TPP only excludes public services if they are not provided on a commercial basis or in competition with other suppliers. This applies to hardly any public services in the UK nowadays – for instance, the NHS has an internal market and competes with private healthcare. In recent trade deals, other European countries in similar positions therefore put in explicit exclusions for their various public services, but the UK chose not to do so. As long as the government continues to assert that there is no risk, they will not take steps to take our public services off the table.

For countries in the global South, the risks are not just of undermining existing public services, but of preventing strong public services being established in the first place – in health, education and welfare. A couple of years ago, Uruguay withdrew from one of the other big trade deals, TISA, precisely because of such concerns about rules on services. They decided the deal was not compatible with their vision for the country's future. One specific worry was exactly the issue of broadband internet access for all. Uruguay has chosen to prioritise this as a springboard for the country in the twenty-first century, but the trade deal was threatening this.

Digital deregulation

TPP was the first trade deal to include a full chapter on 'e-commerce' – the text of which is now serving as a template for other deals. Very little in this chapter, however, is to do with the mechanics of selling things online. Instead, along with the rules on services, its effect would be to establish the digital landscape and marketplace as a deregulated, corporate controlled space.

Over the past year or so, the increasing power of digital platforms like Facebook, Amazon and Google over our lives has been dramatically highlighted. Data leaks, fake news, election campaigning, algorithm biases, trolling and hate speech have all raised questions about who is or should be regulating the digital world and how. The answers aren't necessarily straightforward, but parliaments need to be able to find the right balance without having their hands tied by trade rules – and to keep that balance as technology rapidly evolves.

TPP would require data to be able to be transferred and stored in other countries, even though privacy and consumer protection rules may be weaker. This includes sensitive personal data, such as health records or financial history.[11] TPP does have exceptions for government data and incorporates some exceptions for privacy or 'legitimate public policy objectives', but these are so wrapped in conditions that they offer very little protection in reality.

The digital world has already exacerbated the ability of multinationals to avoid paying tax. TPP rules that say you cannot require corporations to set up in your country in order to trade there (unless you remember to make an exception in the list-it-or-lose-it process) make it even harder to pin them down to pay the tax they owe. These rules also pose concerns for many other areas, such as regulation of financial services, online education courses and processing of health tests.

TPP will prevent regulators from requiring corporations to disclose source code – the under the bonnet programming of products. The consequences of being unable to inspect this can be very real – for instance a bug in medical equipment that could cost lives, or the impact on the planet of VW's gaming of diesel emissions mechanisms.

The concerns about digital deregulation have particular urgency for countries in the global South. At present, the digital space is dominated by a few major platforms – Google, Amazon, Facebook and Alibaba in China. As the digital economy grows, Southern countries need to make sure they can benefit from it to support their development:

"Like with earlier phases of industrialisation, developing countries must first focus on digital industrialisation, where they are severely lagging behind, before entering into commitments on global digital trade."[12]

Data is the oil of the digital economy, and TPP would ensure that the Southern countries involved hand it over to the control of corporate platforms.

Finance

TPP will undermine the ability to regulate banks, hedge funds and other financial services. A few decades ago, financial services would have been largely excluded from trade deals so that countries could have prudential oversight of a sector that poses so many risks if things go wrong. However it started being included as part of the general trend for financial deregulation in the 80s and 90s. Despite the experience of the global financial crisis and efforts to reintroduce rules for banks, the drive for deregulation continues within trade deals like TPP.

As with food standards, TPP pushes countries to recognise each other's financial regulations as equivalent to their own. Allowing a bank to operate in one country under a different set of rules from another country, alongside another bank under the rules of a third country, greatly weakens oversight and poses the kinds of hazards that led to the 2008 financial crisis. TPP's wording here is quite vague, for example stating that mutual recognition of financial service regulations could be achieved by unspecified 'other means', leaving big loopholes which financial corporations are likely to exploit to the maximum.

The digital deregulation also affects financial services. As more and more financial transactions are done online, and cross-border finance becomes an everyday reality, banks can further escape national regulation.

TPP prevents countries from imposing limits on financial corporations. Whether this is a cap on the high-frequency trading in speculative markets that causes extreme volatility and crashes, or a basic restriction on banks becoming too big to fail, this is a high-risk approach. Even worse, if we face another a financial crisis, TPP limits what governments can do to intervene to fix it.

Access to medicines

The original TPP included controversial clauses around patents on medicines, which would have damaged access to medicines. It would have delayed the point at which cheaper generic versions of medicines can be introduced and made it harder for manufacturers of generic medicines to operate. These clauses were suspended when the US left TPP, but remain in place ready to potentially be reactivated. If that happened, it would affect access to medicines for millions of people.

Corporate control of seeds and knowledge

TPP requires all the countries involved to sign up to restrictive seed laws, known as UPOV 91,[13] that would limit farmers' ability to save, exchange and re-use seeds, even if they are small-scale farmers with no involvement in international trade. This would affect Chile, Malaysia, Mexico and Brunei, as well as New Zealand, and will need them to change their laws.

It also pressures countries to allow traditional knowledge to be incorporated within patent and copyright law. This tends to lead to corporate appropriation and profit of traditional knowledge, without benefit to the communities and peoples who have developed and held that expertise. An example was the patenting of neem as a fungicide even though this property of the neem tree was public knowledge in India for centuries and it was widely used by farmers. That patent was eventually overturned after years of campaigning, but encouraging the approach of patenting such knowledge has been described as the legalisation of biopiracy.

Santiago, Chile, January 2016: Protesters taking part in a march against TPP highlight the dangers that the trade deal poses to food and seeds.

Weak safeguards

In response to criticism and campaigning pressure, governments have argued that the 'right to regulate' will not be undermined by trade deals. TPP includes a mention of this in its preamble, along with nice words about public health, environmental protection and other positive things. However, whereas the core provisions of the deal have strong, legally binding provisions, including the corporate court section, the right to regulate is purely rhetorical. It is revealing that the UK government consultation document lists the chapters of the TPP but neglects to mention the sections that deal with the right to regulate – a clear indication that the government considers it to be purely cosmetic.

In contrast, there is a specific carve-out from corporate courts included for tobacco regulation. Australia was sued by Philip Morris when it introduced rules on plain packaging for cigarettes, and though in the end it won the case, that experience and the public outcry around it led it to insist on this exception. Faced with the reality of that case, Australia isn't relying on flimsy rhetoric about the right to regulate.

TPP incorporates some clauses from WTO rules that provide general exceptions for public interest. This is not an exception a country can claim in advance – it is a defence a country can use if challenged by another country. However it has proven nearly impossible to do so at the WTO: of 44 cases, only one has ever succeeded.[14] Acting in the public interest also can't be used as a defence against an ISDS case.

Workers' rights are included in TPP, but again on the whole, it sets out things countries might aspire to do, one day, rather than legally binding requirements. The few provisions that are legally binding are much harder to enforce than other parts of the deal; unions have pointed out that the enforcement mechanisms included are the same as ones in previous trade deals that turned out to be ineffective in practice.

It's the same with environmental standards – the deal talks of countries 'striving to ensure' protection of the environment, but not actually requiring anything. It is also highly selective in the environmental law that it refers to, with no mention of the climate change treaty!

Trying to enforce workers' rights and environmental standards through trade deals is in any case problematic. They should be binding and enforceable in their own right, rather than subject to trade law which puts the corporate bottom line above everything else. Instead, trade deals should be subject to other areas of international law, and their core provisions should be rewritten to support people and planet. TPP meanwhile puts social and environmental aims below profit, while not actually providing any real safeguards.

Jumping the gun

In the political debates and decisions facing the UK around Brexit, among the most crucial is how close the UK should stay to the EU's rulebook and what that means for its future trading arrangements. Should the UK stay aligned to the EU in order to maintain access to its market, keep the Irish border open and guarantee that we keep existing environmental protections, food safety standards and other rules as they are? Or should it separate itself from the EU's rulebook in order to have the ability to change our rules to fit more closely with the rules of others in future trade deals? In practice, this would mainly mean the rules of the US which, along with China, is one of the other main regulatory 'regimes' that compete with the EU globally.

TPP forms part of the US 'regime'. It was written with the US in mind and has stayed that way to make it easy for the US to potentially re-join in the future.

The UK government has argued that it can have a common rulebook with the EU and still negotiate independent trade deals elsewhere because those would be unique deals, negotiated to suit the UK's circumstances. Whatever the likelihood of this in other cases, this certainly can't be the case with TPP. TPP is a done deal; it is completed and negotiations are closed. Other countries are invited to join it, but on the basis of accepting what's already been agreed. The UK will be asked to make extra concessions as a condition of joining, but it won't be able to ask for concessions in return.

For the UK to join TPP would pre-empt debate about staying closer or further from the EU rulebook – our choice would be made for us.

Conclusion

TPP will hand over even more power to the most powerful corporations in the world and deepen the inequalities of hyperglobalisation.[15] The UK should not be considering joining it. Instead it should be developing a progressive approach to trade that can work for people and planet.

Notes

1. It's Our Future, https://itsourfuture.org.nz
2. Chile Mejor Sin TLC, *In defence of sovereignty and democracy: the Chilean civil society says NO to the Transpacific Partnership Agreement (TPP)*, http://chilemejorsintlc.cl/declaration-tpp/declaracion-tpp/statement-tpp/
3. For example: MFAT, "Economic Modelling on Estimated Effect of TPP on New Zealand Economy", *TPP Talk,* http://www.tpp.mfat.govt.nz/assets/docs/TPP%20-%20CGE%20Analysis%20of%20Impact%20on%20New%20Zealand,%20explanatory%20cover%20note.pdf; Dade et al, *The art of the trade deal: quantifying the benefits of a TPP without the United States*, http://cwf.ca/research/publications/the-art-of-the-trade-deal-quantifying-the-benefits-of-a-tpp-without-the-united-states/
4. Gaukrodger, D. and K. Gordon, "Investor-state dispute settlement: a scoping paper for the investment policy community", *OECD Working Papers on International Investment*, 2012/03, OECD, 2012, p19, http://dx.doi.org/10.1787/5k46b1r85j6f-en
5. UNCTAD, *Investor–state dispute settlement: review of developments in 2017*, June 2018, p5, https://unctad.org/en/PublicationsLibrary/diaepcbinf2018d2_en.pdf
6. Gus Van Harten & Pavel Malysheuski, "Who has benefited financially from investment treaty arbitration? An evaluation of the size and wealth of claimants", *Osgoode Legal Studies Research Paper,* No. 14/2016, p1, https://papers.ssrn.com/sol3/papers2.cfm?abstract_id=2713876
7. Chile Mejor Sin TLC, *Implicancias del Acuerdo Transpacífico (TPP)*, 2016, p7, http://chilemejorsintlc.cl/wp-content/uploads/2016/11/implicancias-del-tpp.pdf (Original: "Si se trata en igual forma lo que es diferente, los resultados serán desiguales.")
8. "Australia to demand Britain accepts hormone-treated beef", *Times*, 2 April 2018, https://www.thetimes.co.uk/article/australia-to-demand-britain-accepts-hormonetreated-beef-htwf9xxsb
9. Danny Friedman, "TPP's coup de grâce: how the trademark system prevailed as geographical indication system" in Chaisse et all eds, *Paradigm shift in international economic law rule-making: TPP as a new model for trade agreements?,* Springer, 2017, 273-291, https://www.researchgate.net/publication/321054732/
10. WTO, *United States — measures affecting the cross-border supply of gambling and betting services*, DS285, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds285_e.htm
11. Financial corporations' data must be allowed to be transferred for processing, although it can still be required to be stored locally.
12. Parminder Jeet Singh, "Digital economy policies for developing countries", *South Views,* 24 July 2018, Geneva: South Centre, https://us5.campaign-archive.com/?u=fa9cf38799136b5660f367ba6&id=d553fb3cd0
13. *International convention for the protection of new varieties of plants,* Revised March 19, 1991. For more background see: https://www.grain.org/e/5314
14. Public Citizen, *Only one of 44 attempts to use the GATT Article XX/GATS Article XIV General Exception has ever succeeded*, 2015, https://www.citizen.org/sites/default/files/general-exception_4.pdf
15. UNCTAD, Trade and development report 2018: power, platforms and the free trade delusion, 2018, https://unctad.org/en/pages/PublicationWebflyer.aspx?publicationid=2227

Global Justice Now

Global Justice Now is a democratic social justice organisation working as part of a global movement to challenge the powerful and create a more just and equal world.

globaljustice.org.uk

TRADE JUSTICE MOVEMENT

The Trade Justice Movement is a network of over 70 organisations, including fair trade, environmental and women's rights organisations and trade unions. Together we call for a trade system that works for people and planet.

tjm.org.uk

WAR ON WANT

FIGHTING GLOBAL POVERTY

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