

Profits Before Health: The Next Chapter of the Trans-Pacific Partnership (TPP)

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*"Imagine a group of corporate lawyers on a hilltop in Switzerland with the power to decide that a law passed in Illinois to regulate fracking is detrimental to the maximisation of corporate profits and therefore null and void."
Letter to The Herald News, Oct 11, 2014*

If you want to do your very best to bash the commonweal and undermine the premise of a social compact, a trade deal, masked by the lingo of beneficial free trade, is a good start. The Transpacific-Partnership (TPP) continues its ride through the negotiating rooms in top secrecy, punctured occasionally by a WikiLeaks release and the utterings of concerned bystanders. The latest variant of the TPP's intellectual property chapter (the "second release") suggests a predictably corporate driven agenda on the issue of health care.[1]

Significant in the chapter is the coverage of pharmaceuticals, patents, and copyright over digital rights canvassed in the Vietnam meetings in May. The Office of the US Trade Representative, caught with its proverbial pants down, has warned against drawing "premature conclusions of any kind based on supposed leaked text from unsubstantiated, unnamed sources." Rather blandly, the statement goes on to say that "pharmaceutical intellectual property issues" should be best dealt with in accordance with "flexibility" and "needs".[2]

As health is very much a government concern, falling within the social contract, so to speak, responses to upholding it have varied. This is where the pongy scent of political interference can become problematic, notably if done through the forum of an international "trade" agreement. Local laws can be such irritating things, and bypassing them has become something of the holy grail for trade negotiators.

Some, like many members on the Hill, would rather see people perish in accordance with good old Social Darwinian principles. Sick people of the world, exit! Others back the Scandinavian social model, where health is generally free; or the British health scheme and variants of the same principle: care should, at least at some level, be affordable, and most imperatively so for the indigent.

The Washington approach to this, however, is vastly different. It sneers at the prospects of a healthy commonweal, preferring, instead, a sicker one. (Preferably one cashed up and ready to part with it.) In fact, a sicker citizenry satisfies the profit motive rather nicely, and has become something of a biblical incentive for corporations, the holy grail of share earnings and dividends.

The privileging of the corporate model in the TPP is made clear by the description of

corporations as “investor states”, a term loaded and highly suggestive. Relevant provisions governing such peculiar “states” would “allow corporations to sue governments over local laws that might hinder their profits.”[3]

The positioning of the parties on the latest variant of the IP chapter suggest that countries such as the United States and Japan are less than enthusiastic over the issue of affordable cancer treatment, or for that matter life-saving treatment in general.

Much of this can be presumed by the opposition of the two countries to the objectives section tabled by nine countries ranging from New Zealand to Mexico. Strikingly, one of the provisions is to “Support each Party’s right to protect public health, including by facilitating timely access to affordable medicines”. Other objectives seem logical but take the sting out of the Washington-Tokyo drive, including the sense that, in protecting IP rights, they “do not themselves become barriers to legitimate trade.”

There are a few structural ways that the patent regime will be affected should the IP chapter be passed with its Japan-US impress. One is allowing an extension of patents. The US-tabled Article QQ.E.20 would force signatories to adopt an “automatic monopoly period (marketing exclusivity) for life-saving drugs, with a choice for the groups to decide for definitive inclusion within the treaty of 0, 5, 8 or 12 years.”[4]

The logical consequence of this is permitting drug companies to maintain high prices on products that would otherwise become manufactured as generics once the patent date has expired. Given the US and Japanese domination in areas of IP, this bodes ill for those needing such drugs, and developing countries within the TPP. This is the law of corporate contracts, not social contracts.

An additional and sinister feature to this negotiating agenda are the instituting of criminal procedures and penalties for disclosing trade secrets. This broad blanket expansion of what would constitute corporate and economic espionage would implicate whistleblowers and journalists in the business of discussing topics of trade and economic sensitivity.

The US and Japan are also barnstorming on the subject of criminalising non-commercial copyright infringements, though the released IP chapter suggests that many countries are losing their enthusiasm for it. The tactic of Washington’s trade officials in response to this dilution is to “work through proxies, proposing and opposing far fewer times than anyone else in the Chapter”. [5]

The secrecy mania surrounding the TPP demonstrates the open contempt those engaged in negotiations hold their constituents. Transparency is deemed detrimental, an unnecessary form of enlightenment for the public. Keep the discussion down; keep the lights off.

Sen. Elizabeth Warren (D-Mass.) outlines it rather well, having personally “heard the argument that transparency would undermine the Trade Representatives’ policy to complete the trade agreement because public opposition would be significant. In other words, if people knew what was going on, they would stop it.”[6]

Ignorance is not so much golden here but deadening. “If transparency would lead to widespread public opposition to a trade agreement,” argues Senator Warren, “then that trade agreement should not be the policy of the United States.” Or any other country for that matter.

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Notes

- [1] <https://wikileaks.org/tpp-ip2/>
- [2] <http://www.politico.com/morningtrade/1014/morningtrade15725.html>
- [3] <http://www.allvoices.com/article/100001618>
- [4] https://wikileaks.org/tpp-ip2/#article_e20
- [5] <https://wikileaks.org/tpp-ip2/attack-on-affordable-cancer-treatments.html>
- [6] <https://www.youtube.com/watch?v=kAgJalwdXLI#t=85>

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