

Yes, Trade Deals Really Do Overturn Democracy

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Forget tariffs, forget Obama's promises. The whole point of modern 'trade agreements' is to whack pesky labor, environment and health laws, writes David Morris, and so empower capital and corporate power against regulators, governments and democracy itself. Unconvinced? Just imagine what these deals would look like if they were there to empower people.

What if a trade agreement were designed to protect and nurture labor rather than capital?

On 8th May at Nike's headquarters, President Obama [denounced](#) opponents of the hotly contested Trans-Pacific Partnership as ill informed:

Critics warn that parts of this deal would undermine American regulation ... They're making this stuff up. This is just not true. No trade agreement is going to force us to change our laws.



Back to the future with TPP and other 'trade deals'? Winston Cigarette advertisement published in Ebony magazine, July 1971, Vol. 26 No. 9. Photo: Classic Film via Flickr (CC BY-NC)

On 18th May the World Trade Organization (WTO) issued a final ruling in favor of Canada and Mexico in a case involving a US law requiring country-of-origin labels on packages of beef, pork, chicken and other kinds of meat.

The three-judge WTO panel estimated economic damages at more than \$3 billion. These will be meted out by Canada and Mexico as retaliatory tariffs on a potentially wide array of US industries, from *"California wines to Minnesota mattresses"*, as Gerry Ritz, Canada's Minister of Agriculture [predicted](#).

Obama's false claim exposed in real time

"The only way for the United States to avoid billions in immediate retaliation is to repeal COOL", Ritz [announced](#). Congress hastened to comply. The day the WTO issued its ruling Rep. Michael Conway (R-TX) introduced legislation to overturn the COOL law. On 10th June the House overwhelmingly [passed](#) the bill, 300-131.

The COOL decision and its almost immediate legislative impact demonstrated in real time the inaccuracy of President Obama's comments. Encompassing 12 Pacific Rim countries with 40% of the world's economy the Trans-Pacific Partnership would be the largest trade agreement since the WTO was formed in 1995.

But to call it a 'trade agreement' is both accurate and misleading for it conjures up images of agreements that largely target tariffs. That is no longer the case. Of TPP's 29 draft chapters, [only](#) five deal with traditional trade issues.

Modern trade agreements have less to do with trade than with national sovereignty. The primary focus of modern trade agreements is the elimination of existing laws that govern commerce.

The decision about whether a country can force the livestock industry to reveal where their animals were reared and slaughtered is behind us. Currently under consideration by the WTO is whether a country can force businesses that sell a lethal product to make the packaging of that product unattractive.

The evil weed - tobacco companies head to court

The product is tobacco. Before the 1990s the US government actively assisted American tobacco companies in opening up markets in Asia by threatening trade fights with countries like Japan, Thailand, Taiwan and South Korea that refused to overturn domestic laws impeding companies from using sophisticated marketing techniques.

In the 1970s and 1980s, as evidence of the malignant effects of tobacco accumulated states and cities began to enact anti-smoking initiatives. In the 1990's lawsuits by states resulted in a \$200 billion settlement with tobacco companies based on concrete evidence that they had willfully kept from the American public the evidence that smoking can and in many cases does cripple or kill.

The increasingly schizophrenic nature of US tobacco policies led Congresses' General Accounting Office (GAO) to issue a [report](#) aptly titled: *Dichotomy Between US Tobacco Export Policy and Antismoking Initiatives*. The GAO asked lawmakers to clarify which values would guide their decision-making, advising:

If the Congress believes that trade concerns should predominate, then it should do nothing to alter the current trade policy process. The US government can simultaneously continue to actively help US cigarette exporters overcome foreign trade barriers and promote awareness of the dangers of smoking and further restrict the circumstances in which smoking may take place.

If Congress believes that health considerations should have primacy, the Congress could grant the Department of Health and Human Services the responsibility to decide whether to pursue trade initiatives involving products with substantial adverse health consequences.

At the end of his term President Bill Clinton issued an executive order forbidding the US government to advocate on tobacco's behalf. But by that time we had helped launch a new planetary organization, the WTO and new trade rules that for the first time allowed corporations to sue countries directly for damages caused by regulations.

Adding insult to injury their suit would be heard in a new extra territorial judicial system comprised largely of judges who has been trade lawyers often representing corporations similar to those who would come before them.

(In this new judicial system, largely designed by corporations, there is no conflict of interest. Indeed, the head of the three-judge WTO panel that decided the COOL case had [served](#) as Mexico's deputy General Counsel for Trade Negotiations for a decade and had acted as Mexico's lead counsel in several WTO disputes.)

Now Obama drops tobacco exemption from TPP rules

As countries began to follow the lead of the United States and enact significant restrictions on tobacco products the tobacco companies repeatedly sued under this new judicial system, claiming economic damages for the violation of their copyrights, the diminishing value of their brand name and the expropriation of their intellectual property.

Sometimes tobacco companies sue countries directly, as in the case of Uruguay and Australia. Sometimes they do so indirectly by paying some or all of the legal costs of suits brought by countries like Honduras, Indonesia, Dominican Republic and Cuba.

In May 2014 the WTO appointed a panel to review the many tobacco product-related lawsuits. It expects to issue a final ruling during the second half of 2016.

Given the sordid history of tobacco companies abusing their newly gained ability to sue governments directly President Obama initially was not going to allow that to be expanded to 12 additional countries through the TPP. In September 2013 the *Washington Post* [editorialized](#),

Initially the Obama administration favored a TPP provision exempting individual nations' tobacco regulations ... from legal attack as 'non-tariff barriers' to the free flow of goods. The idea was that, when it comes to

controlling a uniquely dangerous product, there's no such thing as 'protectionism'.

But Obama later backtracked and the TPP will simply require governments to consult before challenging each other's tobacco rules and still allows tobacco companies to mount legal challenges.

So far the tobacco lawsuits have not targeted the United States, but that could change. Thomas Bollyky, a former US trade negotiator, [observes](#), *"US federal, state, and local laws include many of the same regulations that the tobacco industry has challenged in Uruguay, Norway, and elsewhere."*

One of the most pernicious effects of the new trade rules is that they allow giant corporations to cow countries with a limited capacity to defend themselves. As John Oliver [informs](#) us, in 2014 Philip Morris International sent a letter to Togo threatening that tiny country with *"an incalculable amount of international trade litigation"* if it implemented a tobacco product packaging law.

Togo abandoned the initiative. Uruguay has been able to defend itself for the last 5 years in part because of financial assistance from the World Health Organization and former New York City Mayor Michael Bloomberg.

Would a US city or small state be financially able to defend itself if a global corporation were to sue to overturn laws that require government contracts to favor local businesses and local workers?

The contents of new trade agreements like the TPP largely comprise a laundry list of corporate aspirations.

What if TPP was protecting labor rather than capital?

To understand its bias we might engage in a thought exercise. What if a trade agreement were designed to protect and nurture labor rather than capital? Several US trade agreements have included 'side agreements' on labor but these lack the enforcement mechanisms accorded to capital.

There is no extraterritorial judicial system to hear suits by workers or unions. Instead these agreements establish a multi-national forum where nations can be held responsible for not enforcing labor laws they have on the books. As the Heritage Foundation [concludes](#), *"they are largely meaningless."*

At present the International Labor Organization's (ILO) 186 member nations have signed a Declaration on Fundamental Principles and Rights at Work that, [according](#) to the ILO,

commits Member States to respect and promote principles and rights in four categories, whether or not they have ratified the relevant Conventions. These categories are: freedom of association and the effective recognition of the right to collective bargaining, the elimination of forced or compulsory labour, the abolition of child labour and the elimination of discrimination in respect of employment and occupation.

But the ILO's Declaration, like the labor side agreements of US trade agreements lack an enforcement mechanism. Member nations can refuse to ratify any individual standard. Of the eight core conventions, the US for example has [ratified](#) only two. It should go without saying that neither workers nor unions have the right to sue for economic damages in a world court comprised of judges who had formerly served as labor lawyers.

If the TPP's enforcement mechanisms were as toothless as those of labor side agreements or the ILO Declaration there would be no need for fast track, (in which Congress can only vote yes or no on a trade deal with no power to make modifications).

If the labor side agreements or the ILO Declaration had enforcement mechanisms as vigorous as those of the TPP, I daresay the vote on fast track would be lopsidedly against.

The clear and present evidence of the far-reaching negative impact of the TPP is compelling. Rather than being forced to have an up or down vote on a bill consisting of thousands of pages of fine print after only a very limited debate and with no amendments, we should engage in a spirited national conversation about the values that should guide international trade agreements and what type of enforcement mechanisms would best serve the public interest.

David Morris writes for [On the Commons](#).

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