



# Who's at the Table?

## DEMANDING ANSWERS ON AGRICULTURE IN THE TRANS-PACIFIC PARTNERSHIP

The Trans-Pacific Partnership (TPP) has the potential to become the biggest regional free-trade agreement (FTA) in history, both because of the size of the economies participating in the negotiations and because it holds open the possibility for other countries to quietly “dock in” to the existing agreement at some point in the future. What started as an agreement among Brunei Darussalam, Chile, New Zealand and Singapore in 2005 has expanded to include trade talks with Australia, Canada, Malaysia, Mexico, Peru, the United States and Vietnam. Japan and Thailand are considering entering into the negotiations, and others are waiting in the wings. As of 2011, the eleven countries already involved in the TPP account for 30 percent of world agricultural exports and 20 percent of imports.<sup>1</sup>

And yet, despite the potential of this agreement to shape (and in very real ways override) a vast range of public policies, there has been very little public debate on the TPP to date. Despite the precedents set under the World Trade

Organization (WTO), the Free Trade Area of the Americas (FTAA), and the Anti-Counterfeiting Trade Agreement, among others, governments have refused to release negotiating texts. Public input has been limited to those civil society participants who are able to attend the periodic “listening sessions” or make brief presentations at negotiating sessions (without access to the negotiating texts they hope to influence).

Media attention on agriculture and the TPP has focused on New Zealand's insistence on access to U.S. dairy markets. While important, this debate is much too narrow. The TPP is not only about lowering tariffs. If implemented, it would expand protections for investors over consumers and farmers, and severely restrict governments' ability to use public policy to reshape food systems. The fundamental causes of recent protests across the globe over food prices, the rising market power of a handful of global food and agriculture corporations, as well as the dual specters of rising hunger and obesity around

the world, point to the need to transform the world's food systems—not to lock the current dysfunction in place.

There is no agriculture chapter in the TPP. Instead, rules affecting agriculture, food systems and food safety are woven throughout the texts. Very little is known about the content of those drafts. As a starting point, however, farmers, consumers, and legislators should ask questions, and demand answers.

### Investment

While much of the TPP negotiations is a mystery, a draft of the negotiating text on investment (as well as draft intellectual property rights proposals) was leaked last year and published online by the U.S. Citizens' Trade Campaign.<sup>2</sup> If implemented, the “investor-state” provision laid out in Section B would grant investors broad rights to challenge public policy decisions and to receive millions of dollars in compensation for the loss of expected profits.

**INSTITUTE FOR AGRICULTURE AND TRADE POLICY**

Written by Karen Hansen-Kuhn, February 2013

2105 First Avenue South Minneapolis, Minnesota 55404 USA

[iatp.org](http://iatp.org)

This kind of provision has already been used under NAFTA to challenge Mexico's implementation of trade barriers to High Fructose Corn Syrup (HFCS) in favor of domestically produced sugar. Three firms in three separate cases—Corn Products International, ADM/Tate & Lyle and Cargill—sued the Mexican government over this protection. In each case, the dispute panel ruled against Mexico, awarding a total of \$169.18 million USD to the firms in compensation.<sup>3</sup> The arguments in this case were about whether the Mexican government's actions constituted unfair limits on investors' expected profits, not about possible public health concerns over HFCS versus sugar. But even if the government had wanted to raise that issue, under the rules in NAFTA, they would have been simply deemed irrelevant.

Many countries are already bound by investor-state provisions through Bilateral Investment Treaties (BITs) or existing bilateral FTAs, such as the U.S.-Chile and U.S.-Peru FTAs. Australia, however, refused to agree to this investment provision in its bilateral trade deal with the U.S., and others are starting to question the wisdom of granting power to corporations to circumvent domestic legal systems. These concerns extend far beyond agriculture. Even the threat of investor-state suits can undermine governments' ability to balance the interests of consumers, workers, producers and foreign investors. Bolivia withdrew from the International Centre for the Settlement of Investment Disputes Convention in 2007, alleging bias toward multilateral corporations, with Ecuador and Venezuela announcing their withdrawals soon after. Phillip Morris' massive investor-state suit against Uruguay over new rules for cigarette packages has highlighted the threat to government's legitimate right to protect public health.

The leaked draft of the TPP investment chapter also bans performance requirements (conditions host governments set on foreign investment to ensure it meets economic development goals).

These restrictions limit countries' ability to explore new options to reduce vulnerability to volatile international markets and to build integrated local food systems. Malaysia, for example, prohibits foreign investment in supermarkets, fostering the development of locally owned grocery stores.<sup>4</sup> That law could be subject to challenge under the services and investment chapters, either directly through a state-to-state or investor-state challenge, or indirectly through pressure to open new sectors to foreign investment as a prior condition of a new trade deal.

At a December 2011 hearing on TPP, Cargill urged the U.S. to "make the TPP a comprehensive undertaking. That means that the agreement includes all products, all sectors, in all TPP economies. This means, for example, that Australia must agree to investor state dispute settlement. Malaysia must open its government procurement market. Singapore and Vietnam must open their financial markets. And the United States must not exclude any agricultural products or seek to effectively exclude textile and apparel." Wal-Mart insisted that negotiations should address limits to trade and investment all along the supply chain.<sup>5</sup>

## Food safety

Debates have raged for years over how to balance concerns over the safety of food imports with exporters' interest in expanding markets. Much of that discussion has focused on U.S. standards that limit imports from other countries. U.S. consumer organizations and Members of Congress have expressed concerns that the TPP would open the door to imports of shrimp from Vietnam without resolving questions around the safety and environmental impacts of that production.<sup>6</sup>

Food safety rules, like other public health and environmental standards, are determined on the basis of a combination of scientific evidence, consumer preferences and corporate pressure.

While draft text of the TPP chapters on Sanitary and Phytosanitary Standards (SPS) and Technical Barriers to Trade are not available, it is reasonable to assume that the U.S. government is pursuing an agenda consistent with its efforts in other trade forums, that is, to lower food safety standards in other countries to the least common denominator in order to increase export opportunities for agribusinesses.

The U.S. government has been pushing the European Union, China and other countries to eliminate bans on the use of ractopamine, a drug developed to treat asthma, but now used in cattle and hog production to accelerate growth. The U.S. continues to advocate eliminating restrictions on ractopamine, rBGH (recombinant Bovine Growth Hormone, another additive banned in the EU and other countries) and other additives at Codex Alimentarius, a global standards-setting body whose rulings provide the reference point in trade disputes at the WTO and in other trade forums.

In 2012, the nongovernmental Center for Food Safety (CFS) and the Animal Legal Defense Fund petitioned the U.S. Food and Drug Administration (FDA) to ban ractopamine, reporting that it has resulted in more cases of sick or dead pigs than any other livestock additive on the market. China, Russia and New Zealand, among other countries, also ban its use domestically and in imported meat and pork.<sup>7</sup> Countries considering entering into the TPP should carefully consider the risks: Eliminating these bans, in addition to creating what may be serious health hazards, would make it much more difficult for their producers to export beef and pork to expanding markets in China and the EU.

Some of the new technologies applied to agricultural production and food processing sound like the stuff of science fiction: engineered nanoparticles that can effect changes at the molecular level, or experiments in synthetic biology to create novel organisms from existing strands of DNA. Massive new

corporate investments in these brave new technologies for food packaging, soil additives, sunscreens and other consumer goods are advancing much more quickly than governments' ability or willingness to regulate them. The U.S. Grocery Manufacturers Association (the country's largest association of food retailers) projects that the market for nano-enabled packaging materials in the next decade could amount to 25 percent of the \$100 billion annual food packaging market.

Nano-silver coatings on produce and food packaging to retard spoilage are probably already being commercialized and possibly traded, but the U.S. Food and Drug Administration has not even been able to determine exactly how to define these extremely small particles (although they have recently ruled that they cannot be considered to have the same properties as their macro-scale counterparts).<sup>8</sup> There are already doubts about the safety of nano-silver use in food supplements, food packaging materials and other consumer goods because of the particles' ability to pass through cell walls, including those of the placenta and the blood/brain barrier. Research conducted in China suggests that some nanoparticles could result in mutagenic changes at the molecular level, potentially affecting DNA sequences.<sup>9</sup>

Trade policy should not inhibit domestic regulation of food and agricultural products by requiring that governments demonstrate that measures to protect the environment and public health be "least trade restrictive." Decisions about what kind of food is sold within a country should embrace the Precautionary Principle, which supports taking protective actions even before all scientific evidence is available. This principle is a central element of several international environmental agreements, including the Cartagena Protocol on Biosafety.

## Procurement rules

Procurement rules in trade agreements can affect a broad range of public policies at the local and national levels. For the most part, they require national treatment, i.e., that governments cannot favor local suppliers over foreign companies in government contracts. They forbid governments from establishing technical specifications in bids that might distort trade or that are not essential to supplying the good or service.<sup>10</sup> Rules on national treatment and technical specifications also forbid discrimination based on how a good is produced,<sup>11</sup> so public programs to favor the use of sustainably produced local foods in school lunch programs, or to require a certain percentage be sourced from local, small-scale farmers, could be deemed to unfairly discriminate against foreign suppliers.

Some recent trade agreements, such as the U.S.-Korea FTA, specifically exclude school feeding or anti-hunger programs from those procurement commitments and most allow for preferences for small businesses. Still, those commitments, and the level of government included in the agreements, are specific to each trade deal. Policymakers and consumers should ask what sectors are included in the procurement and services commitments in the TPP and what criteria will be used to make those determinations. Some previous U.S. free trade agreements have included procurement provisions that extend below the federal level to include state governments. The U.S.-Australia FTA, for example, includes commitments from 31 U.S. states. Permanent agreements to bind local governments to procurement rules in trade agreements can sometimes be made by governors or mayors, sometimes without full information on the potential consequences.

## Tariffs on agricultural goods

The risks of the liberalization of investment, food safety and procurement rules shouldn't distract from the very real dangers of trade liberalization in the traditional sense of the term, i.e., the removing import tariffs. Corn exports from the U.S. to Mexico quadrupled after NAFTA's approval, driving some two million Mexican farmers out of agriculture. At the same time, U.S. agriculture consolidated, and the number of U.S. farmers declined. At its high point in 2008, U.S. corn exports to Mexico were equivalent to about 40 percent of Mexico's production. Those exports, coupled with increased foreign investment in meat and processed foods, also shifted the Mexican default food environment. Diets shifted away from traditional food staples toward energy-dense processed foods, meat and dairy, which tend to be higher in fats and added sweeteners. Today, Mexico and the U.S. are tied for the world's highest obesity rates.<sup>12</sup>

Countries may decide that some goods are just too important to food security, cultural heritage or rural livelihoods to leave unprotected from floods of cheap imports. This principle was at the heart of disagreements between developing countries and the U.S. and EU, and one of the central reasons for the collapse of the Doha round of the WTO. Korea insisted on taking rice off the table in the U.S.-Korea FTA. Japanese farmers argue vigorously for continued protection of their rice market. And U.S. farmers oppose the inclusion of the dairy and sugar sectors (already seriously weakened by rising input costs) from the TPP.

Droughts, flooding, hurricanes and other extreme weather will only increase with climate change. Discussions of climate change and trade have often focused much too narrowly on expanding trade in environmental goods or preventing governments from enacting protectionist measures on behalf of their own corporations through border taxes on carbon-intensive goods or other measures that might

undermine export markets. While these are valid concerns, they miss the bigger picture: energy-intensive industrial agriculture will need to transition to more sustainable farming methods that reduce emissions from excessive use of chemical fertilizers and confined animal feeding operations, and food producers will need support from governments to cope with the changing climate. Already, farmers are experimenting with new and diversified cropping patterns and local seed varieties that can grow under erratic conditions with fewer imported inputs. These innovations will require sustained public support and protection from floods of imports produced using industrial agriculture methods. Simply liberalizing trade and hoping for the best is a 20th-century response to an unfolding 21st-century catastrophe.

## Competition policy

Corporate concentration in agriculture is an enormous challenge in all of the countries involved in the TPP. In the U.S., just four companies control 83.5 percent of the meat industry. New Zealand's Fonterra (which is pushing hard for access to the U.S. and Canadian dairy markets) controls 90 percent of the national dairy industry. At the international level, Monsanto, DuPont and Syngenta control 57 percent of the commercial seed market,<sup>13</sup> and Wal-Mart dominates supermarkets and retail supply chains in country after country. There is little doubt that these monopolies distort markets and concentrate economic (and political) power.

So-called "competition policy" in trade agreements ignores that problem and focuses instead on distortions and subsidies by state-owned enterprises. While it is probably true that Vietnam's 1,000 state-owned enterprises favor local businesses, the vast economic power of Cargill, Wal-Mart or Monsanto also undoubtedly distorts markets.

So far, antitrust rules in trade agreements to rein in agribusinesses or other corporations have been off the table, but

that doesn't mean it must always be so. Olivier de Schutter, the UN Special Rapporteur on the right to food, notes that excessive buyer concentration typically results in lower prices for those food producers at the bottom end of the supply chain. He urges cooperation among developed and developing countries to establish credible competition and merger regulation authorities.<sup>14</sup>

## The need for an informed public debate

It may be that governments, particularly the U.S. government, think they've been burned by transparency in the past. Careful analysis of the FTAA text contributed to extensive debates throughout the Americas that probably contributed to that agreement's demise. WTO proposals are published on the web and hotly debated among civil society and in the media, and the Doha Round has been dead in the water for years. Is it that the trade deals can't withstand the light of day?

Trade policy should start from such goals as ending global hunger, enhancing rural and urban incomes and employment, and encouraging a transition to climate-friendly agriculture. The burden of proof should be on governments to demonstrate that the commitments being negotiated in the TPP will advance the human rights to food and development. Given the stakes for agriculture and food systems in all of the countries involved, they should include all sectors in a frank discussion of the trade rules that are needed to ensure that food sovereignty, rural livelihoods and sustainable development take precedence over misguided efforts to expand exports at any cost.

## Endnotes

1. Jeffrey J Schott, Barbara Kotschwar and Julia Muir, "Sticking Points in the TPP Negotiations," in *Understanding the Trans Pacific Partnership*, Peterson Institute for International Economics, January 2013, p 17.
2. Available at <http://www.citizenstrade.org/ctc/wp-content/uploads/2012/06/tppinvestment.pdf>.
3. Data from Table of Foreign Investor-State Cases and Claims under NAFTA and other U.S. Trade Deals, Public Citizen, June 2012.
4. Guidelines on Foreign Participation in the Distributive Trade Services Malaysia, Ministry of Domestic Trade, Cooperatives and Consumerism.
5. Hearing before the Subcommittee on Trade of the Committee on Ways and Means, U.S. House of Representatives, December 14, 2011, available at <http://www.gpo.gov/fdsys/pkg/CHRG-112hhrg76318/html/CHRG-112hhrg76318.htm>.
6. Rep. Rosa De Lauro, "Food Safety Critical Issue in Upcoming Trade Talks," available at [http://delauro.house.gov/index.php?option=com\\_content&view=article&id=406:-delauro-food-safety-critical-issue-in-upcoming-trade-talks&catid=7:2011-press-releases&Itemid=23](http://delauro.house.gov/index.php?option=com_content&view=article&id=406:-delauro-food-safety-critical-issue-in-upcoming-trade-talks&catid=7:2011-press-releases&Itemid=23)
7. Cary Gillam, "U.S. food, animal groups seek lower ractopamine limits," Reuters, December 20, 2012.
8. Sustained pressure by nonprofits forces change in FDA nanotech policy, May 4, 2012, <http://www.iatp.org/documents/sustained-pressure-by-nonprofits-forces-change-in-fda-nanotech-policy>.
9. Michael Berger, "Nano-silver used in food storage materials found to interfere with DNA replication," Nanowerk News, <http://www.nanowerk.com/spotlight/spotid=9340.php> (accessed February 18, 2013).
10. The Trans-Pacific Partnership Free Trade Agreement: Procurement, International Trade Union Confederation, available at <http://www.ituc-csi.org/the-trans-pacific-partnership-free,11700>.
11. "Fact vs. Spin: Debunking USTR's "State Government Procurement and Trade Agreements: The Facts", Public Citizen, available at <http://www.citizen.org/documents/ACF8FE.pdf>.
12. Sarah Clarke, Sophia Murphy, David Wallinga and Karen Hansen-Kuhn, "Exporting Obesity: How U.S. Farm and Trade Policy Is Transforming the Mexican Food Environment," IATP, summary of a peer-reviewed article published in the *International Journal of Occupational and Environmental Health*, spring 2012.
13. ETC Group, *Who Will Control the Green Economy?* November 2011, p. 22.
14. Olivier de Schutter, *Addressing Concentration in Food Supply Chains*, Briefing Note 3, December 2010.