

Malaysia and the Trans-Pacific Partnership Agreement (TPP)

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Malaysian Prime Minister Najib Razak lauds the achievements of his government in delivering economic growth while other countries struggle to avoid recession. That ability to deliver consistent economic development is threatened by the proposed US-backed Trans-Pacific Partnership, shaped in secret by private companies

To commemorate Malaysia's 55th Independence Day, Prime Minister Najib Razak published an article highlighting the nation's various accomplishments, principally that while much of world's economies are "either flat or falling," Malaysia is steadily delivering high figures of economic growth. [1] The ruling Barisan Nasional coalition, although perceived by the middle class to be unpopular, has overseen consistent economic development and has worked to raise incomes and provide consumer affordability. Despite these achievements, the upper echelons of Malaysia's ruling coalition have seemingly endorsed a controversial international trade agreement that will have enormous impacts on domestic consumers and will even undermine the government's own ability to issue legislation. The Trans-Pacific Partnership (TPP) is a free-trade agreement led by the United States in partnership with Asia-Pacific nations like Brunei, Australia, New Zealand, Singapore, and others. If the agreement is accepted by all participatory nations and successfully passed, signatory countries must conform to a rigid set of legal regulations, including strict intellectual property protections, authored by representatives of big foreign corporations.

While critics of the agreement call it "a stealth attack on democratic governance," leading members of the US Senate and Congress have expressed outrage over the TPP primarily due to the climate of secrecy surrounding the negotiations. Six hundred US corporate advisors have negotiated the TPP, and the proposed draft text has not been made available to the public, the press or policymakers. US Senator Ron Wyden, the Chair of the Congressional Committee with jurisdiction over TPP, was even denied access to the negotiation texts. [2] In Malaysia, members of parliament such as Charles Santiago have voiced frustrations over Putrajaya's unwillingness to release any information regarding the agreement. [3] Based on information contained in two leaked chapters of the TPP agreement, the partnership aims to abolish the accountability of foreign corporations to the governments of countries with which they trade by introducing a myriad of new corporate rights and privileges. The proposed agreement would make signatory governments accountable to foreign corporations for costs imposed by national laws and regulations, including health, safety and environmental regulations, mandating that corporations receive compensation taken directly from domestic taxpayers and public funds.

Advocacy website Public Citizen has confirmed the authenticity of a leaked chapter of the TPP titled, "[Investment](#)," and issued a detailed analysis of the text. In addition to the leaked

“Intellectual Property Rights” chapter, it can be concluded that the agreement illustrates the major goal of US multinational corporations to impose extreme foreign investor privileges and rights on developing countries by giving individual corporations and investors equal standing with each TPP signatory country’s government. NGOs such as the Malaysian AIDS Council and the Breast Cancer Welfare Association Malaysia have voiced their concern over the TPP’s restrictive intellectual property laws, which allow American drug companies to secure long-term monopolies on pharmaceutical products by preventing the production of generic drugs, thus increasing the price of medicine. [4] The United States is demanding aggressive intellectual property provisions that extend existing patents on medicines for up to 10 years in addition to the current requirement of 20 years. Malaysian Health Minister Datuk Seri Liow Tiong Lai has spoken out against the TPP, arguing that such an agreement would make healthcare less affordable to the public:

“We are against the patent extension. According to the agreement, if a medicine is launched in the US, and then three years later it is launched in Malaysia, the patent would start from when it is launched here and not when it was launched earlier in the US, this is not fair.” [5]

The proposed legislation on Intellectual Property will have enormous ramifications for TPP signatories, including Internet termination for households, businesses, and organizations as an accepted penalty for copyright infringement. In addition to allowing copyright holders to ban parallel imports of copyrighted material and prioritizing national police to enforce copyright laws, a drastic expansion of copyright duration for sound recordings and film is imposed. [6] Signatory nations would essentially submit themselves to oppressive copyright restrictions in line with American law, severely limiting their ability to digitally exchange information on sites like YouTube, where streaming videos can be considered copyrightable. Patricia Ranald, convener of the Australian Fair Trade and Investment Network offers:

“Broader copyright and intellectual property rights demands by the US would lock up the Internet, stifle research and increase education costs, by extending existing generous copyright from 70 years to 120 years, and even making it a criminal offense to temporarily store files on a computer without authorization. The US, as a net exporter of digital information, would be the only party to benefit from this.” [7]

Proposed measures would restrict signatory nations from exercising capital controls to prevent and mitigate financial crises and promote financial stability. Malaysia was able to recover from the 1997 Asian Financial Crisis more quickly than its neighbors by introducing a series of capital control measures on the Malaysian Ringgit to prevent external speculation. Under the TPP, nations would not have the ability to independently pursue monetary policy and issue capital controls, and must permit the free flow of derivatives, currency speculation and other predatory financial instruments. [8] Signatories to the TPP could have their domestic policies (health policy, land use policy, government procurement decisions, regulatory permits, intellectual property rights, monetary regulation) legally overwritten before foreign tribunals, giving external investors the right to pursue claims against a nation outside the regulations of that nation’s own judicial system.

In the private “investor-state” that the TPP is attempting to establish, national governments can be sued by foreign corporations, submitting signatory countries to the jurisdiction of investor arbitral tribunals, staffed by private sector attorneys. Foreign tribunals could order

governments to pay unlimited cash compensation out of national treasuries to foreign corporations and investors if new or existing government policy hinders investors' "expected future profits". Any compensation paid to private investors and foreign corporations, in addition to large hourly fees for tribunals and legal costs would be shouldered by the domestic taxpayer in each signatory country. Under this regime, foreign investors and multinational corporations can undermine the sovereignty of participatory nations by skirting domestic regulations and limiting the abilities of national governments to issue policy. The Trans-Pacific Partnership would oblige nations to alter their domestic policy to comply with twenty-six proposed chapters of legislation, including financial, health-care, telecommunications, food and product standards, land use and natural resources, government procurement, and more.

Undoubtedly, the Trans-Pacific Partnership is a document is constructed to serve private, not public interests, by exempting private corporations from any form of public accountability. The analysis provided in this article is based on two leaked chapters of the proposed agreement (which may or may not be subject to amendments prior to the conclusion of negotiations); the other twenty-four chapters have not been released for public scrutiny, or even to policymakers in those participating countries. Other than the national delegation for each participating country, the only people who have been allowed to see the actual text of the proposed agreement are members of various Trade Advisory Committees and top corporate executives, with no representatives from academia or civil society. The blanketing secrecy over the entire negotiation process is nothing short of alarming, with legislation in place to keep text proposals from being publically released until four years after the close of negotiations. [9] The next round of TPP negotiations is set to take place in Leesburg, Virginia in early September. [10] Prime Minister Najib Razak has said Malaysia is committed to being a member of the Trans-Pacific Partnership:

"I hope sometimes in the near future we will be able to conclude TPP. It is important for the US to have free trade with ASEAN. ASEAN is a US\$2 trillion (RM6.30 trillion) market of 600 million people and there is not another trade bloc with momentum like it in the world." [11]

Ostensibly, the TPP can be seen as an attempt by the United States to build a coalition in which its corporate interests dominate the ASEAN region to counter China's increasing economic prowess. Leaders and citizens alike must reexamine their stance on this issue and consider the enormous negative ramifications it would hold for consumers and domestic industry. Previous attempts to negotiate a US-Malaysia bilateral free trade agreement in 2006 - 2010 have failed; one would hope that attempts to implement a Trans-Pacific Partnership suffer a similar fate.

Notes

[1] [55 Years Of Development Through Harmony](#), 1Malaysia, August 29, 2012

[2] [Public Interest Analysis of Leaked Trans-Pacific Partnership \(TPP\) Investment Text](#), Public Citizen, June 13, 2012

[3] [Why so secretive about TPP trade talks?](#), FMT News, November 09, 2012

[4] [NGOs concerned over medical issues related to TPP](#), The Sun Daily, August 04, 2012

- [5] [Malaysia says no to TPP](#), The Sun Daily, August 06, 2012
- [6] [Exporting copyright: Inside the secretive Trans-Pacific Partnership](#), Ars Technica, May 18, 2012
- [7] [Trans-Pacific Trade Pact Reveals U.S.'s Unbridled Corporate Agenda](#), Inter Press Service, March 09, 2012
- [8] [Malaysia needs to maintain tools for capital controls](#), Centre for Policy Initiatives, March 08, 2012
- [9] [Intellectual Property Rights Chapter](#), Citizens Trade Campaign, September 2011
- [10] [14th Round of TPP Negotiations Set for Leesburg, Virginia](#), Office of the United States Trade Representative, 2012
- [11] [Najib: Go out and be regional champions](#), The Star, May 29, 2012

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