

The Devastating Impacts of the TPP Trade Deal on Vietnam

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<http://warisacrime.org/content/tpp-american-s-and-vietnamese-lose-big-corporations-win>

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Now that the United States, Vietnam, and ten other nations have signed the TPP (Trans-Pacific Partnership) – and the text, finally, has been released to the public – the U.S. Congress and the other countries’ legislative bodies must decide whether to ratify the agreement.

Negotiations were secret, until the document was signed. Before the release of the text a few days ago, even members of Congress were not allowed to see the agreement, except for certain members who were shown only a few pages of certain sections, alone, in a locked room.

Now that the text has been released, the early reviews are in. It seems quite certain that ordinary Americans will not benefit from the TPP. Most will lose.

That also appears to be the case for the people of Vietnam.

Why should citizens of both countries be concerned?

This year is the 20th anniversary of the diplomatic normalization of relations between the U.S. and Vietnamese governments. The anniversary is being touted by both sides as a sort of milestone, and for good reason. Forty years since the end of the war that devastated Vietnam, a legacy of unexploded ordnance and Agent Orange remains, along with poverty and other reminders of the costs and consequences of the war. People of good will on both sides of course are looking for opportunities to cooperate and ways to work together that will benefit the people of both our countries.

But the TPP will not bring cooperation or benefits to American or Vietnamese citizens. It is a carefully contrived and very complicated expansion of corporate power over both governments. In the case of Vietnam, this corporate influence may actually threaten the country’s sovereign rights as an independent nation with its own laws and regulations.

During this ratification period – which may take up to two years in the case of Vietnam, according to Mr. Tran Quoc Khanh, Deputy Minister of Industry and Trade – representatives of the National Assembly will certainly seek to understand the costs and benefits to Vietnam. Members of the U.S. Congress will do the same, although Congress will only be allowed a yes or no vote. The U.S. Congress will not be allowed to alter or improve any of the text of the agreement.

Nonetheless, this will be a critical time. Now that the full text of the agreement has become

public, Americans and Vietnamese should engage in dialogue and carefully scrutinize the entire TPP Agreement. Key, substantive questions have already been identified in recent months by the experts who assembled the pieces of the TPP puzzle that were leaked. That process is now going forward apace, as new details have emerged with release of the text. Some concerns include:

- Vietnam will begin to lose important elements of national sovereignty, most within a five-year deadline, if the TPP goes into effect.
- Public-interest policies and any laws that threaten a U.S. corporation's profits. U.S. corporations will be above the government of Vietnam and above Vietnamese law.
- Disagreements would not be settled in Vietnamese courts or international courts, but by a panel of lawyers picked by corporations.

The agreement includes ISDS (Investor-State Dispute Settlement) provisions, by which a panel of lawyers picked by the corporations - not judges in Vietnamese or international courts - will rule on the lawsuits. Section 28.9(2)(a) of the Agreement says that one panel member each is chosen by each party, and under (2)(d), the chair (and third panel member) is chosen together by the parties, or, if necessary, chosen randomly from a list of qualified people on a roster. It seems likely that the drafters of the agreement sought a legal procedure that would fit all signatory nations, but now there are unintended consequences. Only a small number of lawyers are deemed qualified to serve on these panels. That group is potentially incestuous, since the corporations will have a strong say in suggesting names for the roster.

Recently published texts suggest the TPP agreement will expand¹ and investors and allow the corporations to sue countries in international tribunals for damages the legal rights of corporations caused by such as financial regulations and protections for workers and the environment)

These secretive² tribunals - three lawyers - would likely have a vested interest in the corporations that suggested or picked them. They are apt to impose huge, punitive fines against Vietnam. ISDS will constrain the scope of legitimate regulation, making it harder for Vietnam and other nations to achieve improved labor and environmental standards. In short, ISDS will constrain Vietnam's policy space to manage its own economic development. The government of Vietnam will no longer be beholden to its citizens but, instead, will be beholden to foreign corporations.

This is not speculation. Similar cases have already been filed.

Even the possibility of paying a tribunal's huge fines plus legal costs can push governments to surrender their rights of sovereignty; dilute labor, environmental, or other regulations; and avoid passing such regulations altogether. The U.S. non-profit, Public Citizen, cited examples³ in Canada, where just the threat of ISDS action may have led policymakers "to think twice about enacting protections that could expose the government to a costly investor-state dispute."

Philip Morris, a U.S. cigarette company, has filed suits against Australia⁴ and Uruguay,⁵ arguing those nations' laws mandating health warnings on tobacco products are an

expropriation of the company's property and have cut into profits for Philip Morris. A Swedish energy firm has sued the government of Germany for restrictions on coal-fired⁶ and nuclear⁷ power plants. Veolia, a French waste-management company, is suing Egypt to overturn that nation's minimum-wage law. Eli Lilly pharmaceutical company is fighting⁸ Canada's efforts to reduce the price of medicine through limited drug patents in order to protect its citizens. Eli Lilly is accusing Canada of not letting the company make the profit the corporation wants.

The number of companies that could sue Vietnam is growing.

As of the end of May 2015, U.S. companies in Vietnam had 742 projects worth over \$11 billion. Major American firms - including Coca-Cola, PepsiCo, IBM, Cargill, Microsoft, Citigroup, Chevron, Ford, General Electric, AES (formerly, Applied Energy Services), and UPS - have moved into the Vietnamese market. Some Americans who established these companies in Vietnam did so out of empathy and the wish to address post-war poverty; they may not realize that, under the TPP, the company they introduced could impinge on Vietnam's sovereignty.

Sectors important to Vietnam's economic security would fall under the TPP.

Some in the government of Vietnam may already be worried about such legal suits, which could dismantle its laws and regulations protecting the environment, citizens' health, children's education, and national sovereignty. Vietnam's 2005 Investment Law lists four sectors:

1. prohibited sectors
2. encouraged sectors
3. conditional sectors applicable to both foreign and domestic investors
4. conditional sectors applicable only to foreign investors.

If a U.S. company claims Vietnam is prohibiting the company from investing in Sector 1 (activities seen as "detrimental to national defense, security and public interest, health, or historical and cultural values"), under the TPP, can that foreign company sue Vietnam? The leaked texts of the TPP make it very doubtful that Vietnam's negotiators secured any written guarantees that Vietnam's sovereignty will be respected. If sued under the TPP, Vietnam's national sovereignty would not be protected.

The same question applies to Sector 3, (activities "having an impact on national defense, security, social order and safety; culture, information, press and publishing; finance and banking; public health; entertainment services; real estate; survey, prospecting, exploration and exploitation of natural resources; ecology and the environment; and education and training.") Under the TPP, can foreign companies sue Vietnam for restricting their involvement in that sector? Can foreign-owned banks licensed to operate in Vietnam demand the same high-profit incentives they enjoy in the United States or in other countries? Must Vietnam stop its anti- smoking campaign?

In June 2015, the U.S.-ASEAN Business Council said the TPP will make Vietnam increasingly attractive to U.S. investors. Why? Because the TPP will allow companies to operate with

impunity, overriding Vietnam's national sovereignty.

The U.S. Business Coalition for TPP spent \$118 million in the fourth quarter of 2014, \$126 million in the first quarter of 2015, and \$135 million in the second quarter of 2015, for a total of \$379 million in three quarters.

The TPP could skew regulations worldwide in favor of the banks, manufacturers, and pharmaceutical companies that aggressively lobbied⁹ for the TPP. Further, with the Citizens United Supreme Court decision allowing U.S. corporations to engage in unlimited campaign expenditures to support or oppose candidates, we can be sure U.S. corporations will engage in heavy, financial lobbying to pressure for TPP passage during the upcoming election.

The TPP includes patents on new pharmaceutical products. These patents prevent development of the cheaper generic drugs that have made medicines affordable for Vietnamese. The people of Vietnam should be asking, "Will our families be forced to replace cheaper generic medicines with multi-national brand names protected by the TPP?" Americans should be asking, "Do we want to force the people of Vietnam to pay the same high prices that we pay for drugs?"

Vietnam is the world's second largest rice exporter, yet the TPP will lead to a decrease in agricultural sales in domestic and export markets. Unfortunately, Vietnam is one of the top five nations most threatened by rising seas due to climate change. The nation's two large deltas - the "Red River and Mekong Rice Baskets" - are already in danger, yet the TPP will allow U.S. corporations to sue Vietnam because of the environmental policies and regulations designed to protect those fragile deltas, the citizens, and Vietnam's food sovereignty. In particular, U.S. pesticide companies are apt to sue Vietnam for implementing so successfully the FAO-initiated IPM (Integrated Pest Management) program, which protects the environment and improves yields by teaching pest-control techniques other than pesticides and uses chemical pesticides only when absolutely needed.

Decisions about controversial introduction of GMO seeds and crops will be made outside of Vietnam. The Vietnamese government will no longer have sovereignty in such matters.

Vietnamese farmers and agricultural producers should be asking, "How will TPP affect our ability to compete in world markets, against huge corporations?"

A major effort has gone into lobbying in Vietnam for the TTP, with highly paid American consultants, an orchestrated international and domestic press, and the U.S. Embassy's year-long, 20-year-anniversary celebration pushing the TTP while the contents of the agreement were cloaked in secrecy. As noted above, corporations have undertaken an even bigger lobbying effort in the United States.

Some of the very rich in Vietnam will probably benefit. A small percent of wealthy Americans and major corporate shareholders will make more money. Ordinary people and the poor will lose. That is always the case when agreements are written in secret.

The ratification period is critical. The "people's representatives" - legislative bodies in the United States, Vietnam and other signatory nations - will be debating the full text of the TPP recently disclosed. During this time of legislative approval or disapproval of such a sweeping

agreement, ordinary citizens in Vietnam, the United States, and other nations must raise their voices.

Chuck Searcy is a Vietnam veteran; Lady Borton worked with all sides during the war. Both have worked in Vietnam since before normalization of US-Vietnam diplomatic relations 20 years ago.

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