Trade Deals That Threaten Democracy

How the US-EU and TransPacific Trade and Investment Agreements will further empower corporations and undermine public services, social and environmental protection and trade union rights


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International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations

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Preface

At its 2002 World Congress, the IUF adopted a wide-ranging resolution on trade and investment committing our organization to vigorously oppose the expanded WTO "Doha Round" agenda and to combat the growing number of bilateral trade and investment agreements as instruments for entrenching and expanding corporate power at the expense of democratic rights and the rights of workers and their trade unions. The resolution highlighted the function of the expanding web of regional and bilateral agreements in building on the WTO rules to construct, layer upon layer, "investment regimes which enforce the right of corporations to pursue maximum profit while removing and undermining restrictions which seek to regulate corporate activities in the interest of public health, worker and consumer health and safety, public services and the environment."

The Resolution recalled the IUF's historical and statutory commitment to promote and defend a broad spectrum of basic rights: the right to adequate, nutritious and safe food; the right to food security and food sovereignty; the right to a safe working and living environment; and the right to livelihood protection. Congress further called on the IUF and its affiliates to "actively support and campaign for governments at every level (local, national, regional) to review all existing trade and investment rules and treaties using these fundamental rights as a benchmark and to reject all trade and investment agreements which conflict with those rights."

Organized opposition killed the proposed Multilateral Agreement on Investment (MAI), an attempt to establish far-reaching powers for transnational investors only partially realized in the WTO's TRIMS agreement. Popular resistance also halted the proposed Free Trade Area of the Americas, an attempt to extend the reach of the North American Free Trade Agreement (NAFTA) to all of Central and South America and the Caribbean.

Since 2002, growing popular resistance has blocked the advance of the WTO Doha Round. This has arrested the insertion of more far-reaching investment rules into the WTO, but has also frozen into place a global food system whose destructive features were dramatically highlighted in the 2008 and subsequent food crises which are essentially permanent. And while attention has largely focused on these ambitious mega-treaties, an intricate web of bilateral and regional investment agreements, some of them deliberately and misleadingly packaged as free trade agreements, have conferred on transnational capital new powers to directly challenge the democratic right of governments to regulate and to legislate in the public interest.

The latest proposed treaty instruments to embody these investor ambitions are the EU-US trade deal now known as the Transatlantic Trade and Investment Partnership (TTIP) and the twelve-nation Trans-Pacific Partnership Agreement (TPPA) between Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States and Vietnam.

Both these treaties are being negotiated under conditions of the strictest secrecy. Corporations draft and share the negotiating texts, but citizens are denied access in the name of national security. On the basis of the leaked texts we know that they would build on existing trade and investment rules by incorporating the most toxic elements of the already-existing thousands of treaties and granting expanded powers to transnational capital to challenge public interest policies and practices, eliminating or putting at risk rights for which workers and unions have struggled over many decades.

This publication builds on the past work of the IUF and the efforts of many activists in explaining the nature of these threats and why the labour movement must commit to defeating these treaties as an urgent political priority. We would also hope to stimulate discussion on how we might move beyond these defensive struggles to begin putting in place a system of global rules to effectively enforce respect for human rights over the private claims of investors.

Ron Oswald
IUF General Secretary
April 2014

New trade deals threaten democracy

Proponents, opponents and trade negotiators involved in the elaboration of two vast investment treaties currently under construction, the EU-US trade deal now known as the Transatlantic Trade and Investment Partnership (TTIP) and the twelve-nation Trans-Pacific Partnership Agreement (TPPA) between Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States and Vietnam agree on the most essential point. The agreements, which have been deliberately and misleadingly branded as Free Trade Agreements to boost their marketing, have little to do with lowering tariffs, which are generally already low. At the heart of these projects is the drive to further expand the already considerable power of transnational investors by restricting the regulatory power of governments and locking the system into place to prevent new regulatory initiatives or reverse privatizations.

The texts are officially secret; documents relating to the negotiations will be kept under government protection for decades. Neither lawmakers nor the public have access to the draft texts, which are, however, shared with corporate leaders and lobbyists. Wikileaks has provided an important public service in making available draft chapters of the TPPA, and these confirm that the treaty significantly expands upon existing provisions in the WTO which have already significantly augmented corporate power and reduced public policy space. (The leaked chapters and critical analysis are available at http://www.citizenstrade.org/ctc/blog/2014/01/15/leaked-tpp-texts-reveal-bonanza-special-rights-corporations/)

The TPPA is “WTO-plus” on, for example, public services, government procurement, state-owned enterprises (loosely defined to cover any enterprise in which the state has a commercial interest), intellectual property protection and financial regulation. It would restrict governments’ capacity to legislate worker and consumer food safety standards, regulate financial flows, provide affordable medical services and protect natural resources and the environment.

The TPPA incorporates the most toxic elements of the regional and bilateral trade and investment treaties which have been layered on to the WTO for expanding the scope and enforcement of transnational investment. The "right" of investors to directly challenge government laws and regulations at national and sub-national level through secret arbitration tribunals which bypass domestic courts is grounded in an expansive definition of "investment" which applies to even anticipated, future profits and purely speculative financial instruments. While WTO rules limit governments' ability to favor or support domestic producers in ways which "discriminate" against foreign investors (the national treatment/most favored nation principles), these expanded powers confer elevated, exclusive privileges on transnational capital.

The TTIP is at a less developed stage – formal negotiations began only last year , though it has long been a corporate priority - but government pronouncements and EU and US corporate wish lists setting out their goals for the negotiations show that the TTIP will bear a strong family resemblance to what we know of the TPPA. There would be little point to the treaty if it too were not WTO-plus.

On the basis of the leaked texts and what we already know about the devastating impact of the WTO and the regional and bilateral agreements, *the trade union movement should commit to defeating these two treaties as an urgent priority*.

The background – with progress slowing at the WTO, corporations pursue the "fast track"

The WTO has been a prime mover in promoting, institutionalizing and enforcing the global neo-liberal project. The WTO is not simply about freeing cross border trade – with the important exception of agriculture, tariffs were steadily rolled back under the multilateral General Agreement on Tariffs and Trade (GATT), which preceded the WTO and whose treaties and jurisprudence were incorporated into it, and have continued to diminish. The WTO's core project is social and political: the "non-tariff barriers" to the flow of goods and services it seeks to eliminate are the laws and regulations “constructed over decades of struggle by labour and social movements to protect the collective political, economic and social rights of working people by limiting corporate power and the predominance of profit over people. These include various forms of government regulation of corporate activities, such as laws on employment, environmental protection and public health. Public ownership and public provision of services are also attacked as barriers, since they place fairness and social needs before the most important need of corporations - private profit… The purpose of the WTO agreements as components of the WTO regime is to lock states in at the national and sub-national level, preventing the possibility of re-erecting these barriers. The regime is expressly designed to prevent a reversal of neoliberal policies and the corporate power it consolidates by threatening sanctions against countries whose governments attempt to re-erect these barriers or create new forms of social and/or ecological protection in response to the pressure of labour and social movements.” (The WTO and the World Food System, IUF 2002: http://www.iufdocuments.org/www/documents/wto/wto-e.pdf)

While transnational capital has made enormous gains over the WTO decades, the corporate appetite grows through eating. The WTO project has lost momentum; the Doha Round negotiations are bogged down, perhaps permanently. Important elements in the full corporate agenda have not yet been fully captured – on pharmaceuticals, biotech and intellectual property, for example, in agriculture, the perennial “bargaining chip”, and in services. The WTO services agreement, the GATS, potentially offers up all services for privatizations, but governments must “opt in” on opening particular service sectors. Countries may also, with great difficulty, withdraw from their service commitments. Despite extensive privatizations, the persistence of public health, educational, postal, transport and other services is a constant irritant to hungry corporations.

At the heart of these projects is the drive to further expand the already considerable power of transnational investors by restricting the regulatory power of governments and locking the system into place to prevent new regulatory initiatives or reverse privatizations.

So while still making full use of the WTO treaties and their capacity to impose sanctions, the corporations are pursuing more and faster tracks to their objectives. In services, one response was the creation, in 2012, of a group of some two dozen countries calling themselves ”The Really Good Friends of Services” to pursue the negotiation of a Trade in Services Agreement (TISA). The US, EU, Japan, Canada, Australia, New Zealand, Switzerland and South Korea are the wealthy core of the group. The Really Good Friends are pushing for a services agreement among themselves which would circumvent the inconveniences of GATS by liberalizing trade and investment in virtually all modes and sectors of services, public and private, and impose new regulatory “disciplines” on these services. The US and EU are pushing for “multilateralization” of the TISA, meaning the creation of a bloc of signatory governments inside the WTO GATS negotiations which would establish the hyperliberalized TISA provisions as the global services standard.

In September 2013, the IUF joined with hundreds of national and international trade union and civil society groups around the world to demand an end to the project (http://corporateeurope.org/blog/342-civil-society-groups-oppose-deregulation-andprivatisation-proposed-services-agreement-tisa).

Investor-to-state: fast track to circumventing democracy

The other corporate fast track is to broaden the reach and scope of the bilateral and regional trade and investment agreements which have proliferated since the 1994 North American Free Trade Agreement (NAFTA). There are now approximately 3,200 such agreements. Most of the approximately 300 regional and bilateral free trade agreements (FTAs) are essentially investment treaties. The thousands of bilateral investment treaties (BITs) deal exclusively with investment issues. Over 90% of these treaties provide investor-to-state dispute settlement (ISDS) provisions which allow corporations to directly sue adhering governments for damages in closed tribunals for which there is no appeals process.

Long familiar in North America thanks to a number of well-publicized NAFTA cases, investment treaties have only recently become a contentious issue in Europe in connection with the proposed inclusion of ISDS in the TTIP. But the EU and its members have signed over 1,400 bilateral investment treaties, including 9 between member states and the US. A number of these BITs are between EU member states, and EU investors have made generous use of the ISDS mechanism. Another multilateral treaty, the Energy Charter Treaty (ECT) signed by 51 member countries and the European Union, which came into force in 1998, contains binding ISDS provisions that are increasingly being made use of. Australia, Iceland, Norway, and Russia have signed but not ratified the ECT; the US and Canada are not signatories.

The treaties prohibit any restrictions on the repatriation of profits or funds. Governments may not impose capital controls to halt attacks on their currencies or restrict "hot money" flows in a crisis.

ISDS claims are proliferating. The figures are not definitive due to the total lack of transparency, but UNCTAD's 2013 World Investment Report records a total of 514 cases concluded, pending or discontinued. Of the 244 concluded cases, 31 percent were settled in favor of the investor, 42% in favor of the state, and the terms of the remaining 27% are confidential. In 2012 a record 58 new investor-state claims were initiated; over two-thirds of the respondents were developing or "transition" countries. The compensation settlements have also escalated since early NAFTA days. The 2012 USD 1.77 billion award to Occidental Petroleum for Ecuador's termination of a contract has now swelled to over 3 billion with the addition of compound interest calculated from the date of the "violation".

The cases are treated in closed tribunals for which there is no appeal and arbitrators are free to determine compensation and allocation of costs. The arbitration tribunals stipulated by most treaties are the World Bank's International Centre for Settlement of Investment Disputes (ICSID) and/or the United Nations Commission on International Trade Law (UNCITRAL). The tribunals consist of 3 private-sector lawyers who also serve as corporate advocates – there are no conflict of interest rules and the jurisprudence is essentially arbitrary. The average cost per case is USD 4 million, most of it lawyer fees. A handful of investment law firms have ridden the litigation boom and dominate the business. (http://corporateeurope.org/trade/2013/06/transatlantic-corporate-bill-rights)

Expanding investor "rights"

Language in these treaties varies, but the vast majority of them share elements in common, derived from NAFTA's Chapter 11. "Investment" is broadly defined to move far beyond the equity investment normally considered to constitute foreign direct investment (FDI) to cover debt instruments including sovereign bonds, futures, derivatives, options and other speculative tools, intellectual property including patents and copyrights, licenses, franchises, authorizations and permits.

Expropriation has expanded to include “measures tantamount to expropriation”, “indirect expropriation” and “regulatory expropriation”, i.e. any state measure or policy which may potentially impact on profits, future profits, or “reasonable expectation of profits” even if the policy or measure is of a general nature and does not apply to the specific “investment”. National treatment/non-discrimination has expanded to embrace “minimum standards” which include a wooly “fair and equitable treatment” and “maintaining a stable investment climate”.

The treaties prohibit any restrictions on the repatriation of profits or funds. Governments may not impose capital controls to halt attacks on their currencies or restrict “hot money” flows in a crisis. Even the IMF has recently conceded that such controls are an essential policy measure. Argentina has had to pay out hundreds of millions of dollars as a result of investor cases based on the government’s delinking of the peso from the dollar in the 2002 crisis.

Notorious NAFTA Chapter 11 cases include the 1996 suit by the US Metalclad Corporation against the government of Mexico for closing a waste treatment facility after a geological audit indicated severe threats to the local water supply. The tribunal ruled that the cancellation of a state-level zoning permit constituted regulatory expropriation and ordered the government to pay the company government USD 16.7 million in damages. In 1997 the US Ethyl Corporation sued the Canadian government for a ban imposed on its gasoline additive MMT, a proven health hazard. Ethyl claimed that the ban “expropriated” its assets in Canada and that legislative debate itself constituted an expropriation of its assets because public criticism of MMT damaged the company’s reputation. In 1998, the Canadian government withdrew the legislation banning MMT and paid Ethyl Corp USD 13 million to settle the case. In 2000, United Parcel Service sued the government of Canada for USD 160 million in damages, claiming that the public postal service’s parcel and courier services put it at a competitive disadvantage.

We should not separate ISDS from the wider context or focus on it to the neglect of the other treaty provisions. Investor-to-state lawsuits are not the only mechanism for enforcing corporate power.

The suit was rejected nearly 7 years and millions of dollars in legal fees later on narrow technical grounds, but was a loud warning to public postal services on both sides of the border.

In 2011, the federal government of Canada agreed to a USD 130 million settlement with AbitibiBowater, a pulp and paper manufacturer based in Canada but registered in the US state of Delaware, an onshore tax haven. In 2008, the company closed its mill in Newfoundland and asserted a right to sell its timber harvesting and water use permits, which were contingent on production. Under Canada's constitution land and water use rights belong to the provinces, so the provincial government moved to take back the licenses. AbitibiBowater sidestepped the courts, filed a Chapter 11 claim and won, setting a precedent which effectively privatizes Canada's public ownership of natural resources (http://www.canadians.org/media/trade/2011/08-Mar-11.html) by allowing foreign companies to assert ownership claims. "By recognizing a proprietary claim to water taking and forest harvesting rights, Canada has gone much further than any international tribunal established under NAFTA rules, or to our knowledge, under the rules of other international investment treaties," a lawyer for the public interest advocacy group Council of Canada explained to Parliament in 2011. He pointed out that a government statement asserting that the settlement would not set a precedent was meaningless under NAFTA's national treatment clause which grants foreign companies treatment no less favorable than national companies under similar circumstances.

In November 2012, the US pharmaceutical company Eli Lilly launched a suit to attack Canadian court decisions rejecting monopoly patent protections on two of its drugs after finding insufficient evidence that the drugs could deliver the promised results, "The first attempt by a patent-holding pharmaceutical corporation to use the extraordinary investor privileges provided by U.S. 'trade' agreements as a tool to push for greater monopoly patent protections (https://www.citizen.org/eli-lilly-investor-state-factsheet) which increase the cost of medicines for consumers and governments."

Eli Lilly is demanding $100 million in compensation. That same month, US-based Lone Pine Resources announced notice of its intention to seek USD 250 million in damages from the government of Quebec in response to its popular moratorium on gas shale extraction (fracking) under the St. Lawrence River. The fracking threat to water resources is well documented but Lone Pine contends the moratorium is "arbitrary, capricious and illegal" under Chapter 11.

The Ethyl Corporation MMT case shows how ISDS lawsuits can lead directly to changes in national or sub-national legislation. Tribunals can order "injunctive relief" in addition to compensation.

When the newly elected government of Slovakia in 2006 restricted the power of private health insurers to distribute or repatriate profits, several foreign health care providers sued for damages using the Netherlands-Slovakia BIT. The Dutch company Achmea was eventually awarded USD 25 million in damages and costs, and succeeded in enforcing the order through the Luxembourg courts, which have blocked EUR 29 million of the government's assets in its banks. The story doesn't stop there. In February 2013, Achmea initiated proceedings against the government of Slovakia to block draft legislation which would establish a single public health insurance scheme. The law is still in draft form and envisages various options to accomplish this goal. Achmea's claim for compensation for expropriation under a law which has not been adopted and under which it has therefore suffered no damages *constitutes a pre-emptive strike to block future legislation*. (http://kluwerarbitrationblog.com/blog/2013/03/28/achmea-ii-seizing-arbitral-tribunals-to-prevent-likely-future-expropriations-is-it-an-option/)

The European Commission's October 2013 "Factsheet on Investor-State Dispute Settlement" (http://trade.ec.europa.eu/doclib/docs/2013/october/tradoc_151791.pdf), part of the attempt to sell ISDS, asks: *Will the ISDS mechanism limit the EU's right to regulate?,* and answers: *No. Including an ISDS mechanism in an investment agreement will not make it more difficult for the EU or its Member States to pass laws or regulations.*

The mere threat of an expensive lawsuit hangs over virtually all regulatory measures, and can also be used as a bargaining chip. Lawsuits or the threat of ISDS under regional and bilateral agreements are being used to block legislation on mining-related water safety in El Salvador. In June 2012, the French services provider Veolia used the France-Egypt BIT to sue the Egyptian government for increasing minimum wages. In May 2012, the Swedish energy company Vattenfall launched a claim under the Energy Charter Act against Germany's phase-out of nuclear energy following the Fukushima nuclear catastrophe, although one of the two plants operated by the company in Germany has in fact been out of operation since 2007 due to numerous incidents.

Layer by layer, a powerful machine has been constructed to weaken the capacity of governments to regulate in the public interest. Many of the WTO treaties, like the TRIPS agreement on intellectual property, were built by first negotiating a series of wide-ranging bilaterals to neutralize opposition at the multilateral WTO. FTAs and BITs were in turn layered onto these treaties, which provide a floor. These have then become more expansive, more expensive and the corporations have become more litigious. The TPPA and TTIP would in turn set the new gold standard for corporate power. New adherents to the TPPA would have to join on a take-it-or-leave-it basis.

Can the treaties be limited?

The web of treaty obligations incorporated in the global investment regime already grants such enormous powers to transnational corporations that attempts to restrict the reach of new agreements with limiting clauses face substantial obstacles. The UNCTAD 2013 investment review advocates new, gentler and more "sustainability" friendly treaties, but concedes that "Renegotiation efforts aimed at reducing or rebalancing treaty obligations can be rendered futile by the MFN (Most Favored Nation) obligation, if the scope of the MFN obligation is not limited it can result in the unanticipated incorporation of stronger investor rights from IAs [investment agreements] with third countries." Treaties that define commitments to liberalize the service or other sectors through exclusions ("carve outs") leave no space for future regulation in response new and unanticipated social and environmental threats in the future and are otherwise susceptible to various forms of attack. Treaty language referencing the state right to regulate in a manner "otherwise consistent with this Agreement" (NAFTA Article 1114(1)) on the environment) simply means that a treaty party may adopt any regulatory measure it wishes provided it is not discriminatory, is taken in the public interest and … compensation is paid. Achmea is using precisely this approach to attack a law which does not yet exist.

Language affirming commitments to refrain from undermining human rights or labour standards suffer the same weakness. These rights are already recognized in customary international law and add nothing to the treaties. The language merely encourages but is non-binding – governments "should" take no measure to undermine etc. No investment treaty sets out mechanisms by which the responsibilities of corporations to society can be effectively enforced. International human rights law is soft, investment law is hard. The United Nations Guiding Principles on Business and Human Rights reaffirm the state duty to protect, but set out no new legal obligations – that was one of their selling points.

Investment measures in trade agreements, for example, are consistently used to block states from banning or (limiting through labelling requirements) GMOs despite the Cartegena Protocol to the Biodiversity Convention, an international treaty which gives states that sovereign right. In the hierarchy of treaties, commercial law trumps human rights.

What purpose do these agreements serve?

There is no evidence to indicate that the absence of ISDS limits foreign investment. Brazil, Latin America's largest recipient of FDI has no investment agreements which contain ISDS. The United States has no ISDS with China, which continues to receive massive investment flows. As usual, jobs for hard-pressed workers is the promise used to sell these agreements to a skeptical public. Yet the methodologically flawed impact assessment prepared for the European Commission predicts substantial job losses and prolonged dislocation for European workers without specifying the sources of new employment creation. NAFTA is now generally credited with destroying manufacturing jobs and fostering social inequality in North America, pushing Mexico far back in the development league, destroying Mexican agriculture and pushing millions of migrants north in search of work. The single market and the single currency in Europe were all sold in the name of jobs. There is no reason why this time things will be different. The path to recovery does not lead through more deregulation and the lowering of social and environmental standards.

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The two decades of the WTO have brought huge increases in world trade and investment, but they have also brought recurrent crises, widening inequality and massive social and environmental destruction. The winners have been the corporations. The UNCTAD report previously cited in this report estimates that 80% of world trade now takes place within the value chains of transnational corporations.

We should not separate ISDS from the wider context or focus on it to the neglect of the other treaty provisions. Investor-to-state lawsuits are not the only mechanism for enforcing corporate power, though it is a powerful tool. Investment protection can be enforced through state-to-state mechanisms in FTAs/BITs and through contract provisions. The WTO treaties on Trade Related Investment Measures (TRIMS) and Government Procurement already severely restrict the use of local content and other performance requirements. A successful WTO complaint by Japan recently forced the Canadian province of Ontario to eliminate the provisions in its Green Energy legislation encouraging local renewable energy producers. The US is now similarly pressing India through the WTO to drop support for local solar power production. Corporations can simultaneously pursue WTO complaints as well as use bilateral ISDS. Philip Morris, for example, is challenging Australia's law on cigarette plain packaging through the WTO after failing to overturn it in the courts. The US-Australia FTA contains no ISDS, so the company is simultaneously claiming damages through the Hong Kong-Australia agreement, as well as suing Uruguay for its anti-smoking policies by claiming to be Swiss and making use of the Uruguay-Switzerland BIT! The government of New Zealand is awaiting the outcome of the WTO decision on Australia's cigarette plain packaging to determine whether it will implement similar legislation which is currently pending.

Where do we go from here?

The corporate web is dense, but opposition is growing. South Africa is letting its existing bilateral investor treaties lapse and will sign no new ones. Indonesia is exiting its investor treaties. (It should be noted that successor clauses in these treaties keep their terms in application generally for 10-15 years in the event of unilateral termination, so there is no instant relief.) Australia has refused to include ISDS in any trade agreement since 2011; there is none in the FTA just signed with Japan. Several Latin American countries have withdrawn from existing treaty commitments and there is growing discussion about regional schemes to foster cross-border investment on different foundations. Controversy around the TPPA and TTIP has generated unprecedented discussion about investment treaties and corporate power more broadly. Unions should seek to build on this momentum.

Rather than seeking exemptions or improved language, the goal should be to stop these treaties by making them a major national political issue, highlighting their domestic impact. Public opposition killed the Multilateral Agreement on Investment (MAI) and the Free Trade Agreement of the Americas, both of which were attempts to bring NAFTA-style investor clauses into wider treaties. They have predictably returned again as the TPPA and TTIP, so the opportunity should be used to generate a deeper discussion about stopping all new agreements which exceed current WTO commitments and ultimately about rolling back the damage emanating from the WTO. All measures which constrain or potentially inhibit governments' authority and capacity for democratic regulation in the public interest should be stripped out of trade discussions. We need trade, and trade needs rules, but we don't need these rules. Proposals to tinker with the detailed language of these treaties ignore their fundamental purpose, that of advancing investor rights over social needs.

Together with NGOs, social movements and public advocacy groups, we need to organize to defeat the negotiations on the TPPA and TTIP, but the struggle doesn't end there. It must be broadened to roll back transnational investor privileges enshrined in the current web of trade and investment treaties and reclaim democratic public policy space to strengthen the struggle for enforceable worker rights, sustainable livelihoods, quality public services and the tools and means to rebuild systems of food production in ways which conserve the world's resources and ensure the right to food.

Foodworkers, "Regulatory coherence" and downward harmonization of food standards – the example of meat

The rules governing global trade in their current form promote the downward harmonization of standards. The new buzzword for this is "regulatory coherence". A look at food standards, and specifically meat, shows how the process unfolds. The corporate push for "regulatory coherence" is already making itself felt in moves to lower European food safety standards. In part, this is the result of long-standing corporate lobbying enforced through the threat of WTO sanctions. But it also reflects the more immediate pressure to trade away regulatory safeguards as part of the negotiations on the TTIP.

The biotech lobby and cereal exporters in both Europe and the United States make no secret of their wish to see all GM requirements, including labelling requirements and contamination threshold levels, stripped out of trade agreements. CropLife America, the pesticide lobby group which is part of the wider "life sciences" agrichemical and seed constellation, has also taken aim at proposed changes to EU regulations which would restrict the import of foods containing residues of the highly damaging pesticides known to be endocrine disrupters. "If the EU regulation is implemented as proposed", warns CropLife, "it could block more than $4 billion of U.S. agricultural exports to the EU, in addition to exports of crop protection active ingredients. (http://www.croplifeamerica.org/news/cla/US-Agricultural-Exports-Threatened-EU-Pesticide-Regulation) Such actions would imperil the Transatlantic Trade and Investment Partnership (TTIP)… While scientific risk assessment is the internationally accepted practice for regulating crop protection products, the EU increasingly regulates based on hazard identification, without taking into account exposure or risk. This runs counter to the World Trade Organization (WTO) Sanitary and Phytosanitary (SPS) Agreement to which the EU is signatory."

Corporate lobbyists also have precise targets for meat safety standards. Last year, the European Commission authorized the import of US-beef treated with lactic acid. This was the result of a settlement which aimed to defuse tensions arising from the successful US WTO complaint against the EU ban on beef from cattle fed on growth hormones. The EU retained its ban, although the WTO did find it in violation of various WTO treaty commitments (an important precedent) and awarded the US the right to impose USD 116 million in annual sanctions. The US agreed to lift sanctions in return for a quota on the import of US hormone-free beef. The problem was that the beef, while free of growth hormone, is washed in lactic acid as a decontaminant, and EU regulations prohibit the use of any substance other than potable water for removing contaminants from foods of animal origin, unless specifically exempted. After years of wrangling, lactic acid was formally exempted, a move hailed by the United States Department of Agriculture's Foreign Agricultural Service as "a major victory for science-based food processing." It can now be accepted in imports as well as introduced into EU beef production. There is no labeling requirement.

It would require a specific exemption to authorize the use of lactic acid on poultry meat, but last year's move opened a breach in a regulatory approach originally designed to ensure safety at all stages of processing, an approach diametrically opposed to, for example, the massive application of chemical Pathogen Reduction Treatments (PRTs) by the US poultry industry. PRTs are chemical washes applied in later stages of processing to compensate for fecal and other contamination arising from high line speeds and inadequate standards at earlier stages. PRTs include chlorine compounds and other chemical solutions which expose workers to proven hazards and can cause environmental pollution through effluent discharges.

In March this year, the European Food Safety Authority, which has rarely met a chemical treatment, food additive, packaging material or genetic modification it didn't like, gave a positive toxicological assessment for peroxyacetic acid (also called peracetic acid) as a microbial wash for poultry carcasses and meat (without, however, confirming its effectiveness in eliminating E-coli, salmonella and other pathogens). The assessment must still be acted on by the Commission, but it builds on the lactic acid precedent to authorize the use of toxic substances at the end stage of processing rather than eliminating contaminants earlier. Exposure to peroxyacetic acid can cause permanent damage to the heart, lungs and liver as well as burns. The US poultry lobby greeted the EFSA move as another triumph for “sound science”.

The European Union is going further still in weakening food safety standards in order to “reduce the regulatory burden” on business. The EFSA is now recommending the elimination of mandatory inspection of chicken carcasses in poultry plants. Standards of disease inspection in pork meat have already been relaxed. These moves parallel proposals to modify federal poultry safety standards in the US that would further reduce the already depleted ranks of government meat inspectors in the name of industry self-regulation and authorize an increase in line speeds from 140 to 170 birds per minute – all in the name of consumer safety. Unions and public interest advocacy groups oppose the changes, pointing to the already high rate of repetitive strain injuries among poultry workers and the dangers of poultry-borne pathogens. Higher line speeds and fewer inspectors would also mean more injuries, more chemical washes, more worker exposure and more risks to workers and consumers.

The EU prohibition of PRT-treated poultry imports has been the subject of an ongoing US WTO complaint since 2009. The complaint alleges breaches of the WTO Agreements on Technical Barriers to Trade, Agriculture and Sanitary Phytosanitary Measures (SPS) as well as articles of the GATT, the General Agreement on Tariffs and Trade which was incorporated into the WTO. Similar cocktails of WTO treaties were successfully used in the hormone beef complaint and the successful challenge to the EU limitations on GM crops and foods.

The EU, China and Russia are among the 160 countries which prohibit the import of meat from animals fed with ractopamine, a drug fed to pigs, beef cattle and turkeys in 27 countries including the US to promote faster and leaner growth. An accumulating body of evidence directly links ractopamine to adverse animal health and raises questions about the drug's impact on human health. But countries are free to regulate the use of the drug in livestock production in the absence of a specific international safety standard authorizing its "safe" use and permissible residue levels in food products. The US pharmaceutical and meat lobbies therefore pressured the UN Codex Alimentarius, to adopt minimum residue levels for ractopamine in animal tissue, established by a controversial 2012 decision after years of lobbying. Since the corporate-influenced Codex sets the WTO's food safety standards, this concession opened the way for the US to seek WTO sanctions against countries which bar imports of meat from animals fed the additive. It can also now provide a bargaining chip in the TTIP negotiations, where worker and consumer health become part of the horse trading.

The cross-Atlantic damage is not a one-way street. EU negotiators are pushing to overturn the US ban on EU cattle and cattle products and on feed products containing ruminant ingredients that can transmit mad cow disease, measures taken in response to the fatal BSE outbreak in Europe.

The multi-faceted WTO complaints illustrate the variety of existing weapons at the disposal of governments, acting on behalf of their corporations, to roll back public interest regulation. The goal is regulatory convergence – on the lowest possible standards. But they are slow, and the corporations are impatient. So the idea has arisen of establishing regulatory coherence by treaty, backed up by an investor-to-state dispute resolution procedure (ISDS). Coherence by treaty is the instant microbial wash which eliminates regulatory residues.

General coherence chapters are under construction in both the TTIP and the Trans-Pacific Partnership Agreement (TPPA). The coherence chapters in these two powerful instruments for enforcing corporate supremacy approach the issue differently to arrive at the same goal. The TPPA regulatory coherence chapter imposes detailed procedures on domestic lawmakers and regulators, including guaranteed participation for investors (in the name of "transparency") in the development of all new laws and regulations potentially affecting foreign trade and investment, and specifies the kinds of evidence and criteria that are acceptable for evaluating current or future regulatory measures. It is the overall treaty architecture which is the key: the coherence chapter, taken together with the numerous other chapters, aims to straitjacket government action.

The proposed EU TTIP text (http://www.bilaterals.org/IMG/pdf/ttip-regulatory-coherence-2-12-2013.pdf), on the other hand, focuses on the modalities of cooperation between the treaty parties, opening the path to mutually assured regulatory destruction through a process in which corporate lobbyists on both sides of the Atlantic potentially collaborate in eliminating agreed targets. The European biotech industry, for example, needs transatlantic allies to facilitate the expansion of GM technology in the face of consumer resistance. The EU's chemical industry feels hampered by the REACH regulations, which put burdens of safety proof on the companies, in contrast to the US system. The US cattle lobby supported the successful WTO challenge to the American government's limited country-of-origin labelling requirement. The list is long.

From a food safety standpoint as well as a more general one, the fundamental problem is this: according to the draft EU text, "In concrete terms, where appropriate, regulators/competent authorities should cooperate to enhance regulatory compatibility, with a view to exploring trade facilitative solutions, e.g. by way of recognition of equivalence, mutual recognition or reliance and exchange of data and information, or other means."

Equivalence can only be determined with reference to an existing body of standards. The WTO has already determined that, for example, hormone-fed beef and poultry from animals fed on growth-promoting antibiotics and other drugs are the "veterinary equivalent" of meat from animals raised and slaughtered under a "plough to plate" safety regime built on the precautionary principle, which the WTO rejects. The food and agricultural export lobby in the US has called on the US to negotiate "an ambitious 'SPS plus' chapter based on science and international standards" in the TTIP - a direct challenge to food safety standards based on the precautionary principle.

"Equivalence" is the opening wedge for the deregulatory assault on governments' capacity to pursue public policy objectives. "Necessity tests", the "least burdensome" doctrine, "threshold" requirements and cost-benefit analysis for assessing public goods which cannot be priced, precisely because they are public, are additional weapons in the corporate arsenal. And it will be left to dispute resolution bodies – whether investor-to-state or state-to-state- to determine the circumstances under which the equivalence doctrine is "appropriate" or not.

Regulations on labeling, packaging, pesticide use, food additives, ergonomic standards and worker protection are at high risk, in the EU as elsewhere, of being challenged as non-tariff trade barriers. The hothouse environment generated by the treaty negotiations add to the pressure and explains the EU's pre-emptive surrender in meat processing.

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This brochure seeks to provide trade unionists with an overview of what is behind the negotiations on the EU-US and TransPacific trade and investment agreements and their likely impact. It explains why we need to organize to defeat these treaties, to roll back the layers of protection shielding transnational capital from democratic regulation and to begin putting in place a system of global rules which effectively enforces respect for human rights over the private claims of investors.