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TRANS-PACIFIC PARTNERSHIP FREE TRADE AGREEMENT

ENVIRONMENT

International environmental standards should be the floor of environmental protection in the TPPA

The TPPA should establish a commitment to environmental protection based on all parties having ratified international standards among others the Convention on International Trade in Endangered Species of Wild Fauna and Flora and the Montreal Protocol on Substances That Deplete the Ozone Layer. The TPPA parties should also agree to prohibit derogation from national, sub-national, and local laws and regulations that establish environmental standards or aim to protect the environment and public health. Every country should also be bound to implement its environmental laws and be held accountable if it fails to do so.

Provisions to prohibit trade of illegally harvested products

The TPPA should put in place a comprehensive list of illegally harvested products including in forestry and mining. The TPPA must recognise the right of each nation to restrict or ban practices that threaten to pollute the air, water, and land. Therefore, decisions to place a moratorium on certain types of mining or drilling, for example, should not be considered a violation of the agreement and must be excluded from investor-state challenges.

In order to protect wildlife and the environment, customs services must seize any such products at the border and binding measures should be enacted so as to increase capacity to trace and track such trade with a view to prosecuting those responsible.

The environment chapter must be enforceable. Environment must be excluded from investment disputes.

Aiming at achieving strong environmental protection, the environment chapter should be subject to the same dispute settlement procedures as commercial disputes, including sanctions as grave as in commercial cases.

Investment rules and dispute processes must not be able to be used against existing or improved environmental laws and regulations. Environmental protection must be excluded from investment disputes. The u.S. Construction that admits that environmental protection measures do not constitute expropriations “except in rare circumstances” is insufficient to deter such cases, or to protect each country’s right to protect its environment as it sees fit.

ENVIRONMENT MUST BE PROTECTED!

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INVESTMENT

Trade agreements should not include investment provisions that provide expansive rights to multinational corporations

Some governments negotiating the TPPA are insisting that it should contain dangerous investor-to-state dispute mechanisms which allow corporations to sue countries over their laws and regulatory decisions. These mechanisms allow foreign investors to claim rights above and beyond those that citizens and domestic investors enjoy and have resulted in governments being forced to pay private enterprises hundreds of millions of dollars and in some cases even change the law or regulation at issue. Mnes have challenged zoning decisions, bans on toxic substances, plain-package tobacco laws, and even judicial decisions no area of law or regulation is immune. The investor's right to bypass domestic courts and proceed directly to international arbitrations contrasts starkly with the lack of effective mechanisms to address violations of workers' rights and environmental standards.

Unions demand an end to investor to state dispute settlement

Of particular concern is the ability of enterprises to sue governments directly. The investor-to-state mechanism elevates the private, profit seeking interests of enterprises to the same level as the public interests governments seek to protect. It allows enterprises to challenge the administrative, legislative and judicial decisions of governments in an unaccountable, international tribunal with no appeal mechanism. The tribunals are required to focus on the rights of the investor and are empowered to pass judgment on the actions of democratically-elected governments without any expertise or understanding of the public interests or societal values at issue in a dispute. Instead of providing an avenue for an mne to tear down public interest protections (or prevent them from being enacted at all), the TPPA must instead provide only for state-to-state dispute settlement, which would allow disputes to be resolved in an open process where both state parties would be able to present their legal arguments.

TPPA negotiators must put the interests of citizens and the public ahead of investors

Investor-to-state dispute resolution is not the only concern. The definitions of investment, expropriation and minimum standard of treatment in many investment chapters, for example, are too broad and have resulted in rulings that have had very negative consequences for the public interest in the countries affected. Negotiators must also ensure that financial regulation and taxation are not compromised by investment rules, and that the rules do not permit investment challenges to attack labour, human rights and environmental protections.

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LABOUR RIGHTS

LABOUR RIGHTS

For years, respect for worker rights has been a condition for expanded trade and investment in numerous preference programs and trade and investment agreements internationally. The intent of these provisions is clear. If the potential gains of international trade and investment are to be shared fairly with those workers producing these goods and services, the fundamental rights of workers must be fully respected in law and in practice.

Existing labour provisions are weak, and have inadequate enforcement mechanisms

In every country, workers continue to face serious and frequent violations of their basic labour rights, further driving down wages and working conditions and increasing levels of income inequality. Existing labour provisions in preference programs and trade and investment agreements have provided some leverage for workers in some countries, but they are wholly inadequate.

Labour rights rules must be as strong as the commercial rights available for corporations

Any future trade agreement must include both a stronger and broader commitment on labour rights. Countries must comply not only with the core labour rights, as enshrined in the relevant international labour organization conventions, but also the rights and standards related to the broader concept of decent work. The agreement must also ensure that workers throughout supply chains are covered fully by these protections, and that they apply equally to migrant workers. Furthermore, goods produced by forced or compulsory labour must never enter international commerce.

The agreement's dispute settlement procedures must work quickly and result in targeted, deterrent sanctions (similar to the sanctions faced for violations of other chapters of the agreement) if cooperative consultations and arbitration are exhausted and fail to bring about compliance with the agreement's labour obligations. A politically and economically independent labour secretariat, which would play an important role in research and oversight of the agreement's labour provisions, should also be established.

Labour rights must not be threatened by other parts of the agreement

Other parts of the agreement must not threaten labour and other human rights. For example, government procurement rules should not prevent procurement being used to improve working conditions and adherence to labour standards. Investment rules and dispute processes must not be able to be used against existing or improved labour laws and regulations. Finally, investors must not be able to challenge labour and human right protections as violations of the investment chapter.

THE GOVERNMENTS NEGOTIATING THE TPPA CAN AND MUST DO BETTER! TRADE UNIONS DEMAND A SEAT AT THE TABLE AND AN AGREEMENT THAT FULLY PROTECTS THE RIGHTS OF WORKERS PRODUCING THE GOODS AND SERVICES TRADED IN THE GLOBAL ECONOMY.

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INTELLECTUAL PROPERTY AND PUBLIC HEALTH

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TRANS-PACIFIC PARTNERSHIP FREE TRADE AGREEMENT

The intellectual property rights (iprs) should strike the right balance between appropriate protection of patents that allow for r&d and the production of new pharmaceuticals and access to medicines. However, the patent protection established in many recent free trade agreements far exceed the international standards for patent protection established in the wto agreement on trade-related aspects of intellectual property rights (trips). Provisions that go beyond the trips commitments jeopardise peoples' access to affordable medicines, particularly in developing countries.

Consumers and public health departments should not pick up the tab for patent protection that exceeds existing protection in each country

Some recent trade agreements require parties to grant a new patent for new uses or forms (e.g., Liquid instead of tablet) of existing patented medicines without allowing parties to require a proof that the new form is a substantial improvement. On the one hand, a new method of use or form of medicine can add value for the patient, but on the other hand, it delays generics' entry into the market and may grant companies additional years of monopoly rights on drugs without any real innovation. Competition generated from generics' entry into the market brings down prices for consumers. Also, generic drug producers can sometimes come on the market much faster if they are able to obtain marketing approval before the patent on an existing drug expires, but a brand-name pharmaceutical manufacturer can use free trade agreements to make this as difficult as possible.

Some free trade agreements also deny generic drug producers access to the results of the tests that demonstrate the safety of a drug. These tests are a crucial step in order to ensure safety in bringing a drug to market. Trips require protection of test data against unfair competition, but leaves flexibility for governments to provide access to generic manufacturers. In contrast, some free trade agreements oblige parties to grant exclusive rights for at least five years after a patent expires, further delaying competition.

Some free trade agreements also allow the use of drug registration procedures to give any entity claiming a pharmaceutical patent the power to stop competitors from reaching the market.

We say no to strengthening patent protection of pharamceuticals beyond existing standards in each country, which would impede more affordable, generic drugs from entering the market, particularly in developing countries

As if the ipr provisions were not enough, some recent trade agreements have included provisions that undermine public pharmaceutical benefit schemes. The korea-us fta, for example, requires a country to "appropriately recognize the value of the patented pharmaceutical product or medical device in the amount of reimbursement it provides". It contains a "transparency" mechanism that allows pharmaceutical companies greater access to the government committees that decide whether to fund new pharmaceuticals. It also establishes an "independent review process" that allows corporations to appeal public pricing decisions. Many people are concerned that excessive political influence of large pharmaceutical corporations pushes up the price of medicines and results in excessive profits for these corporations. The impact of these provisions is clear: a drug price remains high, and access to affordable medicine is reduced. Negotiators are considering similar language in the TPPA.

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REGULATORY COHERENCE

Unions have long maintained that trade agreements should not limit or constrain a government's ability to legislate and regulate to promote and protect the health, safety, and general welfare of its citizens. Indeed, unions believe this is one of government's primary functions. With respect to public interest regulation and legislation, trade agreements should be a force for progress, rather than a vehicle for downward harmonisation and denigration of appropriate rules for health, safety, environmental sustainability, and economic justice. Unions are deeply concerned that the Trans-Pacific Partnership Free Trade Agreement (a.k.a. the Trans-Pacific FTA or TPPA) will provide yet another venue for global corporations (and governments acting on their behalf) to lobby for weaker regulations. Working families a no matter where they live simply cannot afford to have their workplace, food, and product safety become a matter of voluntary compliance. Important regulations on matters related to domestic public policy priorities must not be prevented or weakened by global corporations or by the influence of governments other than one's own.

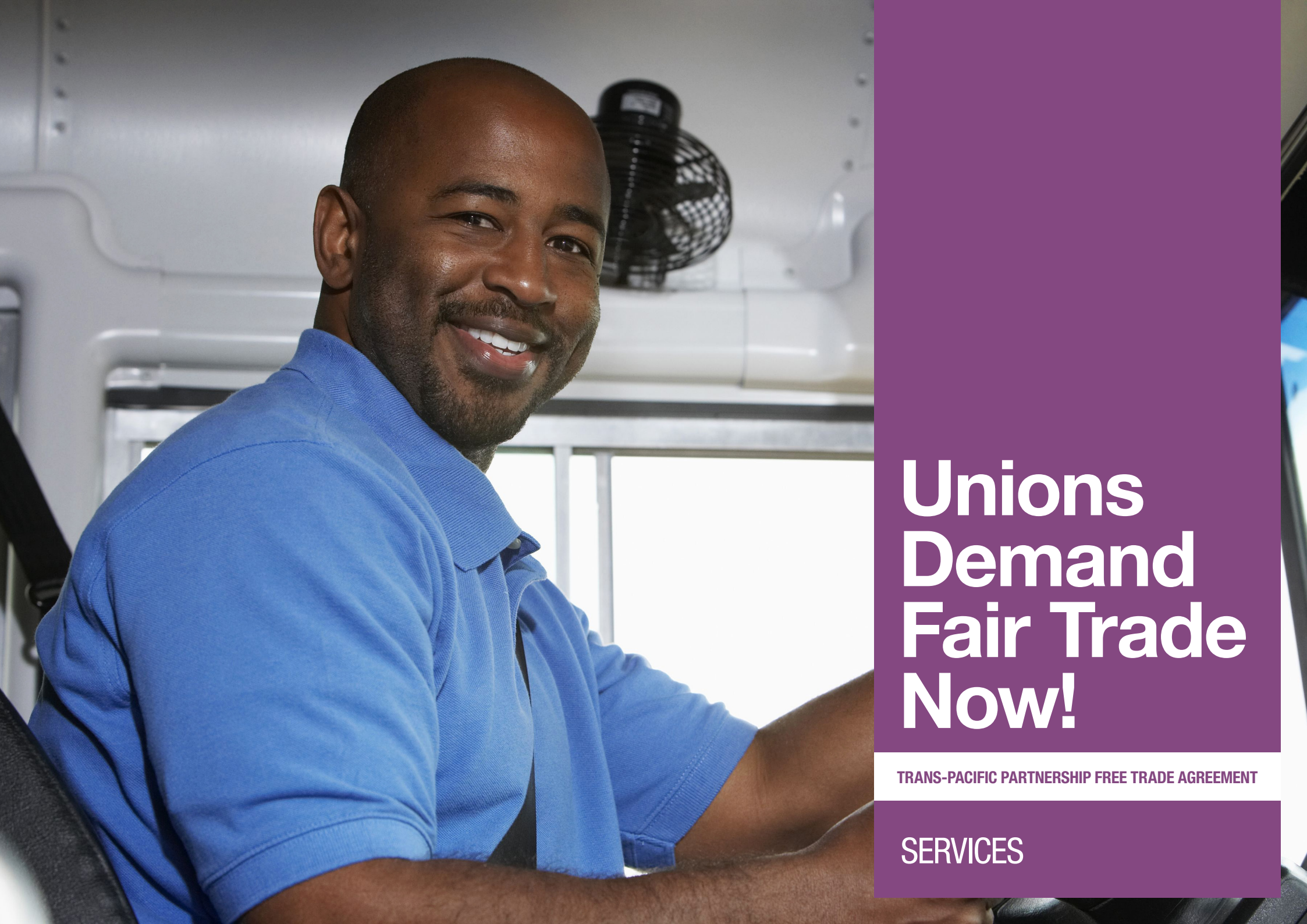
The Direction Ahead: Regulatory Impact Analysis?

Although the negotiating texts of the TPPA are secret, the TPPA is likely to require parties to use so-called "Regulatory Impact Analysis," or RIA, in developing all of its regulations. RIA has been on the forefront of the neo-liberal trade agenda and APEC has spent considerable time promoting the idea. According to the U.S. Government, in a March 2011 presentation to APEC stakeholders, RIA "assesses the anticipated consequences of a regulation and estimates associated benefits and costs." While this sounds innocent enough, the truth is that RIA focuses more on the "burden" to business than the public good to be achieved. According to a private sector presentation to APEC stakeholders, RIA improves the "cost-effectiveness" of policy decisions and reduces "unnecessary regulations". But unnecessary regulation is in the eye of the beholder. So long as regulatory agencies are open to "capture" by the interests being regulated, too many regulations will be deemed "unnecessary", and innocents will suffer needlessly from adulterated foods, unsafe workplaces, and dangerous consumer products. This is particularly a risk in areas of regulation where benefits are difficult to quantify such as labour and environmental issues.

RIA measures its success by reducing the number of regulations proposed without ever addressing the unmet need to adequately protect the public from various dangers. The U.S. has adopted the RIA model and apparently counts among its successes the failure to regulate silica dust. In the U.S., exposure to crystalline silicaa kills some 200 workers each year and causes new cases of silicosis in as many as 7,300 workers, mostly in the construction field. While silicosis is incurable, it is also preventable but American workers continue to wait. This is not a regulatory regime that should be exported to and imposed upon the U.S.'s trading partners, particularly developing countries in which civil society organis ations cannot match the resources that global corporations have to influence the regulatory process. Moreover, the information provided in RIAs could be used by investors to sue governments in international tribunals under the investor-state settlement process proposed for the TPPA. Investors would be able to turn these analyses against governments, forcing them to pay large amounts in "compensation" for the regulation. Trade agreements, including the WTO, have already been used to attack public interest regulations with respect to such issues as tobacco control, labelling of genetically-modified foods, recycling standards, and standards to prevent BSE ("mad cow disease") from entering the food supply.

Bottom Line: The Ability to Regulate is a Sovereign Right

RIA is not a model that works for workers or anyone concerned about environmental, health, and similar standards. A trade agreement is not the appropriate place to develop domestic regulatory mandates. This should be retained as a sovereign right. Should the current neo-liberal deregulatory trend ever fall out of fashion (as it did a century ago in many countries including the U.S. when scandals over tainted milk, meat, and other products led to the creation of the Food and Drug Administration and a host of laws promoting clean and pure foods), the U.S. and every other TPPA nation would be unable to modify its regulatory regime without persuading all other TPPA parties to change their approach or withdrawing from the agreement.



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SERVICES

TPPA should not include public services and the access to and the quality of public services should be guaranteed

Trade unions believe that public services should be provided by public entities, which is the only way to ensure universal access, reasonable pricing and accountability to the public. We have seen the opposite happen, as more and more public services are fully or partially privatized. In many cases, privatised enterprises deliver inferior services at higher prices and do not attempt to provide services on a universal basis. Basic public services should simply be excluded from the disciplines of the services chapter.

As to services generally, unions urge governments to take a "positive list" approach. A positive list approach, which binds only those services specifically named, is the most appropriate method to prevent the application of chapter's liberalisation obligations to services that were not contemplated or did not exist at the time the agreement was negotiated. This is important, since once a service is bound the decision cannot be reversed without payment of compensation – which could be very costly.

TPPA should promote financial stability

The global financial crisis demonstrated the importance of government and regulation to ensure stability of individual financial institutions, the financial system itself, and the economic system. To prevent future crises, government must have the policy space to effectively regulate the financial sector. However, we are concerned that the TPPA may create obstacles to effective financial regulation. There should be clearly and unambiguously worded text that permits authorities in each country to take the actions they deem necessary for prudential purposes, to ensure stability of financial institutions, to ensure the stability and integrity of the financial system and to ensure that the financial system supports the stability and health of the economy. This should apply to both precautionary measures and those required during a crisis. The necessity of the actions taken should be self-judging and not subject to judgment by, for example, a dispute resolution panel.

Further, a financial services agreement should provide broad regulatory powers to reign in risky financial products and services, including preventing their use, restricting market size, and restricting cross-border access to such products and services. This should apply to both existing and new financial services.

Additionally, any agreement on financial services should also ensure that countries retain their ability to control capital and exchange movements to and from their economies. Such controls have been identified by many respected economists and international organisations, including the imf and unctad, as useful and successful in stabilising economies, assisting development, and helping to prevent damaging crises.

A NEW FRAMEWORK FOR SERVICES IS NEEDED NOW!

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PROCUREMENT

Unions have long maintained that trade agreements should not constrain federal and sub-federal procurement rules that serve important public policy aims, such as local economic development and job creation, environmental protection and social justice – including respect for human and workers' rights. However, some trade agreements, as well as the WTO Agreement on Government Procurement include procurement rules that undermine the ability of governments to enact and enforce procurement rules that are related to these important policy goals. The Trans-Pacific Partnership Agreement (TPPA) must not replicate the mistakes of the past.

Eliminating or Reducing Preferences for Local Business or Which Support Public Policy Goals

The central provisions of procurement agreements are those that require national treatment, meaning that governments cannot generally favour local suppliers in government contracts for goods and services. In addition, governments are barred from imposing technical specifications in their public contracts if those specifications pose an "unnecessary" barrier to trade, and government contracts can only contain supplier qualifications that are "essential" to the performance of the contract. Rules on technical specifications and supplier qualifications could allow foreign companies to ask their home government to challenge procurement rules designed to achieve social or development goals. The most recent US model contains language which provides that a procuring entity is also not precluded from preparing, adopting, or applying technical specifications to require a supplier to comply with generally applicable laws regarding (i) fundamental principles and rights at work and (ii) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health. This must be reflected in the TPPA as well.

In the past, some governments have filed exceptions, such as for small and minority-owned businesses or certain public services, utilities or transportation, but others have taken no exceptions and thus have little policy space – which is worrying, particularly with regard to public services.

Jobs: Are More Jobs Gained or Lost?

Of course, we are aware that access to foreign procurement does create opportunities for domestic firms, some of which may support domestic jobs. However, the most important reasons for government procurement rules favouring local suppliers are to support economic development by assisting small local firms to grow and to serve other important public policy aims as described above. Opening procurement to foreign bidders helps large firms, not the ones that most need it, and makes it very difficult to achieve those other aims. Additionally, there is the question whether the jobs potentially lost to opening procurement to foreign bidders are greater than the domestic-based jobs potentially gained by access to foreign procurement markets. Also important are the kinds of jobs at stake. These matters deserve careful, comprehensive analysis before moving forward. Based on careful analysis of the potential impacts of procurement liberalisation under the TPPA, both positive and negative, governments should adjust their offers and requests accordingly. These matters are even more relevant in developing countries which may never have the opportunity to build strong domestic firms if large-scale global businesses, which have already achieved economies of scale, outbid smaller domestic firms, dominating a nation's entire government procurement market.

Responding to Economic Crisis

In the wake of the economic crisis, some countries moved to prime their economies through economic stimulus measures. However, even the stimulus measures that were completely consistent with procurement obligations under the WTO AGP and various FTAs sparked sharp criticism as being "protectionist" and an intense international debate on trade and procurement policy. This cynical debate was designed to undermine the legitimacy of the idea that a nation may use its government expenditures to stimulate its economy—or for any other policy objective. The very nature of the business cycle makes it certain that each TPPA nation will eventually face the question of whether or not to use the public purse to stimulate its own economy. Should they do so, they will find that any additional procurement concessions made in the TPPA (over and above concessions already made in the WTO and existing FTAs) will diminish the impact of fiscal stimulus. Governments must keep this in mind as they move forward with the negotiations.