
Fast Track and TPP: A Recipe for Disaster for Women and LGBT Communities

Pressured by corporate interests, the U.S. government is currently negotiating the Trans-Pacific Partnership (TPP), a sweeping trade agreement modeled after NAFTA, with 11 other Pacific Rim countries, including Brunei. As with NAFTA, the agreement would give signatory countries privileged access to the U.S. market and the opportunity to challenge a broad array of U.S. domestic laws before special trade tribunals. The pact is being negotiated in secret, although drafts of its text have leaked.ⁱ

To force the controversial deal through Congress, TPP advocates are pressing Congress to adopt so-called Trade Promotion Authority, colloquially known as “Fast Track” which would dramatically curtail the ability of Congress to shape the TPP and other trade agreements to protect the rights of women, LGBT communities, workers, or the environment. If Congress were to approve Fast Track, it would abandon its constitutional power to determine the content of trade policy. The bill provides no role for Congress to select appropriate trade partners. It empowers the executive branch to unilaterally select partner countries for a trade pact, determine an agreement’s contents through the negotiating process, and then sign and enter into an agreement all before Congress voted to approve a trade pact’s contents, regardless of whether a pact met Congress’ negotiating objectives. This means Congress would lose its power to shape the contents of a deal or appropriate partner countries as it is being negotiated. The current bill requires votes in both House and Senate within 90 days, forbids any amendments and limits debate to 20 hours. Fast Track would apply not only to pacts negotiated by the Obama administration, but those negotiated by the next administration as well.ⁱⁱ

The TPP would provide Brunei with special access to the U.S. market months after its government adopted a new penal code that targets women and LGBT communities by making same-sex sexual relations and “adultery” punishable by death by stoning. On May 1, 2014, Brunei began a phased implementation of a new penal code based on an extremist form of Sharia law which will impose whipping or death by stoning for same-sex sexual relations, adultery, and extramarital sexual relations.ⁱⁱⁱ Stoning is a gruesome punishment that violates human rights norms against torture. A person is buried so that only his or her head is exposed and is then pelted to death with rocks. Women have historically been the primary victims of this horrific practice.^{iv} Additionally, the penal code calls for fines and imprisonment for women who have abortions or give birth out of wedlock.^v The law also provides that marital rape is legal, so long as the wife is not under 13 years of age.^{vi} The United Nations High Commissioner for Human Rights has expressed deep concern about Brunei’s new penal code and called for its suspension.^{vii} The law has also triggered a celebrity-backed boycott of the Beverly Hills Hotel, which is owned by the billionaire Sultan of Brunei.^{viii} Yet Brunei is moving forward with implementation anyway.

The bill’s human rights language is unenforceable. The bill includes a new negotiating objective related to human rights: “to promote respect for internationally recognized human rights.” However, this provision is toothless. The Administration is not required to include any provisions fulfilling the

negotiating objectives in the final deal. The 1988 Fast Track used for the North American Free Trade Agreement (NAFTA) and the establishment of the World Trade Organization (WTO) included a negotiating objective on labor standards, but neither pact included such terms. The 2002 Fast Track listed as a priority the establishment of mechanisms to counter currency manipulation, but none of the pacts established under that authority included such terms. Under Fast Track, the president will be able to unilaterally pick countries with serious human rights abuses like Brunei as trade negotiating partners, initiate negotiations with them, conclude negotiations, and sign and enter into the trade agreement with the governments committing the abuses.

Absent Fast Track, Congress would have the power to require that the TPP exclude Brunei and prevent its future inclusion until it repeals these heinous laws, so that the United States does not strengthen commercial ties with a country guilty of barbaric treatment of women and LGBT persons. But under Fast Track, the executive branch alone would get to determine the TPP's members. Moreover, if the TPP were to take effect, its rules would remove policy tools to pressure countries like Brunei to halt human rights violations. For government purchases covered by the procurement provisions of the TPP, the deal will require the federal government (and perhaps even state governments) to treat Brunei's firms that want to become government contractors exactly the same as US firms, despite Brunei's deplorable human rights record. This could remove tools used in the past to demand corporate responsibility for human rights abuses, such as the successful Apartheid-era bans on doing business with companies operating in South Africa. Thus, not only would the TPP allow human rights violators like the Sultan of Brunei to profit from duty-free access to U.S. markets, but U.S. states could have fewer tools to pressure these regimes to stop human rights abuses.

The TPP would also reduce affordable access to life-saving medical care, including HIV/AIDS medication. Doctors Without Borders has warned that “the TPP agreement is on track to become the most harmful trade pact ever for access to medicine in developing countries.”^{xix} Under the TPP, pharmaceutical companies would have more power to keep generic versions of key drugs off the market. Competition from generic producers of antiretroviral medicines played a critical role in reducing the price of these medicines in poor countries, lowering costs by approximately 99% and helping nearly 12 million people obtain HIV/AIDS treatment.^x The TPP could undermine competition from generics by, among numerous other provisions, extending pharmaceutical companies' patent rights and allowing such companies to extend their monopolies and continue to charge artificially high prices for key drugs.^{xi} High prices mean more lives lost – already AIDS is the leading cause of death for women of reproductive age worldwide and discrimination against LGBT communities hampers their access to life-saving medical and health services.^{xii} If Fast Track is adopted, it will be impossible to modify the TPP to ensure that the agreement does not put affordable access to crucial medicines out of reach for those who desperately need them.

In sum, the TPP and Fast Track are a dangerous attack on our democracy. The TPP would strengthen corporate rights and enable corporations to challenge democratically-enacted U.S. laws in special trade tribunals. The TPP would also strengthen our ties with states like Brunei that abuse their citizens, and prevent our own nation from using its policy tools to support human rights and oppose these despotic regimes. And rather than promoting American values and globalizing justice and equal rights, Fast Track would lock-in the worst aspects of the TPP by eliminating our representatives' authority to choose our trading partners and amend any pact that the executive branch negotiates. The rights of women, the LGBT community, the sick, and the poor should not be thrown under the bus to advance the agendas of multinational corporations.

ⁱ See LORI WALLACH and TODD TUCKER, PUBLIC INTEREST ANALYSIS OF LEAKED TRANS-PACIFIC PARTNERSHIP INVESTMENT TEXT, PUBLIC CITIZEN, June 13, 2012, <http://www.citizen.org/documents/Leaked-TPP-Investment-Analysis.pdf>

ⁱⁱ For details concerning the provisions of the current Fast Track proposal, see Public Citizen, 2015, “Analysis: Hatch Bill would revive controversial 2002 Fast Track Mechanism” <http://www.citizen.org/documents/fast-track-2015.pdf>

ⁱⁱⁱ Brunei Darussalam, Penal Code (2013), Sections 69, 70, 71, 82, 84; United Nations News Centre, UN Concerned at Broad Application of Death Penalty in Brunei’s Revised Penal Code, April 11th, 2014 [“UNNC Report”], <http://www.un.org/apps/news/story.asp?NewsID=47552#.VHn36WTF8YI>

^{iv} Id.

^v Brunei Penal Code, Section 94: Gail Sullivan, Sharia Law Gets a Cool Reception in Beverly Hills [“Sharia Law”, Washington Post], Washington Post, May 6, 2014, <http://www.washingtonpost.com/news/morning-mix/wp/2014/05/06/sharia-law-gets-cool-reception-in-beverly-hills>; Freedom House, Freedom in the World 2014: Brunei (2014), <https://freedomhouse.org/report/freedom-world/2014/brunei#.VTIS59JVikp>

^{vi} Brunei Penal Code, Section 75; U.S State Department, Human Rights Report: Brunei, 2013, <http://www.state.gov/documents/organization/220391.pdf>; Int’l Commission of Jurists, Submission to the UN Committee on the Elimination of Discrimination against Women in Advance of the Examination of Brunei Darussalam’s Initial and Second Periodic Reports under Article 18 of the Convention on the Elimination of All Forms of Discrimination Against Women, Oct. 4, 2014, http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/BRN/INT_CEDAW_NGO_BRN_18687_E.pdf

^{vii} See UNNC Report, supra note 3

^{viii} See Sharia Law, Washington Post, supra note 5

^{ix} Doctors without Borders, “Trading Away Health: The Trans-Pacific Partnership Agreement (TPP),” July 2014, http://www.msf.ca/sites/canada/files/tpp_issuebriefing_july2014.pdf

^x Id.

^{xi} See id.

^{xii} UN Women, Message from the UN Women’s Executive Director for World AIDS Day, Dec. 1, 2014, <http://www.unwomen.org/en/news/stories/2014/12/world-aids-day-2014#sthash.qhwn47ST.dpuf>