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Not So Fast

Fast-tracking secretive trade agreements will benefit big corporations, not the public interest.



Congress needs to stay off the fast track.

May 12, 2015

President Barack Obama and the Republican leadership in Congress are trying to pass "fast track" legislation in order to push through major economic agreements with eleven countries of the Pacific region (the Trans-Pacific Partnership) and Europe (the Trans-Atlantic Trade and Investment Partnership) without the possibility for Congressional amendments. Both are being sold generally as "trade agreements," yet they involve key areas of business law and regulation far beyond trade. Before Congress approves fast track, these agreements need to be made public and exposed to thorough public scrutiny.

Regarding the Trans-Pacific Partnership, for example, there are around 30 major "chapters" being negotiated, many of which would reshape the rules and legal environment for business in the 21st century. Only a few of these 30 chapters directly involve "market access," such as tariff rates and quota restrictions. Many more deal with cross-border investment, investor-state relations and international business regulation. Fast-track authority granted now would enable the administration to negotiate fundamental changes in business law and regulation without democratic scrutiny of the deals until it's too late.

Even worse, the deals are being negotiated in the strangest kind of semi-secrecy. Hundreds of corporate lobbyists but only a few labor representatives have access to the negotiations, and the public has been kept almost completely in the dark. As usual, lobbyists are setting much of the agenda. As currently being negotiated, both trade deals could tilt regulations towards multinational companies and away from the public good in critical areas such as labor standards, environmental sustainability, intellectual property and financial flows.

Consider the question of Investor-State Dispute Settlement, one of the most heatedly contested chapters of both deals. Business associations are pushing to include an arrangement by which a foreign investor (such as a U.S. company operating abroad) can sue the host government if the company alleges that government actions are unjustly harming the firm's profitability. The mechanism creates an ad hoc three-member arbitration panel to decide the claim, outside of the legal system of the host country.

Defenders of the mechanism, including the administration, argue that it has been in place in investment treaties for decades without ill effects. Yet this argument misses the basic fact that multinational companies are increasingly and dangerously using the Investor-State Dispute Settlement mechanism to challenge the ability of governments to regulate businesses. What was once just a relatively little used procedure is now becoming a serious problem for governments that are attempting to implement health, education and other regulations that may have an effect on how businesses operate.

Philip Morris, for example, has recently used this process to resist tobacco-control measures in Australia and Uruguay, and Bilcon, a U.S. mining company, has successfully sued Canada over a regulatory action that had blocked one of its mining projects on environmental grounds. Some argue that the Canada precedent might tempt TransCanada to sue the U.S. government if it tries to block the Keystone XL pipeline.

There are, in fact, a plethora of chapters of the Trans-Pacific Partnership that, like the dispute settlement chapter, are being driven by U.S. lobbyists in ways that threaten the public interest. U.S. drug manufacturers that already use U.S. patent laws and a pliant U.S. political system to gouge American consumers with astronomical drug prices are hoping to use the Trans-Pacific Partnership to stop foreign governments from regulating drug prices and encouraging the use of generics. In general, the U.S. negotiators, following the lead of U.S. companies, are reportedly trying to tighten various dimensions of intellectual property at the expense of consumers.

The quest to negotiate decent 21st-century multinational business agreements with other regions, and ultimately at the global scale, has merit. The two trade deals being negotiated could, conceivably, create a world in which multinational businesses help to expand prosperity and opportunity, in compliance with strong standards on labor rights, environmental sustainability and human rights, and without jeopardizing regulatory authority and outsourcing judicial and administrative functions to ad hoc tribunals.

Yet we can be sure that secretive negotiations, pushed through Congress using fast-track legislation, are much more likely to benefit business lobbies than the public interest in the U.S. and abroad.



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