Countering Trade Opponents' Issues with TPP: Point and Counterpoint

Trade opponents, including some members of Congress, have remained outspoken throughout the intense debate regarding the Trans-Pacific Partnership, or TPP. To address their main arguments against TPP, this article deconstructs and counters each, while stressing the importance of a completed, comprehensive TPP agreement.

<table>
<tr><th>Opponents' Point</th><th>Counterpoint</th></tr>
<tr><td colspan="2">Investor State Dispute Settlement (ISDS)</td></tr>
<tr><td>ISDS, or Investor State Dispute Settlement, is a provision contained in trade agreements, including TPP, which allows big corporations to challenge the laws and regulations of sovereign countries in order to bend the rules in their favor.

• With ISDS, large corporations can take sovereign nations to an international tribunal, through which they can receive large monetary settlements from states that are found to be infringing on a corporation's profit—all at the expense of the taxpayer.
• ISDS provides no room for countries to regulate in the future, and many countries have had to pull back on regulations for fear of being sued through ISDS.
• If a country wants to adopt protective legislation for its citizens (for example, minimum wage), a corporation can sue for "millions or even billions" with the claim that these laws eat into their profits.[i]
• There is no process for countries or groups to challenge companies abusing laborers.[ii]
• Over the past few years, use of ISDS has increased tremendously.</td><td>ISDS is a procedural mechanism provided for in international agreements on investment, meant to protect foreign investment from illegal expropriation if there is proof of discrimination against said foreign investment.

• With ISDS, a corporation can take sovereign nations to a transparent international tribunal when it believes a host country is in violation of an agreement, or has wrongfully seized property through direct or indirect measures. Generally, violations occur when a country changes policy in a way that creates an adverse climate for foreign companies who have already made investments under a contract.
    ○ Corporations generally win ISDS cases one-third of the time and are usually awarded pennies on the dollar in comparison to the original claim.[v]
    ○ Two-thirds of U.S. investors that have used ISDS are individuals or small and medium-sized enterprises.[vi]
• ISDS is also used to protect foreign investment by allowing settlements to take place in a more transparent framework.
    ○ The two countries most frequently targeted by ISDS, Argentina and Venezuela, are ranked as the 143rd and 144th countries (out of 144) in the World Economic Forum's (WEF) Index on Efficiency of Legal Framework in Challenging Regulations.[vii]</td></tr>
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◦ In 2012 alone, there were 58 cases, while in the four decades from 1959 to 2002, there were only 100 cases of ISDS worldwide.[iii] • Cases like that of a French firm suing Egypt for minimum wage hikes reflect a skewed system that favors corporations.[iv]	◦ In the WEF's Index on Efficiency of Legal Framework in Settling Disputes, Argentina and Venezuela are ranked as the 130th and 144th countries (out of 144).[viii] • ISDS cannot change a nation's laws; the only outcome is a monetary settlement.[ix] • The use of ISDS has significantly increased in the past few years, in conjunction with a five-fold increase in foreign direct investment (FDI) globally since 1991.[x] • TPP countries are not the most frequent users of ISDS. ◦ In terms of disputes, investors from EU countries are responsible for the vast majority of cases since 1987.[xi] ◦ There were as many as 252 EU initiated cases between 2003 and 2013 (or 273 if cases against EU countries are included), and the ratio of EU to total cases has risen from 56 percent in the period from 2003 to 2011 to 67 percent in the last two-year period.[xii] ◦ This makes sense, as the EU accounts for nearly 50 percent of global FDI stock, and many disputes take place in sectors characterized by high levels of government intervention.[xiii] • With regard to the Egyptian case involving a French company, Senator Warren often refers to: ◦ "Veolia of France, a waste management company, invoked ISDS to enforce a contract with the government of Alexandria, Egypt, that it says required compensation if costs increased; the company maintains that the wage increases triggered this provision." ◦ "The case — which would result, at most, in a monetary award to Veolia, not the overthrow of the minimum wage — remains in litigation."[xiv]
IP Protections and Public Health	
The strict intellectual property (IP) protections in TPP will make medication more expensive in developing countries.	• IP restrictions, contrary to what Senator Warren and economists such as Joseph Stiglitz believe, have in fact spurred pharmaceutical research and development.

- These new IP laws will obstruct lower-priced generic medicines.[xv]
- They will serve to limit restrictions on drug pricing to benefit Big Pharma through increased prices.[xvi]
- "Of course, pharmaceutical companies claim they need to charge high prices to fund their research and development. This just isn't so. For one thing, drug companies spend more on marketing and advertising than on new ideas. Overly restrictive intellectual property rights actually slow new discoveries, by making it more difficult for scientists to build on the research of others and by choking off the exchange of ideas that is critical to innovation. As it is, most of the important innovations come out of our universities and research centers, like the National Institutes of Health, funded by government and foundations."[xvii] –Joseph Stiglitz

  - "Creative applications of IP rights have resulted in the development of medicines for previously-ignored conditions. As reported by the New England Journal of Medicine, 'In 2013, the Food and Drug Administration (FDA) approved 27 new drugs for marketing. Eight of these drugs are for orphan diseases, including six rare cancers. In fact, more than half of the 139 drugs approved by the FDA since 2009 are for orphan diseases and cancers.'"[xviii]
- The threat of an under-developed pharmaceutical market is existential with respect to non-communicable diseases (NCDs), such as cancers and cardiovascular diseases. IP protections provide pharmaceutical companies with the incentive to research and market lifesaving drugs that combat NCDs, as shown above.[xix]
  - NCDs are the most prominent driver of healthcare costs, both in terms of human health and economic prosperity, "and Asia will be the hardest hit."[xx]
  - Claiming 63% of all deaths, these diseases are currently the world's main killer.[xxi]
    - "Eighty percent of these deaths now occur in low- and middle-income countries."[xxii]
    - "Half of those who die of chronic non-communicable diseases are in the prime of their productive years, and thus, the disability imposed and the lives lost are also endangering industry competitiveness across borders."[xxiii]
    - "Over the next 20 years, NCDs will cost more than US$ 30 trillion, representing 48% of global GDP in 2010, and pushing millions of people below the poverty line."[xxiv]
  - By 2030, total output losses will soar, steadily rising over the next 20 years and picking up sharply by 2030.[xxv]
    - The high-income countries bear the highest absolute burden of lost output, while the upper-middle-income countries (a group that includes China) have the second highest burden, followed by lower-middle-income countries.[xxvi]

	▪ "These hefty sums can be put in perspective by looking at health outlays. World expenditure on health in 2009 totalled [sic] US$ 5.1 trillion (US$ 754 per capita) 13, of which 61% was spent by public entities. The vast majority of this expenditure (US$ 4.4 trillion) took place in high-income countries, where spending per capita was US$ 3,971 and the share of public spending was 62% of the total. At the other end of the spectrum, low-income countries spent an average of US$ 21 per capita, of which 42% was supplied by public entities."[xxvii]
	• On a global level, there is a need for IP protections to help combat the future threat that NCDs pose.
	  ○ Right now, there is little economic incentive for pharmaceutical research and development to address NCDs, but TPP's IP protections are aimed at creating such an incentive.[xxviii]
	• Biologics, fortunately, are going to play a key role in treating cancer through methods such as immunotherapy.[xxix]
	• However, patent protections and data exclusivity are especially important for the manufacturing of biologics.
	  ○ "Estimates are that the pre-approval cost of developing a biologic approaches $1.2 billion and that the time needed to recover the pre-approval R&D costs be between 12.9 and 16.2 years."[xxx]
	  ○ In the United States there is already a law in place (the *Biologics Price Competition and Innovation Act of 2009*) that provides for 12 years of exclusivity for these drugs.[xxxi]
	  ○ Biologics are strictly protected because, unlike generic small molecule medicines which require the identical active ingredient as the pioneer medicine, biosimilars do not need the pioneer medicine as a reference point to be created and could use the data gathered in the original medicine's clinical trials in order to be manufactured.[xxxii]

- The 12-year data exclusivity in TPP is important to the U.S. pharmaceutical industry and the U.S. economy alike because "About 5,600 medicines are in development in the 12 T.P.P. countries, according to the Senate Finance Committee. Of those, 3,372 are in the United States, including more than 900 biologics, which are grown from live cells. The industry contributes nearly $800 billion to the United States economy each year."[xxxiii]

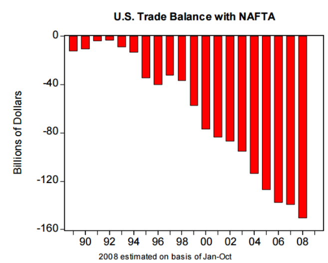
Labor and Job Losses

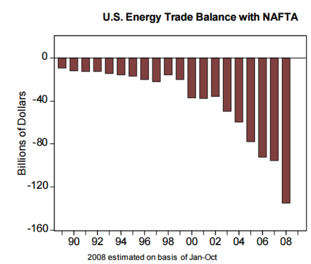
TPP, like past agreements, such as the North American Free Trade Agreement (NAFTA), Central America Free Trade Agreement (CAFTA), China permanent normal trade relations (PNTR) and United States-Korea Free Trade Agreement (KORUS), will cost the United States millions of middle class jobs, promote income inequality and debilitate the manufacturing sector.

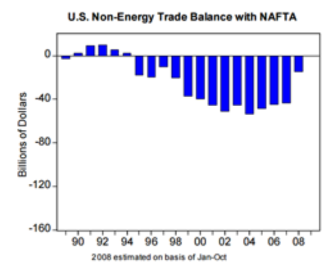
- A February 2014 report from the Economic Policy Institute highlights that 5.7 million American jobs have been eliminated by trade deficits over 15 years.[xxxiv]
- American workers cannot compete when we partner with countries that manipulate their currency and have poor labor standards.
  - "Why would an American corporation invest in this country, pay American workers $15, $18, $20 and hour, provide healthcare, deal with environmental regulations, trade unions, when they can go abroad, pay people pennies an hour, not have to worry about the environment." —Bernie Sanders
- Current trade only benefits the CEOs and large multinational corporations, furthering income inequality.

To say TPP will cost the United States millions of jobs is an overstatement. It is important to recognize the actual benefits of free trade and why trade agreements, like NAFTA, CAFTA, KORUS, PNTR and ultimately TPP, are necessary.

- Regarding NAFTA.
  - An overwhelming majority of the NAFTA trade deficit stems from U.S. fossil fuel trade with Mexico and Canada.[xxxviii]



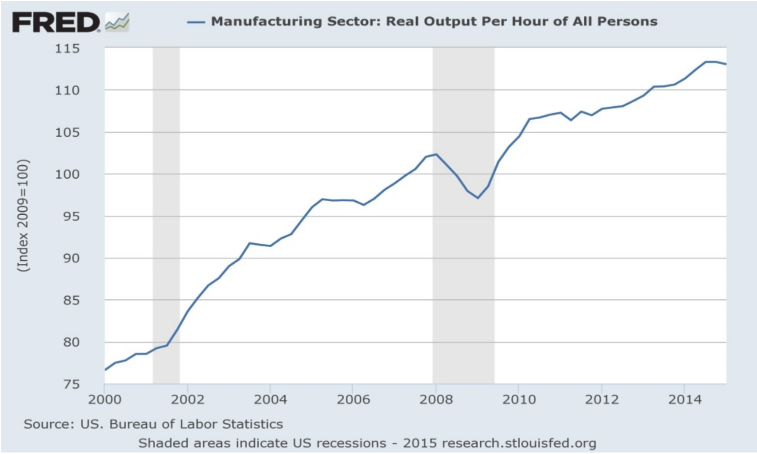




- Regarding China, PNTR did in fact lead to a huge trade deficit and the loss of many U.S. jobs. But, it is equally important to note that **PNTR was not a traditional free trade agreement.**
  - Granting China PNTR is partially responsible for job loss in the manufacturing sector as a result of the lifting of uncertainty surrounding investments in China. This absence of uncertainty led to a large unexpected outflow of investment from U.S. companies.[xxxix]

- NAFTA created a huge deficit with Mexico and lost the United States 680,000 jobs. PNTR has led to a net loss of 2.7 million jobs. KORUS has cost us 75,000 jobs.[xxxv]
- Manufacturing jobs that used to be a stable source of income and benefits for those who were not fortunate enough to go to college no longer exist.
  - "Today when young people graduate high school they don't have the opportunity to work in a factory and have a union job and make middle-class wages." —Bernie Sanders
  - Instead, good manufacturing jobs have been replaced by jobs at companies with low wages, low benefits and are 'vehemently anti-union'.[xxxvi]
  - 25% of all jobs in 1970 were manufacturing jobs; today they are 9%.[xxxvii]

  - As a result, "skill intensive industries more in line with U.S. comparative advantage do relatively well in terms of employment." After granting China PNTR, U.S. employment also rose in industries where Chinese tariffs declined.[xl]
  - PNTR also led to the effort to improve production through technology in the United States, in order to compete with the Chinese labor market.
    - While jobs were lost, productivity has rapidly increased as a result of the U.S. manufacturing sector becoming more capital intensive and seeing a large spike in research and investment in production technology.[xli]
- Now, because of a lack of qualified workers and low interest, an issue that manufacturing now faces is "a lack of workers."[xlii]
  - "The industry expects it will need to fill as many as 3.5 million jobs over the next decade—in part due to worker retirements but also due to the industry's nascent U.S. revival."[xliii]
  - "The industry predicts that as many as 2 million of these future jobs may go unfilled for lack of qualified—and willing talent."[xliv]
  - "In reality, the average U.S. manufacturing worker—who also likely holds a post-secondary credential if not a college degree—earned $77,506 in 2013."[xlv]



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	• Poor labor standards and lower wages abroad hurt both the U.S. and global market, yet, it is short-sighted to think that protectionism and refusing to operate in the global marketplace will help.
	  ○ Protection rarely saves jobs permanently. For example, after the Bush-era steel tariffs in 2002, 200,000 Americans lost their jobs due to higher steel prices. That's more people than the steel industry employed at the time, and one in four of the jobs lost were jobs in the steel industry.[xlvii]
	• TPP will level the playing field with strict labor standards. Tom Malinowski, Assistant Secretary for the Bureau of Democracy, Human Rights, and Labor at the State Department, noted at a recent Senate hearing that even with TPP unsigned, Vietnam is already allowing its citizens to unionize—a first for the Communist regime.
	  ○ It is also important to note that, in contrast to PNTR, a majority of TPP countries are already developed, high wage countries that, with the exception of Vietnam, do not pose the same threat that an underdeveloped-China posed, with its large labor supply and demand for investment. Free trade with Vietnam, which is a fraction of the size of China, will not result in a similar amount of job loss.
	• Free trade does not only benefit CEOs and multinational companies; in rich countries, free trade is pro-poor.[xlviii]
	  ○ The real income loss from closing off trade is 57% for the 10thpercentile of the income distribution and 25% for the 90th percentile.[xlix]
	• Low-income consumers spend relatively more on sectors that trade more, while high-income consumers spend more on services, which are the least traded. Low-income consumers also spend more on goods with lower elasticity of substitution across source countries.[l]
	  ○ In short, there are "larger expenditures in more tradeable sectors and a lower rate of substitution between imports and domestic goods for poor consumers; these two features lead to larger gains from trade for the poor than the rich."[li]

	"U.S. small and medium-sized enterprises (SMEs) also stand to gain from trade liberalization. In fact, almost 98 percent of all exporters and 97 percent of all importers are SMEs, representing almost 40 percent of U.S. goods exports and 31.5 percent of goods imports. In addition, 94 percent of SMEs are exporters and importers. Therefore, trade agreements that liberalize trade barriers, like the TPP, should disproportionately benefit SMEs. In contrast with large businesses, SMEs generally benefit the most from government efforts to reduce trade barriers overseas as their capacity to overcome these barriers by establishing subsidiaries in other countries is much more limited."[lii] - However, this trend falls along a u-shaped curve, meaning that there is some truth to the argument that trade is least beneficial for median-income consumers. Ultimately, the ones hurt most by free trade are those in the middle class.[liii] • The job losses from agreements like NAFTA, as well as actions such as PNTR, are recognizable, yet this negative is often inflated and ignores the positives. Since NAFTA, for example, "new export-related jobs in the U.S. now pay 15-20% more than those focused on domestic production."[liv] However, wages have not kept pace with the rapid increase in labor productivity, and domestic income inequality has risen (global inequality is on a steady, but modest decline).[lv] - Trade has not led to this trend, but instead has accelerated the effects of globalization (specialization, increased productivity) and has not been met with the necessary domestic policies to lessen the growing pains of free trade. - It is a stretch to blame U.S. employment shifts entirely on free trade. With regard to NAFTA, "manufacturing in the United States was under stress decades before the treaty, and job losses in that sector are viewed as part of a structural shift in the U.S. economy toward light manufacturing and high-end services."[lvi]

Closing Remarks

Ultimately, ISDS is necessary to protect FDI and to attract investment to developing countries. In fact, "BITs with ISDS play a more significant role in promoting FDI in such sectors than in sectors with predominantly private buyers. The simple reason behind that pattern is that there is a greater degree of political and regulatory risk in sectors with significant government involvement."[lvii] Senator Warren is correct in her assertion that, in some cases, ISDS does not allow countries to easily adopt future regulations that are meant to protect citizens, but according to The Office of the United States Trade Representative, in TPP, "The investment chapter will include carefully defined obligations and exceptions designed to ensure that nothing in the chapter impinges on legitimate regulation or provides foreign investors with greater substantive rights than those already available under U.S. law. It will also reaffirm the right of any TPP government to ensure that investment activity in its territory is undertaken in a manner sensitive to environmental, health, or other regulatory objectives."[lviii]

Combining strict and universal labor and environmental regulatory standards with ISDS for TPP countries could be a change for good. The regulations that TPP will put in place will become the agreed upon standard of the nations involved; ISDS cases would be unable to change these standards. This will create a multilateral approach to regulation that will not only protect workers and the environment, but level the investment playing field as well.

As the U.S. economy inevitably becomes more globalized, it in turn becomes more productive and specialized. This economic fluctuation is inevitable; free trade agreements merely hasten the pace of this trend. Manufacturing as the median-income staple of the United States is no longer the norm and can no longer be counted on to soak up all unemployment, but it still has a large role to play. As manufacturing in the United States has become more valuable and complex, secondary education or specialized training has become a requirement for a job on the factory floor, and these jobs will be around in the future. It is important that the U.S. education system meet this trend. Many of these 'middle-class jobs' exist, but the education required to get them has yet to catch up. The industry and education system must adapt, and the old method of doing things can no longer be protected. Global economic integration is unstoppable, barring large scale war or cataclysmic events, and protectionism has been shown to do more harm than good.

It is important that policies become proactive instead of reactive. The need for the U.S. government to take an active role in assisting those affected by labor market shifts, through programs such as Trade Adjustment Assistance, is essential. More time and energy must be devoted to reforming education and expanding worker rights to those who work low-income service jobs in an effort to make these jobs better paying. As middle-income manufacturing jobs experience changes and market shocks, the U.S. government needs to do more to create a new middle-income employment sector. It is too early to tell whether the President's recent executive action on overtime pay will be a step in the right direction. While it may help wage disparity for a time, in order for meaningful change to take place, a shift must occur in the U.S. labor market to combat structural unemployment, and this is unlikely to take place without government assistance.

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